

Five Things to Consider when Calculating Qualified Health Plan Expenses Under the FFCRA

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While most employers are aware of the payroll tax credits available for paid sick and family leave requirements provided under the Families First Coronavirus Response Act (FFCRA), many are unaware credits area also available for “qualified health plan expenses” related to that leave. The IRS issued specific guidance on this point last week. The following summarizes five things all employers should know about calculating payroll tax credits for qualified health plan expenses under the FFCRA:

1. Qualified Health Plan Expenses Must be Attributable to Sick and Family Leave Paid for Periods after April 1, 2020.

In guidance issued last week, the IRS indicated the eligible period for purposes of determining qualified health plan expenses begins April 1, 2020, and ends on December 31, 2020. This means that credits are available for qualified health plan expenses related to qualified sick and family leave paid for that period.

2. There’s No Wrong Way to Calculate the Credits (That is, so Long as it is Reasonable).

In guidance issued last week, the IRS noted that employers sponsoring both fully-insured and self-insured health plans may use “any reasonable method to determine and allocate the plan expenses.” That said, the IRS did suggest some methods. For fully-insured plans, the IRS suggested employers may use (1) the COBRA applicable premium for the employee typically available from the insurer, (2) one average premium rate for all employees, or (3) a substantially similar method that takes into account the average premium rate determined separately for employees with self-only and other than self-only coverage. For self-insured, the IRS recognized there would be more flexibility and variety in calculating qualified health plan expenses.

3. The Credits Include both the Employer and Employee Portion of the Premium.

The amount of qualified health plan expenses taken into account in determining the credits generally includes both the portion of the cost paid by the employer and the portion of the cost paid by the employee. This was a bit of a surprise in the guidance. This means the employer receives the payroll tax credit for the entire premium allocable to the employee.

4. The Employer's Method Can Account for whether Dependents Are Covered under the Plan.

As discussed above, the IRS provided substantial flexibility in allocating qualified health plan expenses to qualified sick and family leave paid by the employer. As an example, in addition to taking average premiums into account, the IRS guidance notes that employers may attribute more expenses to employees carrying other than self-only coverage. For example, for plans charging extra for spouse-only and family coverage, the guidance appears to allow those employers to allocate additional health care expenses relating to the paid leave.

5. "Qualified Health Plan Expenses" Includes Certain Other Tax-Favored Plans.

The guidance also made clear that "qualified health plan expenses" only includes certain tax-advantaged plans. For example, the amount of qualified health plan expenses may include contributions to health reimbursement arrangements (HRAs) (including an individual coverage HRA), or health flexible savings account (health FSAs), but does not include employer contributions to health savings accounts (HSAs), Archer MSAs, or Qualified Small Employer Health Reimbursement Arrangements (QSEHRAs). Instead, employers sponsoring high deductible health plans (HDHPs) are instructed to calculate the amount of qualified expenses in the same manner as an insured or self-insured group health plan, as applicable.

Employers who are subject to the FFCRA should remember this important component of the allowed FFCRA tax credit and take this time to consider how to effectively allocate qualified health plan expenses to eligible paid leave in ways that are both advantageous to the employer and reasonable in nature. While the IRS has provided some examples describing how these calculations may look, employers should be aware there is flexibility beyond those illustrations.

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