



Government Agencies Announce Plan to Implement COVID-19 Leave and Tax Credits

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On March 20, the Treasury Department, the Internal Revenue Service (IRS), and the Department of Labor (DOL) announced a plan for implementing the new COVID-19 leave requirements and payment of tax credits for small and mid-size employers.

As explained in our March 19 alert found [here](#), the Families First Coronavirus Response Act (the Act) requires an employer with fewer than 500 employees to provide expanded family and medical leave and paid sick leave to address certain absences from employment due to the COVID-19 pandemic. The Act also provides employer tax credits to offset the cost of providing the paid leave required by the Act.

Tax Credits

The Act provides for the following tax credits.

- **Paid Sick Leave Credit.** Employers may receive a refundable credit for sick leave paid to an employee at the employee's regular rate of pay of up to \$511 per day and \$5,110 in the aggregate, for a total of 10 days, if the employee is unable to work because of a COVID-19 quarantine or is seeking a COVID-19 diagnosis. Employers may receive a credit for two-thirds of an employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for a total of 10 days, if the employee is absent from work in order to care for someone infected with COVID-19 or a child whose school or child-care provider is closed. Such credits may be increased by the cost of maintaining health insurance coverage for the employee during such leave.
- **Child Care Leave Credit.** Employers may claim a credit equal to two-thirds of an employee's regular pay of up to \$200 per day and \$10,000 in the aggregate for up to 10 weeks of leave required so the employee may care for a child whose school or day care provider is closed or unavailable due to COVID-19. An additional credit for the cost of maintaining health insurance during the leave is also available.

Payment of the Credits

Under guidance scheduled to be issued this week, employers who pay sick leave or child care leave under the Act will be allowed to retain the amount of payroll taxes equal to the amount of the sick and child care leave paid rather than deposit them with the IRS with the quarterly Form 941 payroll tax

return. Federal income taxes and the employee and employer portions of Social Security and Medicare taxes will be available for retention by employers. If payroll taxes are insufficient to cover the paid leave under the Act, employers may request accelerated payment of the excess amount from the IRS. The IRS expects to process such requests within two weeks.

Small Business Exemption

The DOL will issue emergency guidance providing an exemption from the child care leave requirements for employers with fewer than 50 employees for whom the requirements would jeopardize the viability of the business. The guidance will provide “simple and clear criteria” for determining whether the exemption is available.

Non-Enforcement Period

The DOL will be announcing a temporary non-enforcement period. Under the policy, employers that act reasonably and in good faith to comply with the Act will not be subject to DOL enforcement during the non-enforcement period.

Williams Mullen is closely monitoring COVID-19 developments. The press release issued by the Treasury Department, the IRS, and the DOL is available [here](#).

Please note: This alert contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.

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