



IRS, Treasury and Labor issue first guidance on the Families First Coronavirus Response Act

By Sean P. Clancy and Irene Scholl-Tatevosyan

On Friday, March 20, 2020, the Internal Revenue Service (IRS), U.S. Treasury Department, and U.S. Department of Labor released a joint notice (I.R. 2020-57, March 20, 2020) setting forth preliminary guidance for employers impacted by COVID-19 under the Families First Coronavirus Response Act (the Act).¹

What tax credits are available to covered employers?

The Act authorizes refundable tax credits for covered employers that provide paid sick leave under the Emergency Paid Sick Leave provisions and paid child care leave under the FMLA Amendment.

How do eligible employers claim the new tax credits?

Covered employers will be able to claim the two new tax credits and get “fast funds” based on qualifying paid leave they provide to their employees between the Act’s effective date (to be announced, but no later than April 2) and December 31, 2020. Employers will be able to retain an amount of payroll taxes otherwise required to be deposited with the IRS that is equal to the amount of qualifying sick and child care leave that they paid—a dollar-for-dollar tax deposit offset. Additional guidance on the reporting mechanics will be released this week.

Which “payroll taxes” do not need to be deposited?

Covered employers may keep (instead of depositing) payroll taxes, including federal income taxes withheld from any/all employees as well as both the employer and employees’ share of Social Security and Medicare taxes.

What if an employer’s payroll tax deposits are less than the amount of qualifying paid leave that they provide?

If a qualifying employer’s payroll taxes to be deposited are less than the cost of the qualified leave paid to its employees, the employer will be able to file a request for an accelerated payment from

¹ NP issued an earlier alert discussing [a summary of the Act’s provisions](#).

the IRS. The IRS announced that it expects to process these payment requests in two weeks or less. The details of this new, expedited procedure will be announced this week.

Is there an exemption for small businesses?

Small businesses (fewer than 50 employees) will be eligible for an exemption from both the FMLA Amendment and Emergency Paid Sick Leave provisions if such requirements would “jeopardize the ability of the business to continue” as a going concern. Impacted small businesses will be able to claim the exemption “on the basis of simple and clear criteria” that the Department of Labor will address in emergency guidance.

What if eligible employers fail to comply with the Act’s requirements?

Covered employers will need to come into compliance with the Act as quickly as possible. The Department of Labor will be announcing a temporary non-enforcement policy for 30 days in order to provide a “period of time for employers to come into compliance with the Act.” Under this policy, Labor will not bring an enforcement action against any employer for violations of the Act so long as the employer has acted reasonably and in good faith to comply with the Act. In lieu of enforcement/investigative action, the Department of Labor will provide compliance assistance to eligible employers during this 30-day grace period.

For more information on the content of this alert, please contact our [Coronavirus Response Team](#), your Nixon Peabody attorney, or:

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