

New IRS Guidance and CARES Act Provide Employers with Additional Information about Tax Credits for Paid Leave

Alert

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The Internal Revenue Service (IRS) released eagerly anticipated guidance on Friday, March 27, 2020, aimed at employers wishing to take advantage of the tax credits for providing employees with paid sick leave and paid family leave required under the Families First Coronavirus Response Act (FFCRA). In Notice 2020-21, the IRS announced that the tax credits will only be available with respect to qualified sick leave wages and qualified family leave wages required to be paid under the FFCRA for the period beginning on April 1, 2020, and ending on December 31, 2020.

BACKGROUND

As discussed in a prior alert, the FFCRA generally requires employers with less than 500 employees to provide paid leave to an employee who is unable to work or telework because (i) the employee is quarantined or is exhibiting COVID-19 symptoms and is seeking a medical diagnosis or (ii) must care for an individual subject to quarantine or a child whose school is closed or childcare provider is unavailable. To help employers bear the cost of providing such paid leave, the FFCRA created two refundable tax credits that employers can immediately claim by offsetting the tax credits against their payroll tax withholding obligations.

However, the statutory text of the FFCRA and earlier guidance released by the IRS did not clearly state when employers could begin claiming the tax credit. The FFCRA states only that the tax credits “apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary’s delegate) which is during the 15-day period beginning on the date of the enactment of this

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Act and ending on December 31, 2020.” The FFCRA was enacted on March 18, 2020, meaning that tax credits could have been first available to eligible employers with respect to paid leave provided as early as March 18, 2020, or as late as April 2, 2020.

NOTICE 2020-21

In Notice 2020-21 the IRS states that the date selected by the Secretary of the Treasury (or the Secretary’s delegate) during the 15-day period following the enactment of the FFCRA for the tax credit provisions to become operable is April 1, 2020. Consequently, eligible employers will only be able to claim the tax credits for wages paid with respect to days of paid leave provided between April 1, 2020, and December 31, 2020.

CARES ACT

Also on Friday, March 27, 2020, President Trump signed into law the CARES Act, which amends the paid leave tax credit provisions of the FFCRA. The amendments in the CARES Act provide that (i) in accordance with forms and instructions provided by the Secretary of the Treasury, the tax credits may be advanced to employers, in addition to being offset against the employer’s payroll tax withholding liability and (ii) any underpayment penalties will be waived with respect to employers who fail to remit all of their payroll tax withholding obligation in anticipation of receiving a tax credit under the FFCRA but do not ultimately qualify for the tax credit.

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