

Employer Incentives for Employee Retention

August 26, 2020

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COVID-19 Payroll Tax Relief

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FFCRA Emergency Sick Leave & Family Medical Leave

- Employers with fewer than 500 employees
 - Exemption: businesses with fewer than 50 employees
 - ◇ Providing child care-related emergency paid sick and emergency family medical leave would jeopardize the viability of the business as a going concern
- ALL employees are eligible (FT, PT, Temporary)
 - On payroll for least 30 days

Emergency Paid Sick Time (PST)

If employee qualifies the employer must pay:

- 80 hours PST for FT employee
- At the employee's regular rate of pay or minimum wage
- Capped at \$511 per day and \$5,110 total (self)
- Capped at \$200 per day and \$2,000 total (care of others)



Emergency Family & Medical Leave (E-FMLA)

- 12 weeks of leave for employees who cannot work (or telework) to care for minor child(ren) because of school/care closure
 - Online instruction considered closure
 - If employer agrees, can be taken intermittently
- First 2 weeks unpaid (can use PST or other PTO)
- After 2 weeks paid 2/3 of regular rate of pay capped at \$200 and \$10,000 total



Tax Credits

- Available for both PST & E-FMLA
- Refundable
- Dollar-for-Dollar
- Health insurance costs also included

Tax Credits – Self Employed

- Meets the same factors as employee
 - E-FMLA days multiplied by the lesser of:
 - ◇ \$200 (same limitations as for employees), or
 - ◇ 67% of average daily self-employment income
 - Net earnings from self-employment for the taxable year divided by 260
 - PST days multiplied by the lesser of:
 - ◇ \$511 (self)/\$200 (family) (same limitations as for employees), or
 - ◇ 100% (self)/67% (family) of average daily self-employment income

FFCRA – Documentation (IRS FAQ #44)

- Employer should maintain
 - Employee's name
 - Date or dates for which leave is requested
 - A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason
 - A statement that the employee is unable to work, including by means of telework, for such reason
- Name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine



FFCRA – Documentation (IRS FAQ #44)

- School closing or child care provider unavailability
 - Name and age of the child (or children) to be cared for
 - The name of the school that has closed or place of care that is unavailable
 - Representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave



FFCRA – Add'l Documentation (IRS FAQ #45)

- Documentation to show how PST & E-FMLA was determined
 - Including records of work, telework and qualified sick leave and qualified family leave
- Documentation to show how qualified health plan expenses were allocated to wages
- Copies of any completed Forms 7200
- Copies of the completed Forms 941
- Retain for at least 4 years



CARES Act Employee Retention Credit

- 50% of first \$10K of comp (incl. health benefits) paid from 3/13/20 to 12/31/20
- Available if:
 - Operations fully or partially suspended due to COVID-19 or
 - Gross receipts <50% of same quarter in prior year (until gross receipts >80%)
- ER > 100 EE: only comp paid to out-of-work EE
- ER ≤ 100 EE: any comp paid during one of two situations
- Not available if ER uses paycheck protection loan



Full/Partial Suspension of Operations

- Essential business not suspended
 - Unless:
 - ◇ More than a nominal portion of its business operations are suspended
 - ◇ Supplier of essential business suspended
 - ◇ Required to reduce hours of operation
- Teleworking - comparable operations
- Credit only available for wages paid during the period the order is in force



Gross Receipts – Tax Exempt

- IRS FAQ 46 – updated 6/19/2020
 - Include gross receipts from all operations
 - ◇ Not just UBI
 - Includes:
 - ◇ Total sales (net of returns and allowances)
 - ◇ Amounts received for services
 - ◇ Investment income:
 - Dividends, rents, and royalties
 - Contributions, gifts, grants, and similar amounts,
 - Dues or assessments from members or affiliated organizations.



Employer Credit Comparison

	Paid Sick Leave Credit	E-FMLA Credit	Employee Retention Credit	455 - Employer Credit for Paid Family & Medical Leave	Work Opportunity Tax Credit
Enabling Legislation	Families First Coronavirus Response Act	Families First Coronavirus Response Act	Coronavirus Aid, Relief, and Economic Security Act	Internal Revenue Code Section 455	Internal Revenue Code Section 51
Number of Employee Limitations	Employers with fewer than 500 employees	Employers with fewer than 500 employees	The credit can be claimed by employers with an average of more than 100 employees for all employees who are retained but not currently working as a result of COVID-19. For employers with 100 or fewer employees, all wages paid qualify for the credit so long as they meet other requirements related to suspension of business or reduction in gross receipts.	Any size employer	Any size employer
Type of Employer	Eligible employers that are entitled to claim the refundable tax credits are businesses and tax-exempt organizations that: (i) have fewer than 500 employees, and (ii) are required under the FFCRA to pay "qualified sick leave wages" and/or "qualified family leave wages."	Eligible employers that are entitled to claim the refundable tax credits are businesses and tax-exempt organizations that: (i) have fewer than 500 employees, and (ii) are required under the FFCRA to pay "qualified sick leave wages" and/or "qualified family leave wages."	Private employers and 501(c) employers exempt from tax under 501(a)	Private employers	Private employers
Type of Credit	Refundable Payroll Credit or Self-Employment Tax	Refundable Payroll Credit or Self-Employment Tax	Refundable Payroll Credit	General Business Credit	General Business Credit or Refundable Payroll Credit for Tax-Exempt Employers
Effective Dates	April 1, 2020 through December 31, 2020	April 1, 2020 through December 31, 2020	March 13, 2020 through December 31, 2020	January 1, 2018 through December 31, 2020	Through December 31, 2020
Credit Calculation	Emergency paid sick leave at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate, for a total of 10 days OR For employers who pay wages to an employee to care for a child whose daycare is closed, a payroll tax credit for 100% of employee's qualified sick leave, capped at \$200 per day for 10 days (\$2,000 total); plus eligible employers may receive a tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period. Any included health care costs are subject to the same overall dollar limitations, so it is not an additional credit.	Eligible employers may receive a payroll tax credit of 100% of eligible wages paid, capped at \$200 per day up to \$10,000 per employee in total. Up to 10 weeks of qualifying leave can be counted towards the child care leave credit. Qualified health plan expenses can be added to the wages to determine the credit.	The credit is computed on a calendar-quarter basis and equals 50% of qualified wages up to \$10,000 paid to each employee or \$5,000 in actual credit. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. Wages paid under the FFCRA are not included as "qualified wages."	The credit is a percentage of the amount of wages paid to a qualifying employee while on family and medical leave for up to 12 weeks per taxable year. The minimum percentage is 12.5% and is increased by 0.25% for each percentage point by which the amount paid to a qualifying employee exceeds 50% of the employee's wages, with a maximum of 25%. In certain cases, an additional limit may apply.	The credit amount is computed for qualifying employees as a percentage of wages determined by total hours worked and qualifying category of eligibility. The maximum potential credit per employee ranges anywhere from \$2,400 to \$9,600.

Employer Credit Comparison Continued

	Paid Sick Leave Credit	E-FMLA Credit	Employee Retention Credit	455 - Employer Credit for Paid Family & Medical Leave	Work Opportunity Tax Credit
Qualifying Employee	All employees.	Full- or part-time employees who have been employed for 30 days or longer	No limitations.	A qualifying employee is any employee under the Fair Labor Standards Act who has been employed by the employer for one year or more and who, for the preceding year, had compensation of not more than a certain amount. For an employer claiming a credit for wages paid to an employee in 2018, the employee must not have earned more than \$72,000 in 2017.	A qualifying employee meets one of 9 criteria, unless for a tax-exempt employer, in which case only eligible veterans will qualify. Short-term Temporary Assistance for Needy Families (TANF) Recipient (Group 1); Qualified Veteran (Group 2a); Disabled Veteran (Group 2b); Unemployed Disabled Veteran (Group 2c); Unemployed Veteran - 4 Weeks (Group 2d); Unemployed Veteran - 6 Months (Group 2e); Qualified Ex-felon (Group 3); Designated Community Resident (Group 4); Vocational Rehabilitation Referral (Group 5); Food Stamp Recipient (Supplemental Nutrition Assistance Program - SNAP) (Group 6); Supplemental Security Income Recipient (Group 7); Long-term Family Assistance Recipient (Group 8); Qualified Long-term Unemployment Recipient (Group 9). Employers must submit paperwork for qualifying employees within 28 days of start day in order to be eligible for credit amounts.
What is qualifying leave?	Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee: 1. is subject to a federal, state, or local quarantine or isolation order related to COVID-19; 2. has been advised by a health care provider to self-quarantine related to COVID-19; 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); 5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or 6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.	Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.	N/A	This is leave for one or more of the following reasons: 1. Birth of an employee's child and to care for the child; 2. Placement of a child with the employee for adoption or foster care; 3. To care for the employee's spouse, child, or parent who has a serious health condition; 4. A serious health condition that makes the employee unable to perform the functions of his or her position; 5. Any qualifying exigency due to an employee's spouse, child, or parent being on covered active duty (or having been notified of an impending call or order to covered active duty) in the Armed Forces; 6. To care for a service member who is the employee's spouse, child, parent, or next of kin.	N/A
How do the credits intersect?	Can be taken in connection with E-FMLA credit, but not with Retention Credit. Wages taken into account for this credit cannot be taken into account for purposes of the 455 credit.	Can be taken in connection with Paid Sick Leave Credit, but not with Retention Credit. Wages taken into account for this credit cannot be taken into account for purposes of the 455 credit.	May be taken with other credits, but not for same wages. In that event, must choose among credits for best answer.	Will apply to different employers than covered under FFCRA. May not be taken with Retention Credit. Wages included in Paid Sick Leave or E-FMLA Credits do not qualify.	May be taken with other credits, but not for same wages. In that event, must choose among credits for best answer.





Social Security Tax Deferrals and the New 941

Scott Hess

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Deferral of Employer Social Security Taxes

- ER share of social security tax deferred (6.2%)
 - 50% due 12/31/21 and 50% due 12/31/22
- Applies to deposits/payments from March 27, 2020 to December 31, 2020
 - Including deposits due in January 2021 related to wages paid in December 2020
- *PPP Flexibility Act – PPP loan forgiveness no longer limits deferral*



Timing of Deferral

- Deferral of deposits and payments, not liability
 - Amounts already paid in are not refundable, however
 - You can consider prior deposits during a quarter as first being deposited for other employment taxes
- The maximum amount that can be deferred each quarter is the smaller of
 - Your employer share of social security tax, or
 - The excess of (a) line 10 (reduced by the amount, if any, on line 11a) over (b) line 13a (i.e. total taxes less your deposits)



Repaying the Deferral

- One-half due December 31, 2021
- Remaining deferral due December 31, 2022
- May be repaid via EFTPS, credit or debit card, or check
 - EFTPS is preferred
 - Enter EIN, Form 941 and calendar quarter of deferral on check
- Any payments or deposits made prior to December 31, 2021 are first applied against your payment due on that date



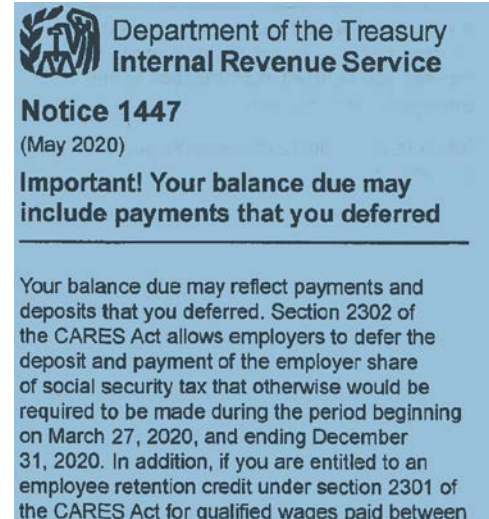
New Form 941

- Updated for COVID-19 Payroll Tax Relief
- More than 40 new lines on form and worksheets
- Worksheet 1 added for COVID-19 related credits
- Updated Form was not ready for Q1
 - Q1 notices going out for deferrals of social security tax
 - Q1 employer retention credits reported on Q2 return
 - ◇ Do not amend Q1



Q1 Tax Notices

- Notice 1447
- Taxpayers that reduced deposits
 - Deferral of social security taxes
 - Anticipation of employer retention credits
- Contact the IRS
 - Writing or phone call
 - Provide details on reduced tax deposits
 - CLA authorized if valid Form 8655 in place



Reporting Employee Retention Credits

- Q1 employer retention credits reported on Q2 return
 - Q1 qualified wages and health plan expenses reported on lines 24 and 25 for purposes of Q2 credit reporting only
 - Do not include Q1 ERC wages on lines 5a-e for social security and Medicare tax purposes (reported in Q1)
- Returns can be amended in order to claim the credit
 - Beginning with Q2



Form 7200 Advances

- Form 7200 used to claim advance refund of paid leave and employee retention credits
- Advances received from filing Form 7200 reported on line 13f
 - If you filed a Form 7200 before the end of the quarter, but you haven't received the advance before filing Form 941, don't include that amount
 - Advance payment requests on Form 7200 for a quarter won't be paid after your Form 941 is processed for that quarter
 - A taxpayer will receive [letter 6312](#) if the IRS either rejected Form 7200 or made a change to the requested amount of advance payment



Additional Reporting Requirements

- IRS [Notice 2020-54](#)
 - Employers will be required to report the amount of qualified sick and family leave wages paid to employees on Form W-2, Box 14, or in a statement provided with the Form W-2



Deferral of Employee Social Security Taxes

- Executive Order signed August 8, 2020
- Defers withholding, deposit and payment of employee social security taxes
- Wages paid September 1, 2020 through December 31, 2020
- Available to employees whose wages are generally less than \$4,000 in a bi-weekly pay period (pre-tax basis)
- AWAITING FURTHER GUIDANCE FROM TREASURY!
 - Repayment and obligation to pay





THANK YOU!

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