



HELPFUL FFCRA GUIDANCE FOR EMPLOYERS FROM IRS AND EEOC

April 6, 2020 | Alert

While the U.S. Department of Labor has been the agency principally responsible for issuing guidance on the Families First Coronavirus Response Act (FFCRA), several other agencies, including the Internal Revenue Service (IRS) and the Equal Employment Opportunity Commission (EEOC) have recently issued important guidance for employers regarding the FFCRA and the COVID-19 pandemic.

Guidance from the IRS on Tax Credits Under the FFCRA

The IRS recently issued guidance in the form of 66 Questions and Answers related to tax credits available under the FFCRA. The following are some important highlights from this IRS guidance:

- Generally, under the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act, an eligible employer is entitled to a fully refundable tax credit equal to the required paid leave. This tax credit also includes: (1) the employer's share of Medicare tax imposed on those wages and, (2) the employer's cost of maintaining health insurance coverage for the employee during the paid leave period. The employer is not subject to the employer portion of social security tax imposed on those wages. For more information on the basics of tax credits allowable under the FFCRA, see our article: [Refundable Tax Credits Available to Cover Emergency Paid Sick Leave and Paid FMLA](#)
- With respect to the health insurance portion, the tax credit generally includes both: (1) the portion of the cost paid by the employer; and (2) the portion of the cost paid by the employee with pre-tax salary reduction contributions. However, the qualified health plan expenses should not include amounts that the employee paid for with after-tax contributions.
- An eligible employer should require an employee seeking leave to submit a *written request* for leave in which the employee

RELATED PROFESSIONALS

Rachel E. Bossard

Elizabeth M. Pall

RELATED PRACTICE & INDUSTRIES

Labor and Employment



provides: (1) the employee's name; (2) the date or dates for which leave is requested; (3) a statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and (4) a statement that the employee is unable to work, including by means of telework, for such reason.

- In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should also include: (1) the name and age of the child (or children) to be cared for; (2) the name of the school that has closed or place of care that is unavailable; and (3) *a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.*
- In addition to the above statement(s) from the employee, an employer should retain, for a period of 4 years, the following documentation related to each employee's leave: (1) documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave; (2) documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages; (3) copies of any completed Forms 7200, Advance of Employer Credits Due to COVID-19, that the employer submitted to the IRS; and (4) copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer submitted to the IRS.

The full IRS guidance can be found here: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#basic>

Guidance from the EEOC

The EEOC, the agency that enforces federal anti-discrimination laws, has issued guidance for employers regarding the effect of the current pandemic on compliance with the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The following are some important highlights from the EEOC guidance:

- During this pandemic, ADA-covered employers may ask employees if they are experiencing symptoms of COVID-19, including fever, chills, cough, shortness of breath, or sore throat. Employers, however, must maintain all information about employee illness as a confidential medical record in compliance with the ADA.
- If an employee is exhibiting symptoms of COVID-19, an employer can require the employee to leave the workplace.
- Although taking an employee's temperature is traditionally considered a "medical examination," during this pandemic, employers may measure employees' body temperature. (However, employers should be aware that some people with COVID-19 do not have a fever.)
- If an employee takes leave because they are exhibiting symptoms of COVID-19 or have been diagnosed with COVID-19, an employer may require a doctor's note to certify the employee's fitness for duty before permitting the employee to return to work.



The full EEOC guidance can be found here:

https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm