Employers Can Immediately Recover the Cost of Mandatory COVID-19-Related Leave Through Reducing Payroll Taxes

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The Families First Coronavirus Response Act requires employers with less than 500 employees to provide 10 days paid sick leave plus paid FMLA leave for COVID-19-related reasons. We outline the ways employers can immediately take advantage of this change.

IN DEPTH

The Families First Coronavirus Response Act (the “Act”) requires employers with less than 500 employees to provide 10 days paid sick leave plus paid FMLA leave for COVID-19-related reasons. See additional details regarding sick leave and child leave required under the Act.

Critically, the Act provides tax credits for the employer portion of Social Security and Medicare taxes. These credits are effective for statutory benefits paid starting on a date not later than April 2, 2020 (to be designated by Treasury), and ending on
Employers can take advantage of this change immediately. Employers can retain payroll taxes equal to the amount of qualifying sick and child care leave that is paid under the Act, rather than deposit it with the IRS. Although the tax credits provided under the Act are for the employer portion of Social Security and Medicare taxes, for purposes of administering or retaining the tax credits, the IRS announced on Friday, March 20, that payroll taxes for this purpose include federal income tax withholding amounts (FITW), the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of statutory benefits paid, employers will be able to file a request for an accelerated payment from the IRS. The IRS has announced that it will process these requests in two weeks or less. Details on how to claim these credits are expected later this week.

Now, for more details, let’s look at each statutory benefit and how tax credits will work for each.

**Paid Sick Leave Tax Credit**

The paid sick leave tax credit applies to the employee’s regular rate of pay subject to limits that vary depending upon the type of leave as follows:

1. If an employee qualifies for sick pay leave due to (i) being unable to work because of a COVID-19 quarantine or self-quarantine or (ii) having COVID-19 symptoms and seeking a medical diagnosis, the tax credit equals 100% of the employee’s regular rate of pay up to a cap of $511 per day (which is a cap of $5,110 in the aggregate if the employee takes the maximum 10 days of paid sick leave).

2. If an employee is (i) caring for someone with COVID-19, or caring for a child because the child’s school or child care facility is closed or (ii) caring for a child because the child care provider is unavailable due to COVID-19, the tax credit is two-thirds of the employee’s regular rate of pay up to a cap of $200 per day (which is a cap of $2,000 in the aggregate if the employee takes the maximum 10 days of paid sick leave).

In either case, an additional tax credit will also be available for certain costs to maintain health insurance coverage for these employees on a covered leave. Guidance from Treasury is expected later this week to address how this will work.

**Child Care Leave Credit**

An employee may take FMLA leave due to being unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to COVID-19. Employees may take 12 weeks of leave for this purpose, with the initial two weeks unpaid and the remaining 10 weeks paid at two-thirds their regular rate of pay.
The amount of the child care tax credit is equal to two-thirds of the employee’s regular pay, capped at $200 per day or $10,000 in the aggregate (if the full 10 weeks of paid FMLA leave is taken). An additional tax credit for certain costs to maintain health insurance coverage during a covered child care leave will also be available.

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