

# COVID-19 PAID SICK LEAVE AND OTHER RELIEF AVAILABLE TO EMPLOYERS

## SICK LEAVE

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

The Families First Coronavirus Response Act passed in March 2020 requires employers with under 500 paid employees to provide paid sick leave and paid family medical leave to eligible employees who have worked at least 30 days before the impact of the novel coronavirus. Employers must provide up to 10 business days (or two weeks) of paid sick leave, and as many as 10 weeks of protected paid family and medical leave for eligible employees impacted by the disease. Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue. The exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern. The Department of Labor will provide emergency guidance and rulemaking to clearly articulate this standard.

Employers are required to permit two weeks of paid sick leave (at the employee's regular rate of pay) to employees affected by coronavirus, for a number of hours based on their full-time or part-time status. Part time employees are entitled to time equal to the number of hours they work on average over a two week period. In addition, for employees who need time off to care for a family member affected by coronavirus, employers are required to permit two weeks of paid leave (at 2/3 of the employee's regular rate of pay). This emergency sick leave is limited to \$511 per day for employees who are in quarantine or looking to get a diagnosis for coronavirus, or \$200 per day to care for a quarantined family member or for childcare. While employers will initially have to pay for this sick/leave pay out of pocket, there is a refundable payroll tax credit for 100% of qualified paid sick leave wages paid by an employer, which is taken against the employer portion of Social Security taxes. When the employer pays their payroll taxes, there should be an option to claim the credit against the taxes owed. If the taxes owed aren't enough to cover the cost of the paid leave, employers can seek an expedited advance from the IRS by submitting a claim form that will be released by the end of March 2020. **It is recommended that employers keep secure detailed records regarding each employee, the hours taken, and the family members affected if applicable.**

In addition, the CARES Act now allows taxpayers to defer paying the employer portion of Social Security payroll taxes through the end of 2020. This applies to self-employed individuals as well – payment of 50% of your Social Security taxes can be deferred through the end of 2020.

Employers are required to post, in a public place on their premises, a notice to employees informing them of the paid sick time available.

A downloadable version of this poster can be found here:

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

## NONENFORCEMENT PERIOD

The Department of Labor (DOL) will issue a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the act. Under this policy, the DOL will not bring an enforcement action against any employer for violations of the act so long as the employer has acted reasonably and in good faith to comply with the act. The DOL will instead focus on helping employers comply during the 30-day period. Please contact legal counsel with questions related to this.

## EFFECTIVE DATES

Tax credits for qualified sick leave wages and qualified family leave wages will apply to wages paid for the period beginning April 1, 2020, and ending Dec. 31, 2020. In addition, days occurring during the period beginning on April 1, 2020, and ending on Dec. 31, 2020, will be taken into account for credits for qualified sick leave equivalent amounts and qualified family leave equivalent amounts for certain self-employed individuals.

# Eligible credits

**Qualified family leave credit:** The Families First Coronavirus Response Act requires employers with fewer than 500 employees to provide public health emergency leave under the Family and Medical Leave Act, P.L. 103-3, when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency related to COVID-19. (Employers with fewer than 50 employees can be exempted from the requirement.) Subject to certain limitations, an employer receives a payroll tax credit equal to 100% of the qualified family leave wages paid by the employer. Self-employed individuals can get the credit as well but cannot use Form 7200 to obtain it.

**Qualified paid sick leave credit:** The Families First Coronavirus Response Act also requires employers with fewer than 500 employees to provide up to 80 hours of paid sick time through the end of this year if an employee is unable to work due to being quarantined or self-quarantined or having COVID-19 or because the employee is caring for someone who is quarantined or self-quarantined or has COVID-19 or if the employee is caring for children whose school has been closed because of COVID-19 precautions. (Employers with fewer than 50 employees can be exempted from the requirement.) Subject to certain limitations, an employer can receive a payroll tax credit equal to 100% of the qualified sick leave wages paid by the employer. Self-employed individuals are also permitted to receive this credit.

**Employee retention credit:** The employee retention credit is available for employers that close or have much-reduced gross receipts due to the coronavirus pandemic. The credit is designed to encourage businesses to keep employees on their payroll by providing a refundable tax credit of 50% of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19. (For more, see “Guidance on Employee Retention Credit,” below.)

## Filing Form 7200

According to the IRS, employers can file the form for advance credits anticipated for a quarter at any time before the end of the month following the quarter in which the employer paid the qualified wages. Employers are permitted to file Form 7200 several times during each quarter. Employers should not file Form 7200 after they file Form 941, *Employer's Quarterly Federal Tax Return*, for the fourth quarter of 2020, or file Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*, Form 944, *Employer's Annual Federal Tax Return*, or Form CT-1, *Employer's Annual Railroad Retirement Tax Return*, for 2020 and should not file the form to request advance credits for any anticipated credit for which the employer has already reduced its employment tax deposits.

Employers file Form 7200 by faxing the completed form to 855-248-0552.

### Guidance on employee retention credit

The IRS also issued its first informal guidance on the employee retention credit, which was just enacted last week ([IR-2020-62](#)).

The credit is available to all employers regardless of size, including tax-exempt organizations, but not to state and local governments and their instrumentalities and small businesses that take small business loans.

Qualifying employers must fall into one of two categories:

- The employer's business is fully or partially suspended by government order due to COVID-19 during the calendar quarter; or
- The employer's gross receipts are below 50% of the comparable quarter in 2019. Once the employer's gross receipts go above 80% of a comparable quarter in 2019, the employer no longer qualifies after the end of that quarter.

These measures are calculated each calendar quarter.

The amount of the credit is 50% of qualifying wages paid up to \$10,000 in total. Wages paid after March 12, 2020, and before Jan. 1, 2021, are eligible for the credit. Wages also include a portion of the cost of employer-provided health care.

Qualifying wages are based on the average number of a business's employees in 2019. However, for purposes of the credit, eligible wages do not include wages counted for purposes of the paid sick leave and paid family leave payroll tax credits. **Also, if an employer receives a covered paycheck protection program loan (PPP Loan) under Section 1102 of the CARES Act, the employer is not eligible to claim an employee retention credit.**

**Employers with fewer than 100 employees:** If the employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless of whether they worked or not. If the employees worked full time and were paid for full-time work, the employer still receives the credit.

**Employers with more than 100 employees:** If the employer had more than 100 employees on average in 2019, then the credit is allowed only for wages paid to employees who did not work during the calendar quarter.

Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit.

Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns or Form 941 beginning with the second quarter. If the employer's employment tax deposits exceed the credit, the employer may receive an advance payment from the IRS by submitting Form 7200.