e-Alert: COVID-19

04.07.20

IRS Issues Guidance on Tax Credit Eligibility Requirements for Employers

Background

The Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, and some of its key provisions, including the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA) — the expanded FMLA — went into effect on April 1.

To offset the cost of these provisions to employers, the FFCRA allows them to file for refundable tax credits. Subject to certain caps and restrictions, these tax credits will cover up to 100% of funds paid out to employees for paid sick leave and paid family and medical leave. Of course,

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employers are eager to learn more about eligibility requirements for these tax credits, which could determine whether they are able to remain in business.

In its initial Frequently Asked Questions (FAQ), the Department of Labor (DOL) has not yet provided guidance on these eligibility requirements and what documentation employers need to collect from their employees in order to claim their tax credits. Instead, the DOL has deferred to the IRS. The IRS has now issued its own guidance to provide clarity to employers. The full IRS notice and FAQ can be found here.

Summary

Late on March 31, before the paid leave provisions of the FFCRA went into effect on April 1, the IRS issued guidance detailing employers' eligibility requirements for the refundable tax credits. The IRS also specified what documentation employers need to collect from employees who are taking qualified paid leave under FFCRA provisions.

The IRS has stated that employees who are taking paid leave under the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act need to submit a request in writing to their employer. This request must include:

- The employee's name;
- The date or dates of the requested leave;
- A statement of the COVID-19 related reason for which the employee is requesting leave;
- Written documentation supporting that reason; and
- A statement by the employee that they are unable to work or telework due to the reason provided.

The following documentation may be required depending on the reason for the requested leave:

- If the requested leave is due to a quarantine order or direction to self-quarantine, the written statement should also include the name of the government agency or healthcare professional directing the quarantine or self-quarantine.
- If the employee is not the person who has been quarantined or directed to self-quarantine, the employee should also provide the name of that person and their relationship to the employee.
- If the requested leave is because of the closure of a school or unavailability of a childcare provider due to COVID-19, the employee should include the name of the school or childcare provider that is no longer available. They should also include a

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written statement that no one else will be caring for the child during the time of the paid EFMLA leave.

- Finally, if the child is over 14, the employee should include a written statement explaining the special circumstances requiring them to care for the child during standard work hours.

Employers will be required to collect this documentation from all employees taking paid leave under FFCRA provisions in order to collect their eligible tax credits as reimbursement. For full details on how to determine employer eligibility and file for these tax credits, see the IRS guidance and FAQ linked above.

Employer Next Steps

- Review the IRS guidance and work directly with a tax professional to determine your eligibility for tax credits under FFCRA provisions.
- As always, please note that we are not tax professionals or accountants, and nothing in this e-Alert should be construed as qualified tax advice.
- Create all necessary processes and policies for requesting required documentation from your employees.
- If you have any questions about this e-Alert please email us.

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