





Table of contents

Questions and Answers	3
Additional resources	7
Examples	8

Questions and Answers



1. Which companies are eligible for the tax credits?

Companies which are required to provide paid COVID-19-related sick leave and paid COVID-19-related family leave under the Act are permitted to claim a credit against the IRC Section 3111(a) employer portion of payroll taxes (6.2% social security tax), on a quarterly basis.

The determination for which companies are subject to the requirements regarding paid leave are governed by applicable employment labor laws, including the Family and Medical Leave Act of 1993 and the Fair Labor Standards Act of 1938. Companies should consult with legal counsel in order to assess the application of the paid leave and sick leave requirements to their particular organizations and situations.¹

Note that the provisions of the Act regarding leave may not apply to all employers:

- The paid family leave requirement applies to employers with fewer than 500 employees, with possible exemptions for certain health care providers and first responders, and businesses with fewer than 50 employees.
- The paid leave requirement applies to 1) a private entity employer with fewer than 500 employees and 2) a public agency (e.g., government), and any entity that is not a private entity/individual with more than one employee.

Many law firms specializing in the employment law aspects of the Act have published [alerts](#) that address the impacted employment law provisions.² The US Department of Labor has also released a Q&A that addresses several issues related to the Act.

2. Are tax exempt entities eligible for the credits?

Yes. Tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick leave and emergency paid family leave under the Act are considered eligible employers.

3. Can companies larger than 500 employees claim the credits if they voluntarily pay sick or family paid leave?

No. The credits are only applicable for companies subject to the requirements in the Act regarding paid family leave and paid sick leave.

¹ Some of the requirements in the Act relate to labor law matters and Deloitte Tax LLP does not provide legal services. Please consult your legal counsel with respect to such legal matters.

² Deloitte Legal Germany and the other participating legal practices of Deloitte Touche Tohmatsu Limited (DTTL) member firms have entered into a non-exclusive alliance with Epstein Becker Green, an independent US employment law firm. The non-exclusive alliance excludes the Deloitte US member firm, which does not provide legal services and does not participate in the non-exclusive alliance.

Questions and Answers

4. **How should companies count employees for purposes of the 500-employee rule, specifically as it relates to related entities?**

These rules are based on employment labor law and companies should consult with their labor counsel and refer to the Department of Labor [Q&A](#) released.

5. **As of what date are the Families First Act credits applicable?**

Employers can claim these credits based on qualifying family and sick leave they provide between April 1, 2020 and December 31, 2020.

6. **How are the tax credits claimed?**

The credits are claimed against the employer portion of payroll taxes. It is anticipated that the credits will be claimed via an employer's quarterly Form 941 filing, beginning with the second quarter filing due in July 2020.

7. **Are the credits refundable?**

Yes. Any excess credits above a company's employer portion of payroll taxes are refundable on a quarterly basis. The IRS has indicated that employers will be able to file a request for an accelerated payment from the IRS, which they expect to process in two weeks or less (as announced in [IR-2020-57](#) and a notable decrease from standard processing times).

8. **How much are the credits?**

There are two credits available, each subject to limitation. The credits are determined by calculating the qualified wages paid to the employee, as defined below. The credits are intended to cover the economic cost of paying the qualified sick and family leave.

1. The credit designed to compensate employers for the cost of providing two weeks paid **sick leave** under FLSA to employees is differentiated based on the reason for the sick leave.
 - For employees who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to the COVID-19 (including those recommendations from state or local governments), the credit is equal to the employee's wages, capped at \$511 per day.
 - For employees caring for a family member in the above conditions or for a child whose school or place of care has been closed, the credit is equal to 2/3 of the employee's wages, capped at \$200 per day.
 - This credit is limited to 10 days per employee.
 - An additional credit is allowed for the amount of the employer's qualified health plan expenses that are allocable to the qualified FMLA wages eligible for the credit.
 - The employer's portion of Medicare tax on the payment of sick leave wages is added to the amount allowable as a credit.



Questions and Answers



2. The credit designed to compensate employers for the cost of providing paid **family leave** to employees under FMLA for the ten weeks following the two weeks of sick leave applies more narrowly than the credit for sick leave. It is applicable only to wages paid for family leave to employees who are caring for a child whose school or place of care has been closed.
 - The credit is equal to 2/3 of the employee's wages, capped at \$10,000 per employee (i.e., \$200 per day for up to 10 weeks).
 - An additional credit is allowed for the amount of the employer's qualified health plan expenses that are allocable to the qualified FMLA wages eligible for the credit.
 - The employer's portion of Medicare tax on the payment of family leave wages is added to the amount allowable as a credit.

See below for example scenarios of how the credits are calculated.

9. **What limitations are there for double benefits?**

In the case of both credits, the Act prevents any double benefit, including, for example, claiming a deduction for sick leave and/or family leave wages paid as well as the associated credits.

Employers are also prohibited from claiming the credits against any wages which have already been claimed for purposes of a credit under Internal Revenue Code section 45S (employer credit for paid family and medical leave passed as part of the Tax Cuts and Jobs Act in 2017).

10. **Can companies claim the credits for part-time leave (e.g., employee works 50% of their normal job and the remaining 50% is paid as leave)?**

The credits are applicable to paid sick leave or paid family leave required by the Act. The determination for the eligibility of these paid leaves is based on employment law; companies should consult with their labor counsel and refer to the Department of Labor [Q&A](#) released.

11. **What documentation should employers maintain for purposes of claiming the credits?**

It will be important for companies to maintain records indicating which payments to employees are related to paid sick and family leave and be able to identify these payments from normal wages.

Questions and Answers

12. Are payments for sick and family leave under the Act considered taxable wages to the employees?

Yes, payments for sick and family leave under the Act are considered taxable wages for federal income tax purposes and subject to the applicable federal tax withholding. These payments are also considered income for purposes of Medicare and Social Security income/withholding for the employee.

However, these payments are not considered wages for purposes of employer IRC Section 3111(a) employer portion of payroll taxes (6.2% social security tax).



Additional resources

- [H.R. 6201](#)
- [“Families First Coronavirus Response Act” H.R. 6201 Tax considerations](#)
- [IRS News Release](#) (IR-2020-57, March 20, 2020)
- [Department of Labor Q&A](#) “Families First Coronavirus Response Act: Questions and Answers”



Examples

Sample scenario 1: One employee caring for child whose school is closed

Employee A has a child whose school has been closed; he will be off work receiving paid leave from his employer. Employee A's normal rate of pay prior to sick leave is \$250/day and he contributes \$75/week to his health insurance plan; his employer contributes \$200/week to the plan. During the sick and family leave periods the company pays Employee A at 2/3 of his normal rate of pay (\$167 per day).

Weeks 1-2

The payroll credit for Employee A's sick leave will be calculated as follows:

- Credit limited to the lesser of 2/3 of Employee A's pay pay ($2/3 * \$250 = \167) or \$200 per day

Sick leave credit for Employee A	$\$167 * 10 \text{ days}$	\$1,670
Health insurance paid for Employee A during sick leave	$(\$75 + \$200) * 2 \text{ weeks}$	\$550
Employer Medicare tax due for Employee A during sick leave	$\$167 * 10 \text{ days} * 1.45\%$	\$24
Total credit*		\$2,241

*The credit will be applied to total employer social security payments for the quarter.

Weeks 3-12

The payroll credit for Employee A's family leave will be calculated as follows:

- Credit limited to the lesser of 2/3 of Employee A's regular pay ($2/3 * \$250 = \167) during the 10-week period ($\$167 * 50 \text{ days} = \$8,350$) or \$10,000

Family leave credit for Employee A	$\$167 * 50 \text{ days}$	\$8,350
Health insurance paid for Employee A during family leave	$(\$75 + \$200) * 10 \text{ weeks}$	\$2,750
Employer Medicare tax due for Employee A during family leave	$\$167 * 50 \text{ days} * 1.45\%$	\$121
Total credit*		\$11,221

*The credit will be applied to total employer social security payments for the quarter.



Examples

Sample scenario 2: One employee subject to self-quarantine

Employee B is required to comply with a self-isolation recommendation with respect to COVID-19; she will be off work receiving paid leave from her employer. Employee B makes \$600/day and contributes \$75/week to her health insurance plan; her employer contributes \$200/week to the plan.

Weeks 1-2

The payroll credit for Employee B's sick leave will be calculated as follows:

- Credit limited to the lesser of actual wages (\$600 per day) or \$511 per day

Sick leave credit for Employee B	\$511 * 10 days	\$5,110
Health insurance paid for Employee B during sick leave	(\$75 + \$200) * 2 weeks	\$550
Employer Medicare tax due for Employee B during sick leave	\$600 * 10 days * 1.45%	\$87
Total credit*		\$5,747

*The credit will be applied to total employer social security payments for the quarter.

Weeks 3-12

The payroll credit for paid family leave is not applicable to Employee B.

Examples

Sample Scenario 3: Group of employees

Company C has 50 employees; 15 of those employees take two weeks of sick leave due to a self-quarantine requirement or a COVID-19 diagnosis, 5 of the employees take two weeks of sick leave to care for a child whose school has closed. Those same 5 employees take 10 weeks of family leave to continue caring for their children whose schools have closed.

All employees make \$250/day and contribute \$75/week to their health insurance plan, and Company C contributes \$200/week on behalf of each employee to the health insurance plan.

Weeks 1-2

The payroll credit for Company C's sick leave will be calculated as follows:

- The credit for employees who are self-quarantined or diagnosed with COVID-19 is limited to the lesser of actual wages (\$250 per day) or \$511 per day
- The credit for employees who are caring for a child whose school is closed is limited to the lesser of 2/3 of actual wages (\$167 per day) or \$200

Sick leave credit for Company C employees on self-quarantine or with a COVID-19 diagnosis	15 employees * \$250 * 10 days	\$37,500
Sick leave credit for Company C employees caring for a child	5 employees * \$250 * 2/3 * 10 days	\$8,333
Health insurance paid for Company C during sick leave	20 employees * (\$75 + \$200) * 2 weeks	\$11,000
Employer Medicare tax due for Company C during sick leave	20 employees * \$250 * 10 days * 1.45%	\$725
Total credit*		\$57,558

*The credit will be applied to total employer social security payments for the quarter.

Weeks 3-13

The payroll credit for Company C's family leave will be calculated as follows:

- The credit for employees who are caring for a child whose school is closed is limited to the lesser of 2/3 of actual wages (\$167 per day) or \$200

Family leave credit for Company C employees caring for a child	5 employees * \$250 * 2/3 * 50 days	\$41,667
Health insurance paid for Company C during family leave	5 employees * (\$75 + \$200) * 10 weeks	\$13,750
Employer Medicare tax due for Company C during family leave	5 employees * \$250 * 50 days * 1.45%	\$906
Total credit*		\$56,323

*The credit will be applied to total employer social security payments for the quarter.



Examples



Sample Scenario 4: Group of employees

Company D has 50 employees; 15 of those employees take two weeks of sick leave due to a self-quarantine requirement or a COVID-19 diagnosis, 5 of the employees take two weeks of sick leave to care for a child whose school has closed. Those same 5 employees take 10 weeks of family leave to continue caring for their children whose schools have closed.

All employees make \$600/day and contribute \$75/week to their health insurance plan, and Company D contributes \$200/week on behalf of each employee to the health insurance plan.

Weeks 1-2

The payroll credit for Company D's sick leave will be calculated as follows:

- The credit for employees who are self-quarantined or diagnosed with COVID-19 is limited to the lesser of actual wages (\$600 per day) or \$511 per day
- The credit for employees who are caring for a child whose school is closed is limited to the lesser of 2/3 of actual wages (\$400 per day) or \$200

Sick leave credit for Company D employees on self-quarantine or with a COVID-19 diagnosis	15 employees * \$511 * 10 days	\$76,650
Sick leave credit for Company D employees caring for a child	5 employees * \$200 * 10 days	\$10,000
Health insurance paid for Company D during sick leave	20 employees * (\$75 + \$200) * 2 weeks	\$11,000
Employer Medicare tax due for Company D during sick leave	20 employees * \$600 * 10 days * 1.45%	\$1,740
Total credit*		\$99,390

*The credit will be applied to total employer social security payments for the quarter.

Weeks 3-13

The payroll credit for Company D's family leave will be calculated as follows:

- The credit for employees who are caring for a child whose school is closed is limited to the lesser of 2/3 of actual wages (\$400 per day) or \$200

Family leave credit for Company D employees caring for a child	5 employees * \$200 * 50 days	\$50,000
Health insurance paid for Company D during family leave	5 employees * (\$75 + \$200) * 10 weeks	\$13,750
Employer Medicare tax due for Company D during family leave	5 employees * \$600 * 50 days * 1.45%	\$2,175
Total credit*		\$65,925

*The credit will be applied to total employer social security payments for the quarter.



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