

What the Families First Coronavirus Response Package Means to You

March 26, 2020

Executive Summary

As noted in an earlier release, phase two of the federal government's legislation requires certain size employers to provide paid sick leave as well as paid family and medical leave to employees. The government then provides a fully refundable credit against payroll taxes to offset the qualified amounts paid to employees. There are additional details below. First, however, in order to understand the tax credits available, one must understand the paid leave you may be required to provide your employees.

Caveat: As accountants, we are not permitted to provide legal advice. The following is only a general outline of benefits you may need to provide to employees. You should discuss this and all other employee related matters, including your ability to terminate employees and related obligations, with your legal counsel. You should also coordinate the benefits and obligations under this legislation with other federal, state and local laws.

Background

These new rules are mandatory for employers with less than 500 employees. Small businesses with less than 50 employees may be exempt from the rules if following them would jeopardize the viability of the business and they receive advance approval for the exemption. Anyone who has been employed for at least 30 days would be covered. The new rules are effective April 1, 2020 and will be in effect until December 31, 2020. Again, these are federal rules and the states or localities in which your business operates may have separate requirements.

Benefits to Provide to Employees

Family and Medical Leave

This provision of the Act grants leave to employees who are unable to work due to the need to care for the employee's minor child whose school is shut down or whose paid child care provider is unavailable due to a public health emergency declared by federal, state, or local government authorities.

The first 10 days of leave can be unpaid. During those 10 days, the employee can use vacation, personal or sick days. After the initial 10 day period, the employer must provide paid leave for an additional 10 weeks at 2/3 of the employee's regular pay. The benefit is limited to \$200 per day with an aggregate payment of \$10,000.

Paid Sick Leave

This leave is effective for employees for the following reasons:

1. Subject to an order by a government entity of quarantine or isolation
2. Advised by a health care provider to self-quarantine
3. Experiencing Coronavirus symptoms and seeking a medical diagnosis
4. Caring for someone subject to quarantine or an isolation order
5. Caring for a child whose school is shutdown or child care provider is unavailable or
6. Experiencing similar conditions to those specified by the Secretary of Health and Human Services

The rules provide for 80 hours of paid sick leave at the employee's regular rate of pay or 2/3 of the regular rate of pay, if qualifying under points 4, 5 or 6 above. The amount is capped at \$511 per day up to a maximum of \$5,110 per employee, if the employee qualifies under points 1, 2 or 3 above. Two thirds of an employee's regular rate of pay, capped at \$200 per day and \$2,000 in total, will qualify for those employees qualifying under points 4, 5 or 6 above.

Benefits to Your Company - Tax Credits

Tax credits will be provided for the amount of benefits noted above. These credits are to be applied against an employer's payroll taxes. The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees. The IRS is developing expedited

procedures to get the refund to you prior to filing a payroll tax return.

The credit for paid sick leave is increased by the employer costs to maintain eligible employees in a group health plan. Such costs are allocated pro rata for each employee on sick leave. These costs cannot be included in the employee's W-2.

Any credits taken by the employer under this act should be included under the employer's taxable income. The wages that the credits are based upon cannot be considered for purposes of the Family and Medical Leave Act of 2017. The employer can elect not to have the credits apply, and continue to take the deduction.

Benefits for the Self-Employed

The same benefits are available to the self-employed. The credit is based on the self-employed income divided by 260 days. The paid sick leave is limited to 10 days reduced by the number of sick days taken in prior years. The paid family and medical leave for self-employed is limited to 50 days. Any self-employed taxpayer who also receives a W-2 will have these provisions apply to the extent they exceed the \$2,000/\$5,110 thresholds under the sick leave portion and the \$10,000 under the family and medical leave portion. The credits may be used to reduce any estimated income tax payments.

Important takeaway: This program is designed to reimburse employers for providing benefits to employees. The idea is to provide benefits to your employees who are unable to work and to have those benefits funded by a tax credit which should offset your cost.

Anchin Observations:

If an employee is terminated or a business shuts down before April 1st, the employee or business will not be subject to these rules.

With Governors Cuomo and Murphy shutting down New York and New Jersey, employers and employees of businesses located in these states would assume they fall under these provisions. However, it should be noted that these rules are applicable to people who are unable to work or to telework (work remotely from home) because of one of the reasons specified above. If you have employees working

remotely from home or able to do so, they would not qualify for benefits and employers would not qualify for credits. This telecommuting provision may significantly reduce the benefits of the above two provisions, especially for many businesses in the service industry.

Employers who have 500 or more employees can continue to use credit available under the Family and Medical Leave Act under IRC 45S. The credit amount calculated is not as generous and not refundable.

The legislation is well intended yet complex. Please contact your Anchin Relationship Partner for additional guidance.

Disclaimer: Please note this is based on the information that is currently available and is subject to change.