



Emergency Federal Paid Leave Tax Credits & Exemptions

As we have previously [reported](#), most employers with less than 500 employees are required to comply with the Families First Coronavirus Act's ([FFCRA](#)) emergency paid sick leave and emergency expanded family and medical leave provisions (the EPSLA and the EEFMLA). These tax credits are intended for employers who are required to comply with the FFCRA; they do not apply to employers with over 500 employees who are not required to comply with the EPSLA and EEFMLA. Employers required to comply with the EPSLA and the EEFMLA are entitled to take refundable federal tax credits for the cost of providing such COVID-19-related paid sick and/or family leave wages to their employees, subject to certain limits.

The Internal Revenue Service ([IRS](#)) has now published [answers](#) to frequently asked questions about how these tax credits will work. Review them for information on claiming these credits, keeping records, calculating credits, etc. In certain cases, the tax credits may be advanced to the employer.

The tax credits available under the FFCRA are to be taken against the employer's employment taxes, and are intended to offset the costs to the employer of compliance with the paid leave provisions of the EPSLA and EEFMLA - not state law requirements or the employer's own policies.

Clarifications Concerning the Health Care Provider Exemption

Separately, employers covered by the FFCRA will qualify for an exemption to the EPSLA and EEFMLA with respect to employees that are "health care providers" or "emergency responders," and thus may exclude those employees from the requirements of the EPSLA and the EEFMLA.

A "health care provider" includes, but is not limited to, anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. The term "health care provider" is fairly broad and includes any individual employed by an entity that contracts with any of these institutions to provide services and anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related items, drugs or treatments.

An "emergency responder" is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

If you are an employer seeking to exempt an employee from the FFCRA leave requirements, and

such employee does not fall squarely within the definitions of either a "health care provider" or "emergency responder" listed above, note that the U.S. Department of Labor ([DOL](#)) urges employers to be judicious when applying this exemption, with the aim of minimizing the spread of COVID-19.

This is an optional exemption that may be exercised by employers who are otherwise subject to the leave requirements of the FFCRA. Such an employer's exercise of this option does not impact an employee's earned or accrued sick, personal or other employer-provided leave under state laws. Further, such an employer's exercise of this option does not authorize it to prevent an employee who is a health care provider or emergency responder from taking earned or accrued leave in accordance with established employer policies.

If an employer subject to the EPSLA or EEFMLA does not elect to exclude a health care provider or emergency responder from taking emergency paid leave under these emergency federal leave laws, but actually provides paid leave to the employee as these laws require, such paid leave should be calculated by the employer for purposes of claiming any tax credits available under the FFCRA.

The "health care provider" exemption does not apply to New York's [law](#) requiring employers to provide sick leave (paid or unpaid depending on tiered criteria) for COVID-19 ordered quarantine purposes. If your employees may be exempt from the FFCRA leave requirements under the "health care provider" exemption or any other exemption, you must assess your obligations under New York leave laws during the pandemic.

Also, remember that the "health care provider" exemption does not apply to exempt any employer who is subject to the Family Medical Leave Act ([FMLA](#)) from their obligations to provide unpaid leave under that law.

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