

# Tax Credits for Paid Sick and Paid Family and Medical Leave: Questions and Answers

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## ***What is the Families First Coronavirus Response Act?***

The Act was passed into law by President Trump on March 18, 2020. The Act contains a number economic stimulus measures in response to COVID-19, including the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act. See additional information regarding this Act, including the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act [HERE](#).

## ***Has the IRS provided guidance on the tax credits available under the Act?***

Yes, the IRS' guidance on the tax credits under the Act can be found [HERE](#).

## ***What are tax credits under the Act?***

Qualified Sick Leave Wages. In the case of an employer, a credit is allowed against the employer's portion of the social security tax under IRC § 3111(a) (i.e., a payroll tax), which is generally at the rate of 6.2% of an employee's wages (subject to a wage cap), for each calendar quarter equal to 100% of the "qualified sick leave wages" paid by such employer with respect to such calendar quarter.

Qualified Family Leave Wages. In the case of an employer, a credit is allowed against the employer's portion of the social security tax for such calendar quarter up to 100% of the "qualified family leave wages" paid by the employer with respect to such calendar quarter.

Note: the credit allowed under the above may be increased by certain qualified health plan expenses of the employer properly allocable to the qualified sick leave wages and qualified family leave wages for which such credit is allowed.

## ***What employers qualify for the Credits?***

Generally, employers that have fewer than 500 employees are subject to the Act, and, thus, would be eligible for the credits if required to pay qualified sick leave wages or qualified family leave wages under the Act. Although government employers (federal, state and local) are generally subject to the Act, such entities are not eligible for the credits.

***How will the employer take advantage of the Credits?***

As indicated in the IRS’ guidance, the tax credits will be immediate, because the employer will be able to retain payroll taxes it otherwise would be required to pay to the IRS. If the credits exceed the employers’ amount of payroll taxes and the employer is due a refund, according to the IRS, the IRS will send the refund as quickly as possible (in two weeks or less according to the IRS’ guidance). The IRS indicates that it will release an expedited procedure and a claim form for such refunds very soon.

***Will the employer be able to retain payroll taxes other than the employer’s portion of social security taxes?***

The Act appears to indicate that the credit applies to the employer’s portion of social security taxes. However, the IRS’ guidance suggests that “[t]he payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.” Allowing all of these types of payroll taxes to be retained would be very helpful to employers allowing them to take immediate advantage of the credit, without having to seek a refund. We will be monitoring IRS updates for more information on this aspect.

***Are there examples of how these credits would work?***

The IRS guidance provides the following two examples that are illustrative:

***Example.*** “If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.”

***Example.*** “If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to

make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.”

### ***What are Qualified Sick Leave Wages?***

“Qualified sick leave wages” means wages and compensation paid by an employer to employee, which are required to be paid by reason of the Emergency Paid Sick Leave Act, including in the following situations: (1) the employee is subject to a quarantine order related to COVID-19, (2) the employee has been advised to self-quarantine due to COVID-19, (3) the employee is experiencing symptoms of COVID-19, (4) the employee is caring for an individual subject to a quarantine order or self-quarantine, and (5) the employee is caring for a child who is unable to go to school or a child care provider. (Note: These have been abbreviated from the more detailed language contained in the Act).

### ***What are Qualified Family Leave Wages?***

“Qualified family leave wages” means wages and compensation paid by an employer which are required to be paid by the Emergency Family and Medical Leave Expansion Act, including when an employee is unable to work due to the need to leave to care for a child who is unable to go school or a child care provider.

### ***What is the amount of Qualified Sick Leave Wages Taken into Account?***

The amount of “qualified sick leave wages” taken into account in determining the tax credit with respect to any employee generally shall not exceed \$200, or \$511 (in certain cases when the employee is subject to a quarantine order, has been advised to self-quarantine, or is experiencing symptoms of COVID-19) for any day (or partial day) for which the employee is paid qualified sick leave wages. This is on a per day (or partial day) basis. Nevertheless, there appears to be a 10 day aggregate limitation on the number of days taken into account with respect to each employee.

### ***What is the amount of Qualified Family Leave Wages Taken into Account?***

The amount of qualified family leave wages taken into account in determining the tax credit with respect to any individual shall not exceed \$200 for any day, or partial day, for which the individual is paid qualified family leave wages and, \$10,000, in the aggregate with respect to all calendar quarters.

***Are the wages paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act Subject to the 6.2% Excise Tax (the Employer's Portion of the Social Security Tax Imposed on the Employee's Wages)?***

No, the Act provides that such wages shall not be considered wages for purposes of IRC § 3111(a).

***Are self-employed individuals eligible for the same tax credit?***

Self-employed individuals are able to qualify for a tax credit against income taxes due to sick leave or family leave. With respect to sick leave, the amount is limited to \$200 per day (not to exceed 67% of the average daily self-employment income of such individual) (if the individual is caring for a family member) or \$511 per day (if the individual is subject to quarantine or is experiencing symptoms of COVID-19). For sick leave, it appears that the number of eligible days to determine the credit is capped at 10. With respect to family leave, the amount is limited to \$200 per day (not to exceed 67% of the average daily self-employment income of the individual for the taxable year). For family leave, it appears that the number of eligible days to determine the credit is capped at 50. According to the IRS' guidance, credits for self-employed individuals will be claimed on their income tax return and will reduce estimated payments.