

Publications

IRS Issues Guidance on Required Documentation Necessary to Obtain Tax Credits on Paid Sick Leave and Emergency FMLA Leave Requests

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The Families First Coronavirus Response Act (FFCRA) requires that most private employers with 500 or fewer employees and most public sector employers provide emergency paid sick leave (PSL) and emergency Family and Medical Leave Act leave (EFML) for specific COVID-19 related reasons. The Internal Revenue Service has released **guidance** specifying what documentation is needed for employers to receive the tax credits that will fund the leave.

Employee supporting documentation

The IRS Guidelines require that an employee must provide written documentation containing the following information before taking PSL or EFML: (1) employee's name; (2) date or dates for which leave is requested; (3) qualifying reason for the leave; and (4) statement that the employee is unable to work (either on-site or via telework) because of the qualified reason for leave.

Employees must also provide additional documentation depending on the reason for taking the PSL or EFMLA:

- **To take PSL because the employee is quarantined**, the employee also must provide the name of the government entity that issued the quarantine or isolation order.
- **To take PSL because the employee has been told to self-quarantine**, the employee also must provide the name of the health care provider who advised the Employee to self-quarantine due to concerns related to COVID-19.
- **To take PSL because the employee is caring for an individual for COVID-19 reasons**, the employee also must provide either: (1) the name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject; or

(2) the name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19. The IRS Guidelines further require that the employee provide the name of the individual being cared for and his or her relation to the employee.

- **To take PSL or EFMLA to care for a son or daughter due to school or childcare closure**, the employee also must provide: (1) the name and age of the son or daughter; (2) the name of the school, place of care, or child care provider that has closed or become unavailable; and (3) a representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes PSL or EFMLA. Additionally, with respect to the employee's inability to work or telework because of a need to provide care for a child older than 14 during daylight hours, the IRS requires a statement that "special circumstances" exist requiring the employee to provide care.

Additional records and documentation required to obtain the tax credit

In addition to the information set forth above that the employer obtains from employees who make leave requests, the employer must also create and maintain records that include the following information:

- Documentation to show how the employer determined the amount of PSL and EFML wages paid to employees that are eligible for the credit, including records of work, telework, and qualified PSL and EFML.
- Documentation to show 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," 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 (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer's entitlement to the credit claimed on Form 941).

IRS Guidelines require that employers retain these records for four years.

Conclusion

The DOL estimates that 61 million Americans will qualify for PSL and/or EFML. To obtain the offered tax credits, Employers must ensure that they are complying with the IRS's procedures for documenting and substantiating the need for leave. For questions regarding the PSL and EFML requirements, contact your Vorys lawyer.