

Employers Take Note: How to Properly Substantiate Your Payroll Tax Credits under the FFCRA

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Earlier this week, the Internal Revenue Service issued guidance on the payroll tax credits available under the Families First Coronavirus Response Act (FFCRA). These credits are available to employers providing qualifying paid sick and family leave, as well as health plan expenses, after April 1, 2020.

One issue the IRS shed light on is how employers should substantiate eligibility for these credits. According to the IRS, an employer should require the employee to provide a written request for such qualifying leave in which the employee provides:

- The employee's name;
- The date or dates for which leave is requested;
- A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and,
- A statement that the employee is unable to work, including by means of telework, for such reason.

If the leave request is based on a quarantine order or self-quarantine advice, the IRS notes that the employee's statement should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

If the request is based on a school closing or child care provider unavailability, the IRS indicated the statement should include the following:

- Name and age of the child (or children) to be cared for;
- The name of the school that has closed or place of care that is unavailable;

- 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 this specific information requested of the employee, the IRS also recommends the employer keep information to support the following:

- 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;
- How the employer determined the amount of qualified health plan expenses that the employer allocated to wages;
- Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19;
- Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return.

While the IRS has indicated it will provide updates and guidance to these Q&As, it is certainly a great start. By acting today to adopt policies and procedures designed to capture this detailed information, employers can help ensure the payroll tax credits they claim will withstand IRS scrutiny in the event of an audit. We expect the IRS will issue much-needed guidance in the days ahead. In the meantime, please reach out to Jim Rourke or Mike Brittingham with any questions.

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