

# IRS Guidelines

## COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs

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The Families First Coronavirus Response Act (the "FFCRA"), signed by President Trump on March 18, 2020, provides small and midsize employers refundable tax credits that reimburse them, dollar-for-dollar, for the cost of providing paid sick and family leave wages to their employees for leave related to COVID-19.

The FFCRA gives businesses with fewer than 500 employees (referred to throughout these FAQs as "Eligible Employers") funds to provide employees with paid sick and family and medical leave for reasons related to COVID-19, either for the employee's own health needs or

to care for family members. Workers may receive up to 80 hours of paid sick leave for their own health needs or to care for others and up to an additional ten weeks of paid family leave to care for a child whose school or place of care is closed or child care provider is closed or unavailable due to COVID-19 precautions. The FFCRA covers the costs of this paid leave by providing small businesses with refundable tax credits. Certain self-employed individuals in similar circumstances are entitled to similar credits.

For a more detailed overview of the law, see "Overview of COVID-19-Related Tax Credits for Small and Midsize Businesses," below.

For FAQs, see "[Basic FAQs](#)," and the sections that follow. The FAQs will be updated to address changes in the law or additional questions as they are raised.

## **Overview of COVID-19-Related Tax Credits for Small and Midsize Businesses**

The FFCRA requires employers to provide paid leave through two separate provisions: (i) the Emergency Paid Sick Leave Act (EPSLA), which entitles workers to up to 80 hours of paid sick time when they are unable to work for certain reasons related to COVID-19, and (ii) the Emergency Family and Medical Leave Expansion Act (Expanded FMLA), which entitles workers to certain paid family and medical leave. The FFCRA provides that employers subject to the EPSLA and the Expanded FMLA paid leave requirements are entitled to fully refundable tax credits to cover the cost of the leave required to be paid for these periods of time during which employees are unable to work (which for purposes of these rules, includes telework). Certain self-employed persons in similar circumstances are entitled to similar credits.

The following section provides an overview of FFCRA's refundable tax credit provisions, and the FAQs that follow provide more detailed information regarding the requirements, limitations, and application of the paid leave credits. The Wage and Hour Division of the Department of Labor (DOL) administers the EPSLA and the Expanded FMLA and has posted FAQs and relevant information about the paid leave requirements at the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

Eligible Employers are entitled to refundable tax credits for qualified sick leave wages and qualified family leave wages (collectively "qualified leave wages"), under sections 7001 and 7003 of the FFCRA respectively. These tax credits are increased by the qualified health plan expenses allocable to, and the Eligible Employer's share of Medicare tax on, the qualified leave wages. Eligible Employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide paid sick leave under the EPSLA and to provide paid family leave under the Expanded FMLA (note that although the FFCRA requires most government employers to provide paid leave, it does not entitle those governmental employers to tax credits for this leave). For more information about Eligible Employers, see "[What employers may claim the tax credits?](#)" Under sections 7002 and 7004 of the FFCRA,

self-employed individuals are entitled to equivalent credits based on similar circumstances in which the individual is unable to work. For more information about how self-employed individuals can claim the credits see [“Specific Provisions Related to Self-Employed Individuals”](#). The refundable tax credits apply to qualified sick leave wages and qualified family leave wages paid for certain periods when an employee is unable to work, as described below, during the period beginning April 1, 2020, and ending December 31, 2020. The same period is used to determine credits for qualified sick leave equivalent amounts and qualified family leave equivalent amounts for certain self-employed individuals.

## Overview of Paid Sick Leave Refundable Credit

The EPSLA requires Eligible Employers to provide employees with paid sick leave if the employee is unable to work (including telework) due to any of the following:

1. the employee is under a Federal, State, or local quarantine or isolation order related to COVID-19;
2. the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. the employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. the employee is caring for the child of such employee if the school or place of care of the child has been closed, or the child care provider of such child is unavailable, due to COVID-19 precautions;
6. the employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

An employee who is unable to work for reasons due to a COVID-19 circumstance described in (1), (2) or (3) above is entitled to paid sick leave for up to two weeks (up to 80 hours) at the employee’s regular rate of pay, or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$511 per day and \$5,110 in the aggregate. For more information, see [“What is the rate of pay for qualified sick leave wages if an employee is unable to work due to their own health needs?”](#)

An employee who is unable to work due to a COVID-19 circumstance described in (4), (5) or (6) above is entitled to paid sick leave for up to two weeks (up to 80 hours) at 2/3 the employee’s regular rate of pay or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$200 per day and \$2,000 in the aggregate. For more information, see [“What is the rate of pay for qualified sick leave wages if an employee is unable to work because he or she needs to care for others?”](#)

The Eligible Employer is entitled to a fully refundable tax credit equal to the required paid sick leave. This tax credit also includes the Eligible Employer’s share of Medicare tax imposed

on those wages and its allocable cost of maintaining health insurance coverage for the employee during the sick leave period (qualified health plan expenses). The Eligible Employer is not subject to the employer portion of social security tax imposed on those wages. (Eligible Employers subject to the Railroad Retirement Tax Act are not subject to either social security tax or Medicare tax on the qualified sick leave wages; accordingly, they do not get a credit for Medicare tax.)

## **Overview of Paid Family Leave Refundable Credit**

In addition to the paid sick leave credit, under the expanded FMLA, an employee who is unable to work (including telework) because of a need to care for a child whose school or place of care is closed or whose child care provider is unavailable due to COVID-19, as described in (5) above, is entitled to paid family and medical leave equal to two-thirds of the employee's regular pay, up to \$200 per day and \$10,000 in the aggregate. Up to ten weeks of qualifying leave can be counted towards the family leave credit. For more information, see [“What is included in “qualified family leave wages”?”](#)

The Eligible Employer is entitled to a fully refundable tax credit equal to the required paid family and medical leave (qualified family leave wages). This tax credit also includes the Eligible Employer's share of Medicare tax imposed on those wages and its cost of maintaining health insurance coverage for the employee during the family leave period (qualified health plan expenses). The Eligible Employer is not subject to the employer portion of social security tax imposed on those wages. (Eligible Employers subject to the Railroad Retirement Tax Act are not subject to either social security tax or Medicare tax on the qualified family leave wages; accordingly, they do not get a credit for Medicare tax.) For more information, see [“How does an Eligible Employer determine the amounts of the qualified family leave wages it is required to pay?”](#)

## **Payment of the Sick and Family Leave Credit**

Eligible Employers are entitled to receive a credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and the employer's share of Medicare tax, paid for leave during the period beginning April 1, 2020, and ending December 31, 2020. The credit is allowed against the taxes imposed on employers by section 3111(a) of the Internal Revenue Code (the “Code”) (the Old-Age, Survivors, and Disability Insurance tax (social security tax)) and section 3221(a) of the Code (the Railroad Retirement Tax Act Tier 1 rate) on all wages and compensation paid to all employees. If the amount of the credit exceeds the employer portion of these federal employment taxes, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) or 6413(a) of the Code. The qualified sick leave wages and qualified family leave wages are not subject to the taxes imposed on employers by sections 3111(a) and 3221(a) of the Code and employers (other than those that are subject to the

Railroad Retirement Tax Act) are entitled to an additional credit for the taxes on employers imposed by section 3111(b) of the Code (Hospital Insurance (Medicare tax)) on such wages.

Eligible Employers that pay qualified leave wages will be able to retain an amount of all federal employment taxes equal to the amount of the qualified leave wages paid, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, rather than depositing them with the IRS. The federal employment taxes that are available for retention by Eligible Employers include federal income taxes withheld from employees, the employees' share of social security and Medicare taxes, and the employer's share of social security and Medicare taxes with respect to all employees.

If the federal employment taxes yet to be deposited are not sufficient to cover the Eligible Employer's cost of qualified leave wages, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, the employer will be able to file a request for an advance payment from the IRS. The IRS expects to begin processing these requests in April 2020.

Eligible Employers claiming the credits for qualified leave wages, plus allocable qualified health plan expenses and the Eligible Employer's share of Medicare taxes, must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, as well retaining the Forms 941, Employer's Quarterly Federal Tax Return, and 7200, Advance of Employer Credits Due To COVID-19, and any other applicable filings made to the IRS requesting the credit.

For more detail on the refundable tax credits and the procedures to receive payment of the advance credit, see "[How to Claim the Credits.](#)"

Eligible Employers claiming the credits for qualified leave wages, plus allocable qualified health plan expenses and the Eligible Employer's share of Medicare taxes, must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, as well retaining the Forms 941, Employer's Quarterly Federal Tax Return, and 7200, Advance of Employer Credits Due To COVID-19, and any other applicable filings made to the IRS requesting the credit.

For more detail on the refundable tax credits and the procedures to receive payment of the advance credit, see "[How to Claim the Credits.](#)"

## Basic FAQs

Use tab to go to the next focusable element

**1. What tax credits does the FFCRA provide?**

**2. When can employers start claiming the credits?**

**3. When will employers start to receive the credits?**

**4. What documentation must an Eligible Employer retain to substantiate eligibility to claim the tax credits?**

- 5. What employers may claim the tax credits?**
- 6. What is the amount of the refundable tax credits available to Eligible Employers?**
- 7. What are “qualified sick leave wages”?**
- 8. What are “qualified family leave wages”?**
- 9. What are “qualified health plan expenses”?**
- 10. What is the Eligible Employer’s share of Medicare tax on qualified leave wages?**
- 11. Are any small businesses exempt from the requirements to provide qualified sick or family leave wages?**
- 12. How do Eligible Employers claim the credits?**
- 13. What if an Eligible Employer does not have enough federal employment taxes set aside for deposit to cover its obligation to provide qualified leave wages?**
- 14. What makes the credits “fully refundable”?**
- 15. Are similar tax credits available to self-employed individuals?**
- 16. Only businesses that employ fewer than 500 employees are eligible for the credits, because only those businesses are required to provide qualified leave wages. How is the “fewer than 500 employees” threshold determined?**
- 17. May an Eligible Employer reduce its federal employment tax deposit by the qualified leave wages that it has paid without incurring a failure to deposit penalty?**
- 18. May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and the Employee Retention Credit under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)?**
- 19. May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and a Small Business Interruption Loan under the CARES Act?**

## **Determining the Amount of the Tax Credit for Qualified Sick Leave Wages**

- 20. What is included in “qualified sick leave wages”?**
- 21. How much credit may an Eligible Employer receive for qualified sick leave wages that it pays?**
- 22. How does an Eligible Employer determine the amounts of the qualified sick leave wages it is required to pay?**
- 23. Are amounts other than qualified sick leave wages included in the tax credit for required sick leave?**
- 24. Is a similar tax credit available to self-employed individuals?**

## **Determining the Amount of the Tax Credit for Qualified Family Leave Wages**

The Family and Medical Leave Act (FMLA) generally entitles eligible employees of covered employers to unpaid, job-protected leave for specified family and medical reasons. The FFCRA amended the FMLA (these FAQs refer this portion of the FFCRA as “the Expanded FMLA”) to require an Eligible Employer to provide qualified family leave wages when an employee is unable to work or telework due to a need for leave to care for a child of the

employee if the child's school or place of care has been closed, or because the child care provider of the child is unavailable, for reasons related to COVID-19.

For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

**25. What is included in "qualified family leave wages"?**

**26. How much credit may an Eligible Employer receive for qualified family leave wages?**

**27. How does an Eligible Employer determine the amounts of the qualified family leave wages it is required to pay?**

**28. What is the rate of pay for qualified family leave wages?**

**29. Are amounts other than qualified family leave wages included in the tax credit for required paid family leave?**

**30. Is a similar tax credit available to self-employed individuals?**

## **Determining the Amount of Allocable Qualified Health Plan Expenses**

"Qualified health plan expenses" are amounts paid or incurred by the Eligible Employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code (the "Code")), but only to the extent that those amounts are excluded from the gross income of employees by reason of section 106(a) of the Code.

Generally, the tax credits for qualified sick leave wages and qualified family leave wages are increased by the qualified health plan expenses allocable to each type of qualified leave wages. Qualified health plan expenses are properly allocated to the qualified sick or family leave wages if the allocation is made on a pro rata basis among covered employees (for example, the average premium for all employees covered by a policy) and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

**31. Does the amount of qualified health plan expenses include both the portion of the cost paid by the Eligible Employer and the portion of the cost paid by the employee?**

**32. For an Eligible Employer that sponsors more than one plan for its employees (for example, both a group health plan and a health flexible spending arrangement (health FSA)), or more than one plan covering different employees, how are the qualified health plan expenses for each employee determined?**

**33. For an Eligible Employer who sponsors a fully-insured group health plan, how are the qualified health plan expenses of that plan allocated to the qualified sick or family leave wages on a pro rata basis?**

**34. For an Eligible Employer who sponsors a self-insured group health plan, how are the qualified health plan expenses of that plan allocated to the qualified leave wages on a pro rata basis?**

**35. For an Eligible Employer who sponsors a health savings account (HSA), or Archer Medical Saving Account (Archer MSA) and a high deductible health plan (HDHP), are contributions to the HSA or Archer MSA included in the qualified health plan expenses?**

**36. For an Eligible Employer who sponsors a health reimbursement arrangement (HRA), a health flexible spending arrangement (health FSA), or a qualified small employer health reimbursement arrangement (QSEHRA), are contributions to the HRA, health FSA, or QSEHRA included in the qualified health plan expenses?**

## **How to Claim the Credits**

**37. How does an Eligible Employer claim the refundable tax credits for qualified leave wages (plus any allocable qualified health plan expenses and the amount of the Eligible Employer's share of Medicare tax)?**

**38. Can an Eligible Employer required to pay qualified leave wages fund these payments before receiving the credits by reducing its federal employment tax deposits?**

**39. Is an Eligible Employer that reduces its federal employment tax deposits to fund qualified leave wages that it has paid subject to penalty for failing to deposit federal employment taxes?**

**40. How can an Eligible Employer that is required to pay qualified leave wages fund the payment of these wages if the Eligible Employer does not have sufficient federal employment taxes set aside for deposit to cover those payments? Can the employer get an advance of the credits?**

**41. If the qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) exceed the Eligible Employer's share of social security tax owed for a quarter, how does the Eligible Employer get a refund of the excess credits? Does this affect what the Eligible Employer puts on its Form 941?**

**42. How does an Eligible Employer obtain Form 7200 and where should it send its completed form to receive the advance credit?**

**43. What if an Eligible Employer does not initially pay an employee qualified leave wages when the employee is entitled to those wages, but pays those wages at a later date?**

## **How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?**

**44. What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?**

**45. What additional records should an Eligible Employer maintain to substantiate eligibility for the sick leave or family leave credit?**

**46. How long should an Eligible Employer maintain records to substantiate eligibility for the sick leave or family leave credit?**

## **Periods of Time for Which Credits are Available**

**47. How long are the refundable tax credits for qualified leave wages available?**

**48. Are wage payments for qualified leave wages made after December 31, 2020, but for periods of leave taken before December 31, 2020, eligible for the credits?**

## **Special Issues for Employers: Taxation and Deductibility of Tax Credits**

49. What amount does an Eligible Employer receiving tax credits for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) need to include in income?

50. May an Eligible Employer deduct as a business expense an amount paid to an employee for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) for which it expects to claim the tax credits?

51. Do the tax credits under sections 7001 and 7003 of the FFCRA reduce the amount deductible as federal employment taxes on an Eligible Employer's income tax return?

## **Special Issues for Employers: Interaction of FFCRA Tax Credits with Other Tax Credits**

52. May Eligible Employers receive credits under both section 45S of the Internal Revenue Code and tax credits for qualified leave wages under the FFCRA?

## **Special Issues for Employers: Use of Third-Party Payers**

53. Can an Eligible Employer that uses a third party to report and pay federal employment taxes to the IRS get the credits?

## **Special Issues for Employers: Other Issues**

54. Can employees make salary reduction contributions from the amounts paid as qualified leave wages for their employer sponsored health plan, a 401(k) or other retirement plan, or any other benefits?

55. Should Eligible Employers withhold federal employment taxes on qualified leave wages paid to employees?

56. May a tax-exempt employer receive the credits?

## **Special Issues for Employees**

57. Are qualified sick leave wages and qualified family leave wages taxable to employees?

58. Are qualified sick leave wages and qualified family leave wages excluded from gross income as "qualified disaster relief payments"?

59. Can an employee receive both "qualified sick leave wages" and "qualified family leave wages"?

## **Specific Provisions Related to Self-Employed Individuals**

**60. Who is an eligible self-employed individual for purposes of the qualified sick leave credit and the qualified family leave credit?**

**61. How is the “qualified sick leave equivalent amount” for an eligible self-employed individual calculated?**

**62. How is the “average daily self-employment income” for an eligible self-employed individual calculated?**

**63. How is the “qualified family leave equivalent amount” for an eligible self-employed individual calculated?**

**64. Can a self-employed individual receive both qualified sick or family leave wages and qualified sick or family leave equivalent amounts?**

**65. How does a self-employed individual claim the credits for qualified sick leave equivalent amounts or qualified family leave equivalent amounts?**

**66. How can a self-employed individual fund his or her qualified sick leave equivalent and qualified paid family leave equivalent amounts before filing his or her Form 1040?**

## **Where can I get more information?**

- [Coronavirus Tax Relief](#)
- Department of Labor's [COVID-19 and the American Workplace](#)