

IRS announces implementation of Families First Coronavirus Response Law

The IRS and the Department of Labor have released preliminary information to employers on the implementation of the FICA tax credit provisions of [Families First Coronavirus Response Law](#) (P.L. 116-127). More guidance will be issued this week.

Who gets what leave

Two types of leave are available: emergency paid sick leave and emergency leave under the FMLA.

Employers with fewer than 500 employees must provide up to 80 hours of **emergency paid sick leave** to full-time employees and up to two weeks to part-time employees to employees who can't work or telecommute. The Secretary of Labor may exempt employers of fewer than 50 employees that would experience hardship. The following employees qualify for paid leave:

- Those who are diagnosed with COVID-19
- Those who are quarantined (including self-imposed quarantine), at the instruction of a health care provider, employer or government official
- Those who are caring for another person who has or is under a quarantine for COVID-19
- Those who are caring for children or other individuals who are unable to care for themselves due to the COVID-19-related closing of their school, child care facility or other care program
- Those who are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

Employees who take emergency leave to care for a family member receive pay at two-thirds their regular rates of pay, multiplied by the number of hours they normally work. Employees who take paid leave under the emergency paid leave provisions to care for themselves receive pay at their regular rate of pay.

Pay is capped at \$511 per day, per employee, up to \$5,110 for employees who take leave to deal with their own quarantine, self-quarantine or COVID-19 symptoms. Pay is capped at \$200 per day, per employee, up to \$2,000 per employee, for employees who take paid leave for any other reason.

Employers with fewer than 500 employees must provide employees who have worked 30 days with **paid FMLA leave** if they can't work or telecommute because they need to care for children under the age of 18 due to their schools being closed or their care givers being unavailable. In addition, employers can require employees to use other paid leave prior to using paid FMLA leave.

Employees who take paid leave receive pay at two-thirds their regular rates of pay multiplied by the number of hours they normally work. Paid leave begins on the 11th day and is capped at \$200 per day, up to \$10,000 in the aggregate.

Two credits, your choice

While the law creates a tax credit covering only the employer's share of FICA taxes, including a proportionate amount of group-health benefits, that are attributable to leave paid to eligible employees, the IRS is letting you retain employees' withheld income taxes and the employees' share of FICA taxes from *all* employees, as well.

If those amounts don't cover the cost of paid leave, you can seek an expedited advance from the IRS by submitting a streamlined claim form that will be shortly (we'll have a link when the form is available).

Here's how this works out.

Example. Mega pays \$5,000 in sick leave and is required to deposit \$8,000 in payroll taxes, including taxes withheld from its employees. Instead of depositing the \$8,000, Mega could use up to \$5,000 for making qualified leave payments. It would only be required to deposit the remaining \$3,000 on its next regular deposit date.

Example. MediumCo pays \$10,000 in sick leave and is required to deposit \$8,000 in taxes. It can use the entire \$8,000 to make qualified leave payments to its employees and file a request with the IRS for an accelerated credit for the remaining \$2,000.