

Understanding the Available Tax Credits Under Families First Coronavirus Response Act



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The Families First Coronavirus Response Act (“Act”) became law on March 18, 2020. The Act goes into effect on April 2, 2020 and will expire on December 31, 2020. Implications to employers and employees have been covered under separate BKK posts which can be found here. This post will provide employers with guidance on how the tax credits are expected to work.

Family and Medical Leave

As my colleague Doug Taylor recently discussed, the Act requires certain employers to provide twelve weeks of leave for certain employees. The first two weeks may be unpaid, and the remaining ten weeks are paid. The cap on such qualified wages is \$10,000 per employee. To help employers pay for this requirement, the Act provides a refundable tax credit for qualified wages paid by the employer, which permits the employer to use the credit against the employer portion of social security taxes. If the employer portion of social security taxes is not enough to utilize the tax credit earned, then the employer may obtain a refund for the excess. Thus, if an employer pays out qualified wages at the cap required, such employer will have a \$10,000 tax credit they can first use against their portion of social security taxes, and then they can seek a refund for the remainder of the credit. This may be the case in certain instances for employees who make annual earnings over \$137,700 as the employer social security tax liability will be \$8,537 ($\$137,700 \times 6.2\%$).

Sick Leave

The Act will require employers to provide up to ten days of sick leave to employees. The wages certain employers must pay is capped at ten days: either max of \$200 or \$511 per day. Thus, the total sick leave required to be paid by an employer per employee is \$2,000 or \$5,100. Again, to help pay for this, the Act allows for a tax credit for the qualified sick leave wages paid. As with the family and medical leave tax credit, the sick leave tax credit is permitted to be used against the employer portion of social security taxes. Any excess credit may be refunded to the employer.

So, for example, if an employer pays out the cap on qualified wages under the family and medical leave portion of the Act and the cap under the sick leave portion of the Act, the employer will be entitled to a \$12,000 or \$15,100 tax credit (depending on which category of sick leave pay). The tax credit is permitted to be used against the employer portion of social security taxes owed on a quarterly basis. If the employer has excess tax credits at the end of the year, they will be able to seek a refund for the excess portion of the tax credits, likely on their 2020 tax return.

Understanding the Available Tax Credits Under Families First Coronavirus Response Act (Cont.)

Unfortunately, employers will need to include the amount of the tax credits in gross income which will somewhat reduce the positive impact of the tax credits. We expect more relief packages to pass shortly, and we anticipate guidance from the IRS and DOL on how to interpret and implement these new rules.