EMPLOYER GUIDE TO FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

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TYPE ATYPICAL

START

Employer has fewer than 500 employees as of the date the employee is requesting leave

NO → FFCRA provisions do not apply

YES → Employer currently has no work for the employee either due to lack of business or because the worksite is closed pursuant to a Federal, State, or local directive (including a shelter-in-place or stayhome order).

YES → FFCRA provisions do not apply

NO → No Employee is unable to work or telework due to having to care for their child under age 18 (18 or older only if the child is disabled and cannot care for him/herself) because the child's school or place of care has been closed (or the child care provider is unavailable) due to COVID-19 reasons and there is no other suitable individual (e.g., another parent or guardian) to care for the child. In addition, the employee has provided a written statement to substantiate the requested leave, including an explanation of special circumstances that exist if the employee's reason for leave is to care for a child older than 14 during daylight hours.

The school or place of care is considered closed if the physical location is closed. This is true even if the child continues to receive instruction or assignments (e.g., online).

YES → Employer has fewer than 50 employees

YES → An authorized officer of the company has determined that offering child care related sick pay and/or expanded FMLA would jeopardize the viability of the business as a going concern because at least one of the following is true:

> The provision of paid sick leave or FMLA would result in the business's expenses exceeding available revenues and cause the business to cease operating at a minimal capacity.

> The absence of the employee requesting leave would cause substantial operational risk to the business because of their specialized knowledge, skills or responsibilities.

> There are not sufficient workers who are available and qualified to perform the services currently being performed by the employee requesting leave, and these services are needed for the business to continue operating at a minimal capacity.

YES → To claim the small business exemption from FFCRA provisions, the employer should document why it meets the criteria above for exemption as set forth by the Department of Labor.

NO → At the time of leave, the employee has been employed for at least 30 days.

NO → FFCRA provisions do not apply

YES → Employee is unable to work or telework because the employee is experiencing at least one of the below:

> Employee is subject to a Federal, State, or local COVID-19 quarantine or isolation order (includes a government-mandated shelter-in-place or stayhome order).

> Employee has been advised by a health care provider to self-quarantine because of COVID-19.

> Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.

NO → Employee is unable to work or telework because the employee is experiencing at least one of the below:

> Employee is caring for another person who is subject to or advised to quarantine or isolation or who is experiencing symptoms. The other person must be either 1) the employee's immediate family member, 2) someone who regularly resides in the employee's home, or 3) someone with whom the employee has a relationship and who genuinely depends on the employee for care in a quarantine or isolation situation.

> Employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

NO → FFCRA provisions do not apply

YES → EMERGENCY SICK LEAVE

EMERGENCY SICK LEAVE

Full-time employee is entitled to 80 hours of emergency paid sick leave. Part-time employee would be entitled to a prorated number of hours.

The employer cannot require the employee to use other paid leave before using emergency sick leave.

→ Employee is eligible for emergency paid sick leave at their regular rate of pay, capped at $511/day for up to 10 days (2 weeks). Maximum paid sick leave benefit is $5,110 per employee.

The employer may choose to pay the employee more than is required above. The employer and the employee may also agree that the employee will use their preexisting leave (e.g., accrued vacation) to supplement the amount of paid sick leave up to the employee's normal earnings.

In any case, the employer is not entitled to a tax credit for any paid sick leave that is not required to be paid or that is paid in excess of the limitations noted above.

Full-time employee is entitled to 80 hours of emergency paid sick leave. Part-time employee would be entitled to a prorated number of hours.

The employer cannot require the employee to use other paid leave before using emergency sick leave.

→ Employee is eligible for emergency paid sick leave at two-thirds of their regular rate of pay, capped at $200/day for up to 10 days (2 weeks). Maximum paid sick leave benefit is $2,000 per employee.

The employer may choose to pay the employee more than is required above. The employer and the employee may also agree that the employee will use their preexisting leave (e.g., accrued vacation) to supplement the amount of paid sick leave up to the employee's normal earnings.

In any case, the employer is not entitled to a tax credit for any paid sick leave that is not required to be paid or that is paid in excess of the limitations noted above.

EMERGENCY FAMILY MEDICAL LEAVE ACT (FMLA) EXPANSION

Employee is entitled to up to 12 weeks of job protected leave through December 31, 2020.

→ The first 10 days (2 weeks) of expanded FMLA are unpaid. The employee may choose to use emergency paid sick leave during this period (see above), or employee may choose to use paid time off (e.g., vacation, sick days, etc.) under the employer's policy.

→ After the first 10 days (2 weeks) of expanded FMLA, the employee is eligible for paid FMLA at two-thirds of the employee's regular rate of pay, capped at $200/day for up to 10 weeks. Maximum FMLA benefit is $10,000 per employee.

The employer may choose to pay the employee more than is required above. The employee may also elect - or the employer may require the employee - to simultaneously use their accrued paid leave (e.g., accrued vacation) for the same hours the employee is receiving expanded FMLA; however, the employer must then pay the employee the full amount to which the employee is entitled under the employer's paid leave policy.

In any case, the employer is not entitled to a tax credit for any paid sick leave that is not required to be paid or that is paid in excess of the limitations noted above.

→ The employer is required to hold the employee's job open until the end of the leave period, except if the employer has fewer than 25 employees and the employee's position no longer exists due to economic conditions or operational changes caused by COVID-19, provided the employer agrees to rehire the employee if a position becomes available within the next twelve months.

PAYROLL TAX CREDIT

Payroll tax credit is equal to 100% of required emergency paid sick leave, capped at $511/day per employee. (Maximum credit of $5,110 per employee.)

Payroll tax credit is equal to 100% of required emergency paid sick leave, capped at $200/day per employee. (Maximum credit of $2,000 per employee.)

Payroll tax credit is equal to 100% of required FMLA, capped at $200/day per employee. (Maximum credit of $10,000 per employee.)

Payroll tax credits are increased by
1.) the amount of the employer's liability for Medicare tax on required emergency paid sick leave and expanded FMLA wages; and
2.) any amounts paid or incurred by the employer to maintain a group health plan, to the extent those expenses are excluded from the employee's gross income under the tax code and "properly allocable" to the respective emergency paid sick leave or FMLA wages required to be paid.

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