




1

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

- The act **requires** certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.
- The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements.
- These provisions will apply from April 1, 2020 through December 31, 2020.

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2

## THE ACT REQUIRES COVERED EMPLOYERS TO PAY COVERED EMPLOYEES

- Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay where the employee is unable to **work (or telework)** because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay because the employee is unable to **work (or telework)** because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and
- Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to **work (or telework)** due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

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3

## COVERED EMPLOYERS?

- The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and **private employers with fewer than 500 employees.**
- Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.
  - (Employers required to document hardships but are not required to notify the DOL)

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4

## ELIGIBLE EMPLOYEES?

- *All employees* of covered employers are eligible for two weeks of paid sick time for specified reasons related to COVID-19. *Employees employed for at least 30 days* are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.
  - **Notice:** Where leave is foreseeable, an employee should provide notice of leave to the employer as soon as is practicable. After the first workday of paid sick time, an employer may require employees to follow reasonable notice procedures in order to continue receiving paid sick time.

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5

## QUALIFYING REASONS FOR LEAVE

- Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work **(or unable to telework)** due to a need for leave because the employee:
  1. is **subject to a Federal, State, or local quarantine or isolation order related to COVID-19**;
  2. has been **advised by a health care provider to self-quarantine** related to COVID-19;
  3. is **experiencing COVID-19** symptoms and is seeking a medical diagnosis;
  4. is **caring for an individual subject to an order** described in (1) or self-quarantine as described in (2);
  5. is **caring for a child** whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
  6. is experiencing any **other substantially-similar condition** specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.
- Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.
- **For reasons (1)-(4) and (6):** A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.
- **For reason (5):** A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

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6

## CALCULATION OF PAY

- **For leave reasons (1), (2), or (3):** employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day (63.88 per hour) and \$5,110 in the aggregate (over a 2-week period).
- **For leave reasons (4) or (6):** employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day (25.00 per hour) and \$2,000 in the aggregate (over a 2-week period).
- **For leave reason (5):** employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period).

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7

## PAID SICK LEAVE FOR SELF-EMPLOYED INDIVIDUALS

- An eligible self-employed individual is defined as **an individual who regularly carries on any trade or business within the meaning of section 1402 of the Code, and would be entitled to receive qualified sick leave wages or qualified family leave wages under the FFCRA if the individual were an employee of an Eligible Employer** (other than himself or herself) that is subject to the requirements of the FFCRA.
- Eligible self-employed individuals are allowed an **income tax credit to offset their federal self-employment tax** for any taxable year equal to their "qualified sick leave equivalent amount" or "qualified family leave equivalent amount."
- For an eligible self-employed individual who is unable to **work or telework** because the individual falls under **reasons 1 through 6** – calculated the same way as for employees, with the same limitations.

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8

## PAID SICK LEAVE FOR SELF-EMPLOYED INDIVIDUALS

- **NOTE:** The **only days that may be taken into account** in determining the qualified sick leave equivalent amount are **days occurring during the period beginning on April 1, 2020, and ending on December 31, 2020.**
- Average daily self-employment income is an amount **equal to the net earnings from self-employment for the taxable year divided by 260.** A taxpayer's net earnings from self-employment are **based on the gross income that he or she derives from the taxpayer's trade or business minus ordinary and necessary trade or business expenses.**
- The **refundable credits** are claimed on the self-employed individual's Form **1040**, U.S. Individual Income Tax Return, tax return **for the 2020 tax year.**
- A self-employed individual **can effectively reduce payments of estimated income taxes** that the individual would otherwise be required to make if the individual was not entitled to the credit on the Form 1040.

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9

## PAID SICK LEAVE CREDIT

- For an employee who is unable to work because of Coronavirus quarantine or self-quarantine or has Coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee's **regular rate of pay, up to \$511 per day** and \$5,110 in the aggregate, for a **total of 10 days.**
- For an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for **two-thirds of the employee's regular rate of pay, up to \$200 per day** and \$2,000 in the aggregate, for **up to 10 days.**

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10

## PAID SICK LEAVE CREDIT

- An **eligible employer is not subject to social security tax** imposed on the **eligible wages** under this act.
- Employers are entitled to an additional **tax credit based on the Employer portion of Medicare taxes** paid on the eligible wages.
- **Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.**

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11

## CHILD CARE LEAVE CREDIT

- **In addition to the sick leave credit**, for an employee who is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the Coronavirus, eligible employers may receive a refundable child care leave credit. This credit is equal to two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate.
- **Up to 10 weeks of qualifying leave** can be counted towards the child care leave credit.
- An eligible employer is not subject to social security tax imposed on the eligible wages under this act.
- Eligible employers are entitled to an additional tax credit, for their portion of Medicare taxes and health insurance, same as the sick leave credit.

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12

## PROMPT PAYMENT FOR THE COST OF PROVIDING LEAVE

- When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941 series) with the IRS.
- Under guidance that will be released next week, eligible employers who pay qualifying sick or child care leave will be able to **retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.**
- 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.**
- If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. **The IRS expects to process these requests in two weeks or less. This will be done by filing Form 7200 – Advance Payment of Employer Credits Due to COVID-19.**

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13

## ADVANCE PAYMENT OF EMPLOYER CREDITS

**7200** Advance Payment of Employer Credits Due to COVID-19

OMB No. 1545-0020

File to [www.irs.gov/Form7200](https://www.irs.gov/Form7200) for instructions and the latest information.

Employer identification number (EIN)

Quarter ending 03/31/2020

Check one: ☐ 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 125th, 126th, 127th, 128th, 129th, 130th, 131st, 132nd, 133rd, 134th, 135th, 136th, 137th, 138th, 139th, 140th, 141st, 142nd, 143rd, 144th, 145th, 146th, 147th, 148th, 149th, 150th, 151st, 152nd, 153rd, 154th, 155th, 156th, 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# ADVANCE PAYMENT OF EMPLOYER CREDITS

<b>Form 7200</b> (March 2020) Department of the Treasury Internal Revenue Service		<b>Advance Payment of Employer Credits Due to COVID-19</b> ▶ Go to <a href="http://www.irs.gov/Form7200">www.irs.gov/Form7200</a> for instructions and the latest information.		OMB No. 1545-0029
Name (not your trade name)		Employer identification number (EIN)		
Trade name (if any)		Applicable calendar quarter (check one)		
Number, street, and apt. or suite no. If a P.O. box, see instructions.		<input type="checkbox"/> (1) April, May, June <input type="checkbox"/> (2) July, August, September <input type="checkbox"/> (3) October, November, December		
City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.)				
Foreign country name		Foreign province/county		Foreign postal code
Does a third-party payer file your employment tax return? (See instructions.) If "Yes," enter its name.				Third-party payer's EIN (if applicable)
<b>Tip:</b> File Form 7200 if you can't reduce your employment tax deposits to fully account for these credits that you expect to claim on your employment tax return for the applicable quarter. Don't reduce your employment tax deposits and request advanced credits for the same expected credits. You will need to reconcile your advanced credits and reduced deposits on your employment tax return. You can't request an advance payment of the credit for sick and family leave for self-employed individuals.				
<b>Part I Tell Us About Your Employment Tax Return</b>				
<b>A</b> Check the box to indicate which employment tax return form you file (or will file for 2020): <input type="checkbox"/> (1) 941, 941-PR, or 941-SS <input type="checkbox"/> (2) 943 or 943-PR <input type="checkbox"/> (3) 944 or 944(SP) <input type="checkbox"/> (4) CT-1				
<b>B</b> Is this a new business started on or after January 1, 2020? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>				

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15

# ADVANCE PAYMENT OF EMPLOYER CREDITS

<b>Part I Tell Us About Your Employment Tax Return</b>	
<b>A</b> Check the box to indicate which employment tax return form you file (or will file for 2020): <input type="checkbox"/> (1) 941, 941-PR, or 941-SS <input type="checkbox"/> (2) 943 or 943-PR <input type="checkbox"/> (3) 944 or 944(SP) <input type="checkbox"/> (4) CT-1	
<b>B</b> Is this a new business started on or after January 1, 2020? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>	
<b>C</b> Amount reported on line 2 of your most recently filed Form 941 (or wages reported on Schedule R (Form 941), column (c), by your third-party payer (see instructions)). If you file a different employment tax return, see instructions.	
<b>D</b> Enter the total number of employees you have. See instructions.	
<b>Part II Enter Your Credits and Advance Requested</b>	
1 Total employee retention credit for the quarter. See instructions . . . . .	1
2 Total qualified sick leave wages eligible for the credit and paid this quarter. See instructions . . . . .	2
3 Total qualified family leave wages eligible for the credit and paid this quarter. See instructions . . . . .	3
4 Add lines 1, 2, and 3 . . . . .	4
5 Total amount by which you have already reduced your federal employment tax deposits for these credits for this quarter . . . . .	5
6 Total advanced credits requested on previous filings of this form for this quarter . . . . .	6
7 Add lines 5 and 6 . . . . .	7
8 <b>Advance requested.</b> Subtract line 7 from line 4. If zero or less, don't file this form . . . . .	8

Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the

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16

## ADVANCE PAYMENT OF EMPLOYER CREDITS

<b>Advance requested. CONTACT THE IRS FIRST IF YOU ARE NOT SURE, DON'T FILE THIS FORM.</b>					
<b>Third-Party Designee</b>	Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details. <input type="checkbox"/> Yes. Complete below. <input type="checkbox"/> No				
	Designee's name ▶ and phone number ▶ Select a 5-digit personal identification number (PIN) to use when talking to the IRS ▶				
<b>Sign Here</b>	Under penalties of perjury, I declare that I have examined this form, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.				
	Your signature		Date	Printed title	
<b>Paid Preparer Use Only</b>	Printed name		Preparer's signature		Best daytime phone
	Print/Type preparer's name		Date	PTIN	Check <input type="checkbox"/> if self-employed
	Firm's name ▶		Firm's EIN ▶		
	Firm's address ▶		Phone no.		
<b>How To File</b>	Fax your completed form to 855-248-0552.				
For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 56392D Form <b>7200</b> (3-2020)					

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17

## EXAMPLES

- If an eligible **employer paid \$5,000** in sick leave and is otherwise required to deposit **\$8,000 in payroll taxes**, including taxes withheld from all its employees, the employer could **use up to \$5,000 of the \$8,000 of taxes** it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the **remaining \$3,000 on its next regular deposit date**.
- If an eligible **employer paid \$10,000** in sick leave and was required to deposit \$8,000 in taxes, the employer could **use the entire \$8,000 of taxes** in order to make qualified leave payments and **file a request for an accelerated credit for the remaining \$2,000**.
- Equivalent child care leave and sick leave credit amounts are **available to self-employed individuals** under similar circumstances. These credits will be **claimed on their income tax return and will reduce estimated tax payments**.

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18

## EMPLOYER NOTICE & PROHIBITIONS

- Each covered employer must **post in a conspicuous place** on its premises a notice of FFCRA requirements.
- Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

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19

## PENALTIES AND ENFORCEMENT

- Employers in violation of the first two weeks' paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act, 29 U.S.C. 216; 217.
- Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act.
- **The Department will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act.**
  - For purposes of this non-enforcement position, "good faith" exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.

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20

## QUESTIONS AND ANSWERS

- *If providing child care-related paid sick leave and expanded family and medical leave at my business with fewer than 50 employees **would jeopardize the viability of my business as a going concern**, how do I take advantage of the small business exemption?*
  - To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.
  - You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.

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21

## QUESTIONS AND ANSWERS

- *How do I count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?*
  - A part-time employee is entitled to leave for his or her average number of work hours in a two-week period.
    - Therefore, you calculate hours of leave based on the number of hours the employee is **normally scheduled** to work.
    - If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you **may use a six-month average** to calculate the average daily hours.
    - Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.

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22

## EXAMPLES

- If an eligible **employee is normally scheduled to work 50 hours per week**, the benefit for week 1 is based on 50 hours under EPSLA, all at the employee's regular rate of pay (no premium for overtime rates). The maximum benefit for the second week of sick leave would be based on 30 hours (for a total maximum total of 80 hours over the 2-week period).
- An eligible **part-time employee averaged 30 hours per week over the past 6**, the maximum benefit for that employee would be 30 hours per week for up to 2 weeks, for a maximum total of 60 hours over the 2-week period.

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23

## AT COOK MARTIN POULSON WE ARE CONSTANTLY STRIVING TO MAKE A DIFFERENCE IN PEOPLES LIVES.

We would love to find additional ways to help you solve the problems that keep you awake at night. Please contact us at **801-252-5649** for our Salt Lake City professionals or **435-258-7405** for our Logan professionals.

If you would like further information please check out our resources page here:  
<https://cookmartin.com/coronavirus/>

If you would like a copy of these slides and other resources, please email Megan Walker:  
[mwalker@cookmartin.com](mailto:mwalker@cookmartin.com)

You can also join us again at one of these future webinars:

- March 31st, 11am MTN
- April 1st, 2pm MTN
- April 2nd, 12pm MTN
- April 3rd, 3pm MTN

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24