



FEDERAL LEGISLATIVE RELIEF CLIENT ALERT #2

Coronavirus and the Law: Tax Credits and Exclusions for Paid Sick Leave and Paid Family & Medical Leave

- On March 18, 2020, Congress passed and President Trump signed H.R. 6201, known as the *Families First Coronavirus Response Act* (the Act to provide support and relief in response to the COVID-19 pandemic).
- This Alert focuses on tax credits for employers and self-employed taxpayers and FICA tax relief for employers.
- **Effective Dates:** The credits and exclusions discussed below will apply only to wages paid in the period (a) beginning on a date selected by the Secretary of the Treasury (or his delegate) within 15 days after the enactment of the Act and (b) ending December 31, 2020.

Under the Act, employers are eligible for tax credits to cover wages paid to their employees who receive paid sick or family leave under the Act's provisions ([see our first alert on the Act](#)). These credits are taken against the employer-portion of FICA and from self-employment taxes for self-employed individuals.

Only employers subject to the Act's required paid sick leave and family and medical leave provisions are eligible to receive the tax credits discussed here.

CREDITS FOR PAID SICK LEAVE

Employers: The total sick leave tax credit for each employer is equal to 100% of the total qualifying paid sick leave wages paid for each of its employees during the calendar quarter.

The amount of qualifying sick leave wages for each employee is equal to wages paid to the employee due to the Act's emergency paid sick leave provisions. The credit is limited to:

- (1) \$511 per day (\$5,110 total per calendar quarter) for an employee taking time off for themselves because they are quarantined or isolated due to, experiencing symptoms of, or seeking a medical diagnosis for, COVID-19 ("COVID-19 Self-Care"); and
- (2) \$200 per day (\$2,000 total per calendar quarter) per employee, if the employee is using sick leave to care for (a) an individual who is quarantined or showing symptoms of COVID-19 or (b) a minor child whose school is closed due to COVID-19 ("COVID-19 Care for Others").

The employer's paid sick time payroll tax credit is claimed on a quarterly basis, presumably on the employer's quarterly payroll tax returns (IRS Form 941). To avoid a double tax benefit, an employer is required to increase its gross income for the taxable year by the amount of the total sick leave credit received.

The amount of sick leave credit is increased by the portion of an employer's "qualified health plan expenses" allocable to the employer's qualifying sick leave wages. "Qualified health plan expenses" are amounts an employer pays or incurs to provide and maintain a group health plan, to the extent these amounts are excluded from the taxable gross income of employees.

Self Employed Individuals: For self-employed individuals—including independent contractors and gig economy workers—the Act provides similar refundable credits against self-employment taxes.

Self-employed individuals who take leave for COVID-19 Self-Care or COVID-19 Care for Others can claim a credit for the individual's "qualified sick leave equivalent amount" due to inability to perform the services of the individual's trade or business. The qualified sick leave equivalent is equal to *the lesser of*:

- 1) Either (a) \$511 per day (\$5,110 total per calendar quarter) for a self-employed individual for COVID-19 Self-Care, or (b) \$200 per day (\$2,000 total per calendar quarter) for a self-employed individual providing COVID-19 Care for Others, and
- 2) 67% of the self-employed individual's "average daily self-employment income" for the taxable year (this amount is the individual's net earnings from self-employment for the taxable year, divided by 260 days).

CREDITS FOR REQUIRED PAID FAMILY & MEDICAL LEAVE

Employers: Employers are allowed a credit each calendar quarter for an amount equal to 100% of "qualified family leave wages" the employer pays by reason of the emergency expansion of required family and medical leave under the provisions of the Act.

(Continued on page 2)

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For each employee, the credit is limited to (a) up to \$200 per day for which an employee is paid qualified family leave wages, and (b) a total of \$10,000 in all calendar quarters. To avoid a double tax benefit, an employer is required to increase its gross income for the taxable year by the amount of the total family and medical leave credit received.

The amount of family medical leave credit above is increased by the portion of an employer's "qualified health plan expenses" (as described above) allocable to the employer's qualified family leave wages.

Self-Employed Individuals: Self-employed individuals are also allowed a credit against self-employment taxes for each taxable year in an amount equal to the product of:

- 1) the number of days (not to exceed 50) during the taxable year that the individual is unable to perform services in any trade or business (on the same basis as if he or she were entitled leave under the emergency expansion of required family and medical leave), multiplied by
- 2) the *lesser* of (a) 67% of the self-employed individual's "average daily self-employment income" for the taxable year, or (b) \$200.

The Treasury Department is required to provide guidance on what documentation self-employed individuals must submit to claim the credit.

Other Limitations

This credit is also refundable to the employer or self-employed individual to the extent it exceeds the total amount the employer owes in payroll tax or the self-employed individual owes in self-employment tax. Further, any wages considered in determining the family and medical leave credit cannot be used to determine the amount of credits related to paid sick leave under the Act (see "Credits for Paid Sick Leave" above).

EXCLUSION OF PAID SICK LEAVE OR PAID FAMILY LEAVE WAGES FROM EMPLOYER'S OASDI PORTION OF FICA

The Act also provides that wages for sick leave and family and medical leave required to be paid under the Act will not be considered wages for purposes of the employer portion of the old age, survivor's, and disability (OASDI) portion (6.2%) of FICA.

As mentioned previously, Congress directed the Secretary of the Treasury or his delegate to issue guidance to carry out the provisions of the Act. Under the circumstances, we anticipate such regulatory guidance will be issued fairly soon, and the Tax practice group will provide additional information it is published.

The attorneys at Woods Rogers are continuously updating our legal blog with topics relating to the COVID-19 coronavirus outbreak. You can find these articles at woodsrogers.com/covid19.

In addition, Woods Rogers has created a Pandemic Response Group of attorneys who are available to answer any specific questions or concerns about your obligations or potential liabilities in a range of different practice areas, such as contract law, labor & employment, construction law, cybersecurity, tax and employee benefits, and commercial litigation. We stand willing and able to assist you during these difficult times.
