
Payroll Credit for Required Family Leave

Description of Program and Relief

This section of the Families First Coronavirus Response Act (the “FFCRA”) provides a tax credit to eligible employers for wages required to be paid under the Emergency Family and Medical Leave Expansion Act (Division C of the FFCRA) (the “EFMLEA”).

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 (“RRTA”)) for each calendar quarter equal to 100% of wages required to be paid under the EFMLEA, capped at \$200 per employee per day, with an aggregate cap of \$10,000 per individual.

Employers will receive additional money from the federal government through an increase in this tax credit 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.

The statute also includes an ordering provision. That provision specifies that the credit for wages under the Emergency Paid Sick Leave Act (Division E of the FFCRA) (the “EPSLA”) is applied against employer-side FICA (or RRTA) taxes before the credit for EFMLEA wages is applied.

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. The program will be 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, sometime before December 31, 2020.

Eligibility Requirements/Restrictions

The employer must have employees who receive wages under the EFMLA. Excess credits over net employer-side FICA (or RRTA) taxes are refundable, though the precise mechanism of the refund is not set out in the statute. Administration of the refunds will 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 EFMLA wages for which a credit is provided.