



March 2020

Families First Coronavirus Response Act Signed Into Law

On March 18, President Trump signed into law the Families First Coronavirus Response Act which provides food assistance support, virus test funding, Emergency Paid Sick Leave, expansion of Emergency Family and Medical Leave, tax credits for paid Sick and paid Family and Medical Leave and Unemployment Insurance stabilization.

The chart below provides details on the sick pay, expansion of emergency family and medical leave and related credit provisions of the law.

Highlights of these provisions include:

- Emergency sick pay provided for up to 10 days for an employee who is unable to work or telework, due to quarantine or self-quarantine of the employee, experiencing coronavirus symptoms and seeking a medical diagnosis, the need to care for a quarantined or self-quarantined individual, or the need to care for a son or daughter due to closure of the school or child care provider relating to coronavirus.
- Family medical leave pay to care for son or daughter if school or child-care provider is closed due to the coronavirus emergency.
- Refundable tax credits to employers equal to the amount of wages required to be paid under the sick pay or family medical leave pay requirements.
- Equivalent refundable tax credits for self-employed individuals.

To speak with a tax advisor, reach out to us at tax@dhg.com.

| | Emergency Sick Pay | Family Leave Emergency Pay |
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| Description | <p>Requires employer to pay for “emergency sick time” if the employee is unable to work or telework due to any of the following related to coronavirus:</p> <ol style="list-style-type: none"> 1. Employee is subject to Federal, State or local quarantine or isolation order. 2. Employee advised by health care provider to self-quarantine. 3. Employee experiencing symptoms and seeking a medical diagnosis. 4. To care for <u>an individual</u> subject to an order described in 1 or advised as described in 2. 5. To care for <u>son or daughter</u> if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to coronavirus precautions. 6. Employee is experiencing any other <u>substantially similar condition specified</u> by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and Secretary of Labor. | <p>Requires employer to pay additional leave time where:</p> <p>An emergency with respect to COVID-19 is declared by a Federal, State, or local authority, <u>and the employee is unable to work or telework</u> due to a need to care for <u>son or daughter under 18 years of age</u> of such employee if the school or place of care has been closed, or the child care provider of such child is unavailable, due to the public health emergency.</p> |
| Employers subject to requirement | <p>Those with < 500 employees; and public agencies or any other entity that is not a private entity or individual and employs 1 or more employees.</p> <p>However, the secretary is given authority to write regulations for good cause to exclude certain health care providers and to exempt businesses < 50 employees when such requirements would jeopardize the viability of the business as a going concern.</p> | <p>Those with < 500 employees</p> <p>However, the secretary is given authority to write regulations for good cause to exclude certain health care providers and to exempt businesses < 50 employees when such requirements would jeopardize the viability of the business as a going concern.</p> |
| Eligible employees | <p>Any employee regardless of how long they have been employed by the employer. Except, an employer may elect to exclude an employee who is a healthcare provider or an emergency responder from this provision.</p> | <p>Any employee who has been employed for at least 30 calendar days by the employer. Except an employer may elect to exclude an employee who is a healthcare provider or an emergency responder from this provision.</p> |
| Requirement to pay begins | <p>At or after the provision effective date: available for immediate use by the employee.</p> | <p>After 10 days for which an employee takes a leave for the listed criteria.</p> |
| Length of time | <p>Full time employees, 80 hours. Part-time employees, number of hours equal to the number of hours the employee works, on average, over 2 week period.</p> | <p>Maximum 10 work weeks (50 days)</p> |
| Amount to be paid to employees | <p>Regular rate in the case of absences resulting from items 1 through 3, but not to exceed \$511 per day and \$5,110 in the aggregate.</p> <p>2/3 of regular rate in the case of absences for items 4 through 6, but not exceed \$200 per day and \$2,000.</p> | <p>2/3 of the employee’s regular rate for the number of hours the employee would otherwise be normally scheduled to work (special guidance is provided for calculating in the case of an employee whose hours vary week to week), but not to exceed \$200 per day and \$10,000 in the aggregate.</p> |

| | Emergency Sick Pay | Family Leave Emergency Pay |
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| Ability to satisfy using existing benefits policy | Somewhat unclear, but in the final version there is no overtly stated requirement that this pay be in addition to any sick pay available from the employer under its existing benefits policy. | Somewhat unclear, but there is no overtly stated requirement that this pay be in addition to any sick pay available from the employer under its existing benefits policy. |
| Other | Wages paid under this requirement are not subject to employer social security tax. | Wages paid under this requirement are not subject to employer social security tax. |
| Tax Credit Available | Yes | Yes |
| Credit Amount based upon | 100% of the wages required paid under the emergency sick leave requirement, plus properly allocated health plan expenses (healthcare plans excluded from employee income under sec. 106(a)). The credit is also increased for employer portion of the medicare tax on these wages. | 100% of the wages required paid under the FMLA emergency leave requirement, plus properly allocated health plan expenses (healthcare plans excluded from employee income under sec. 106(a)). The credit is also increased for employer portion of the medicare tax on these wages. |
| How claimed | <p>Credit is claimed against the employer portion of social security taxes (not medicare taxes). Any credit in excess of total employer social security taxes on the wages with respect to the employment of all employees of the employer the excess shall be a refundable credit to the employer.</p> <p>The Secretary is instructed to provide guidance “providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit”. This appears to be intended to allow employers the ability to access the funds provided by the credits prior to quarter end by reducing their payroll tax deposits.</p> | <p>Credit is claimed against the employer portion of social security taxes (not medicare taxes). Any credit in excess of total employer social security taxes on the wages with respect to the employment of all employees of the employer the excess shall be a refundable credit to the employer.</p> <p>The Secretary is instructed to provide guidance “providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit”. This appears to be intended to allow employers the ability to access the funds provided by the credits prior to quarter end by reducing their payroll tax deposits.</p> |
| Double benefit/Impact on taxable income | Gross income of the employer is increased by the amount of credit claimed so as to prevent a double benefit in the form of both a credit and deduction for the same wages. | Gross income of the employer is increased by the amount of credit claimed so as to prevent a double benefit in the form of both a credit and deduction for the same wages. |
| Self-employed | The credit is allowed for self-employed individuals based upon a calculated sick leave equivalent amount and subject to the same per day and aggregate caps which apply to sick pay for employees. | The credit is allowed for self-employed individuals based upon a calculated family medical leave equivalent amount and subject to the same per day and aggregate caps which apply to family medical leave pay for employees. |