

Notice 2020-54 – Employer Reporting Requirements for Qualified Sick Leave Wages and Qualified Family Leave Wages paid-out under the FFCRA

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The Families First Coronavirus Response Act (FFCRA) Pub. L. No. 116-127, requires employers with fewer than 500 employees to provide paid leave under certain COVID-19-related circumstances via the Emergency Paid Sick Leave Act (up to \$511 per day or \$5,110 in the aggregate per employee) and the Emergency Family and Medical Leave Expansion Act (up to \$200 a day or \$10,000 in the aggregate). The FFCRA also includes two refundable payroll tax credits designed to help these same employers offset the costs of the mandated paid sick leave and paid family leave.

Under the guise of providing self-employed individuals who also receive wages or compensation as employees with the information they need to properly claim any credits for which they may be eligible, the IRS issued Notice 2020-54 in a news release on July 8, 2020. The notice mandates that eligible employers separately state the amount of qualified sick leave wages and qualified family leave wages paid to the employees in Box 14 (the “Other” box) of Form W-2 or on a separate statement. If the separate statement option is utilized by an eligible employer, the separate statement must be included with the Form W-2 provided to the employee. Finally, the notice includes some model instructions for employers to use when providing this information to their employees.

Takeaways

Notice 2020-54 provides employers with some guidance that will be published in the Internal Revenue Bulletin (IRB); thus it can be relied upon in court unlike the 67-and-counting FAQs issued by the IRS concerning these qualified leave wages and associated payroll tax credits. On the other hand, this guidance just dictates additional reporting requirements for employers and/or their payroll providers to track and satisfy. Further, while the IRS indicated that these reporting requirements were to help self-

employed individuals who also receive wages or compensation as employees, it will not come as surprise to anyone if the IRS uses the additional information reported on the Forms W-2 to check/match the information and refundable tax credits reported on the employer's applicable payroll tax returns.

Here's to hoping for the continued release definitive guidance, which will be published in the IRB. Keep checking for updates and additional Insights here. For more detailed information and guidance please reach-out to David M. McCallum and your Nexsen Pruet Tax Team.