
Payroll Credit for Required Paid Sick Leave

Description of Program and Relief

This provision provides a tax credit to eligible employers for wages required to be paid under the Emergency Paid Sick Leave Act (Division E of the Families First Coronavirus Response Act) (the “EPSLA”).

Pursuant to this provision, employers are entitled to a refundable credit against their net employer-side Federal Insurance Contributions Act (“FICA”) taxes (and a similar credit under the parallel social security system for railroads (Railroad Retirement Tax Act, the “RRTA”)) each calendar quarter equal to 100% of wages required to be paid under the EPSLA, subject to the following caps:

- (1) \$511 per employee per day and \$5,110 in the aggregate if the employee is absent because they are subject to a quarantine or isolation order related to coronavirus, has been advised by a health care provider to self-quarantine due to coronavirus concerns, or is experiencing symptoms of coronavirus and is seeking a medical diagnosis; or
- (2) \$200 per employee per day and \$2,000 in the aggregate if the employee is absent to care for an individual subject to quarantine or an isolation order or who has been advised by a health care provider to self-quarantine due to coronavirus concerns, if the employee is caring for a son or daughter and their school or place of care has been closed, or child care for the employee is unavailable due to coronavirus.

Employers may claim a maximum of 10 days’ credit in respect of each employee receiving payments under the EPSLA through December 31, 2020. In addition, employers will receive additional money from the federal government through this tax credit increasing to cover a portion of the costs employers pay to provide health insurance to their employees. The portion will likely be determined based on the proportion of employees taking coronavirus-related leave.

Government or Lead Agency

Department of the Treasury, through the Internal Revenue Service

Dates Available

Not currently available, but intended to be administered via the payroll tax system, with regulations / guidance to be issued by Treasury and the IRS. Will become available once the Secretary of Treasury selects an effective date, no later than April 2, 2020.

Timing is generally quarterly, though employers may effectively be able to count expected credits towards employer-side FICA (or RRTA) taxes that would otherwise be paid in connection with payroll under regulations and guidance to be issued, through December 31, 2020.

Eligibility Requirements/Restrictions

The employer must have employees who receive wages under the EPSLA. Excess credits over net employer-side FICA (or RRTA) taxes are refundable, though the precise mechanic of the refund is not set out in the statute, with administration of the refunds instead to be determined under pre-existing grants of authority to the Secretary of Treasury.

No credit is available to the extent a credit would already be available under Section 45S of the Internal Revenue Code (establishing a credit for the payment of employee wages while the employee is on family or medical leave under the Family and Medical Leave Act of 1993 or similar employer policies). Employers can elect, on a quarter-by-quarter basis under regulations or guidance to be issued, not to take the credit.

List of Additional Information

Treasury is authorized to issue regulations or guidance waiving failure-to-deposit penalties for employer-side FICA (or RRTA) taxes not paid in anticipation of this credit.

To avoid a double benefit, an employer's income is increased by the amount of the credit. This increase effectively eliminates the deduction generated by the payment of EPSLA wages for which a credit is provided.