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Ins & Outs of FFCRA Tax Credits

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Eligible employees can now take up to 80 hours of paid sick leave and up to 12 weeks of paid family leave to care for a child whose school or usual place or person of care is closed, or unable to provide care, because of coronavirus under the Families First Coronavirus Response Act (FFCRA).

Employers will be reimbursed for the cost of this leave, "qualified leave wages," by refundable tax credits. The tax credits are increased by the employer's share of Medicare tax on, and the qualified health plan expenses allocable to, the qualified leave wages. Qualified health plan expenses are amounts paid or incurred by an employer to provide and maintain a group health plan.

Employers who pay qualified leave wages can fund the amount of the wages paid by retaining the following federal employment taxes: federal income taxes withheld from employees, the employees' share of social security and Medicare taxes, and the employer's share of social security and Medicare taxes with respect to all employees.

Read on if you would like additional information on claiming this credit. Please note, the below is not intended to be exhaustive. Employers seeking additional information may find the Internal Revenue Service (IRS) FAQs on this topic helpful. Individual employers with questions should also consult with a legal or tax professional.

Who can claim the credit?

Employers that have fewer than 500 employees and are required under the FFCRA to pay "qualified sick leave wages" and/or "qualified family leave wages" can claim the refundable credits.

When will the refundable tax credits apply to qualified leave wages?

The refundable tax credits apply to qualified leave wages for leave taken between April 1, 2020 and December 31, 2020.

What documentation is necessary to claim the credit?

Employers need to retain records and documentation related to, and supporting each employee's leave to substantiate a claim for the credits to include:

- How the employer determined the amounts to be paid;
- Copies of any completed Forms 7200, Advance of Employer Credits Due to COVID-19, that the employer submitted to the IRS;
- Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer submitted to the IRS; and
- Any other filings that an employer submits to the IRS regarding the credit.

Take a look at our E-Alert if you would like additional information about the documentation necessary to substantiate an employee's request for leave.

Record retention is important. The IRS states that employers should keep records that are available for IRS review for at least four years after the later of the date that the tax becomes due, or is paid, whichever is later. We never know whether there might be future requests or audits, and whether employers may need to retrieve individual or collective data. Plan now for what you think will be most efficient in the future.

How do employers claim the credit?

Employers eligible for the credit will report total qualified leave wages and the corresponding credits for each quarter on their federal employment tax – usually Form 941.

If an employer pays qualified leave wages in a quarter before it is required to deposit federal employment taxes with the IRS for that quarter, the employer may reduce the amount of federal employment taxes it deposits for that quarter by the corresponding amount. Employers document this reduction on Form 941.

What can an employer do if they do not have enough money set aside in federal taxes to cover qualified leave wages?

If an employer's quarterly employment tax deposits that would otherwise be required are less than the amount of credit for which the employer is eligible, the employer may receive the remaining credit in advance by using Form 7200.

What about penalties for failure to deposit federal employment taxes?

As long as employers satisfy certain criteria as to the payment of qualified leave wages, they will not be subject to a penalty under I.R.C. § 6656 for failing to deposit federal employment taxes (as well as allocable qualified health plan expenses and the employer's share of Medicare tax) that relate to these wages. Generally, these criteria include that the employer has paid qualified leave wages in the calendar quarter of the reduced deposit, the amount of tax that the employer does not deposit is less than or equal to the anticipated tax credits, and the employer did not seek an advance of the credit for the amounts at issue by filing Form 7200. For more information, see Notice 2020-22.

For questions regarding FFCRA tax credits, contact Gabrielle Hansen or Charlotte Hodde at 503-228-0500, or at ghansen@barran.com or chodde@barran.com.

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