



# Employer Payroll and Tax Relief Provisions of FFCRA and CARES Act

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# Outline

- › Review of paid leave requirements in FFCRA
- › FFCRA Employer Tax Credits
- › CARES Act Provisions - Employee Retention Credits and Payroll Tax Deferral



## Presenters



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# Families First Coronavirus Response Act (FFCRA): Types of Mandated Leave

- › **Expanded Family and Medical Leave (EFML)**
  - › Reason for leave: Employee is unable to work (or telework) due to a bona fide need for leave to care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19.
  
- › **Two Week Emergency Paid Sick Leave (Paid Leave)**
  - › Reasons for leave:
    - i. Employee is subject to a Federal, State, or local quarantine or isolation order;
    - ii. Employee has been advised by a health care provider to self-quarantine;
    - iii. Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
    - iv. Employee is caring for an individual subject to an order described in (i) or self-quarantine as described in (ii);
    - v. Employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
    - vi. Employee is experiencing any other substantially-similar condition.



## Which employers must comply with FFCRA:

- › Paid Leave and EFML apply to private employers with fewer than 500 employees and certain public employers regardless of size.
- › DOL will be issuing a 30-day non-enforcement policy.
- › Optional exemption to the mandated leave: Employers of Health Care Providers or Emergency Responders may elect to exclude such employees.
- › Small business exemption



## Small Business Exemption

A small business is exempt from certain Paid Leave and EFML requirements if providing such would jeopardize the viability of the business as a going concern.

- › Exemption applies if:
  - › The business employs fewer than 50 employees
  - › The leave is requested because the child's school or place of care is closed, or child care provider is unavailable due to COVID19
  - › An authorized officer of the business has determined at least one listed conditions that would jeopardize the viability of the business as a going concern has been met.



# Small Business Exemption

For an employer to claim the small business exemption an authorized officer of the business must determine 1 of the 3 conditions is satisfied:

- › The provision of Paid Leave or EFML would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- › The absence of the employee or employees requesting Paid Leave or EFML would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- › There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting Paid Leave or EFML, and these labor or services are needed for the small business to operate at a minimal capacity.



# FFCRA Employer Tax Credits - Overview

- › The government is helping employers cash flow required EFML and Paid Leave through refundable employer tax credits
- › The tax credits will allow employers to recoup the payroll costs to comply with the expanded leave provisions
- › There are two types of refundable employer credits authorized by the FFCRA.
  1. Paid Sick Leave Credit
  2. Paid Family and Medical Leave Credit





# FFCRA Employer Tax Credits - Overview

- › The credits equal the sum of (employee-by-employee basis):
  - › Qualifying Wages
  - › Allocable share of Qualified Health Plan Expenses
  - › Employer's share of Medicare tax
- › Any credit received should be included in taxable income of the employer
- › The credits are available for EFML or Paid Leave wages paid beginning April 1, 2020 thru December 31, 2020 by businesses and tax-exempt organizations with fewer than 500 employees



# FFCRA Employer Tax Credits – Qualified Wages

- › Qualified Wages for Paid Sick Leave Credit is **the lesser of paid leave wages or:**
  - › If the employee is receiving paid sick leave to care for themselves - reasons (i), (ii), or (iii) described earlier: **\$511 per day for a total of 10 days (80 hrs), \$5,110 max** OR
  - › If the employee receiving paid sick leave to care for someone else - reasons (iv), (v), or (vi) described earlier: **\$200 per day for a total of 10 days (80 hrs), \$2,000 max**
- › Qualified Wages for Paid Family and Medical Leave Credit is **the lesser of paid EFML wages or \$200 per day for a total of 10 weeks, \$10,000 in total**



# FFCRA Employer Tax Credits – Health Plan Expenses

- › Allocable share of Qualified health plan expenses included in credit
  - › Allocation made on pro-rata basis
    - › Total health insurance premiums ÷ Total number of employees ÷ # of work days
  - › Employer and employee paid health insurance expenses
    - › ER paid portion to extent not included in EE wages
    - › EE paid portion to extent made with pre-tax deductions
  - › Includes ER contributions to HRA and health FSA
  - › Does not include ER contributions to EE HSA accounts



## FFCRA Employer Tax Credits – Health Plan Expenses

### › Example (Health Plan Expenses):

Vandelay Industries, A latex manufacturer, sponsors a group health plan that covers 40 employees, some with self-only coverage and some with family coverage. Each employee works 260 days a year (5 days a week for 52 weeks). The employees contribute a portion of their premium by a pre-tax salary reduction, with different amounts for self-only and family. The total annual premiums for the 40 employees is \$520K (this includes both the ER and EE paid portion).

The allocable share of qualified health plan expenses includable in employer tax credit is \$50 per employee per day:

$\$520,000 \text{ Premiums} \div 40 \text{ EE} \div 260 \text{ days}$



# FFCRA Employer Tax Credits – Claiming the Credits

- › The credits are claimed through a reduction of the periodic payroll tax deposits employers are required to make
- › If the credit amount exceeds the payroll tax deposits, employers can request an advance payment from the IRS using Form 7200 Advance Payment of Employer Credits Due to COVID-19
- › Form 7200 may be filed any time before the end of the month in which you paid EFML or Paid Sick Leave. If necessary, you can request an advance multiple times each quarter
- › Form 941 will be used to reconcile the actual credit amount, reduced payroll tax deposits, and advance payments at the end of the quarter



## FFCRA Employer Credits Examples

### › Example (Credit Calculation):

Back at Vandelay Industries... On April 1, 2020 George, a latex salesman, contracts COVID-19. He is advised by his doctor to self-quarantine for 2 weeks. On the same day Jerry, a manufacturing supervisor, finds out that his father, Morty, has contracted COVID-19. Jerry will need to take off 2 weeks to care for his father. Both employees receive a fixed annual salary and work 260 days a year.

Vandelay Industries qualifies for a \$4,980 Paid Sick Leave Credit as calculated on next slide



# FFCRA Employer Credits Examples

## › Example (Credit Calculation continued)

	George	Jerry
Annual Salary	\$ 50,000	\$ 150,000
Daily Pay	\$ 192	\$ 577
Paid Leave Percentage (1)	100%	67%
Tentative Daily Paid Leave Amount	\$ 192	\$ 385
Limited Daily Paid Leave Amount (2)	\$ 192	\$ 200
Days on Leave	10	10
Paid Leave Wages	\$ 1,923	\$ 2,000
Allocable Health Plan Expenses (3)	\$ 500	\$ 500
ER Medicare Tax on Paid Leave (4)	\$ 28	\$ 29
Total Credit	\$ 2,451	\$ 2,529
		<b>\$ 4,980</b>

(1) Employer required to pay 2/3 of daily salary under FFCRA

(2) Jerry is capped at \$200 per day (lesser of 2/3 of salary or \$200 per day)

(3) Calculated in previous example

(4) 1.45% of Paid Leave Amount



## FFCRA Employer Credits Examples

- › Example 1 (Claiming Credit):

Assume that Vandelay Industries is otherwise required to deposit \$8,000 of payroll taxes. They would be required to deposit only \$3,020 [ $\$8,000 - \$4,980$  credit] on the next regular deposit date.

- › Example 2 (Claiming Credit):

Assume that Vandelay Industries qualified for a \$10,000 Paid Sick Leave Credit and is otherwise required to deposit \$8,000 of payroll taxes. They would not be required to remit payroll taxes on the next regular deposit date and would file Form 7200 to request for an advance on the credit for the remaining \$2,000





# FFCRA Employer Credits for the Self-Employed

- › Self-employed individuals can get credits against SE tax comparable to the Paid Sick Leave or Paid Family and Medical Leave Credit described earlier.
- › Paid Sick Leave Credit for SE Individual
  - › If the SE individual is unable to work because they are caring for themselves - reasons (i), (ii), or (iii) described earlier: **lesser of \$511 or 100% of average daily SE income per day for a maximum of 10 days**
    - › Average Daily SE Income = Net earnings\* for 2020 ÷ 260
      - » \*Net Earnings = Gross Receipts less deductible expenses



# FFCRA Employer Credits for the Self-Employed

## › Example (SE Tax Credit):

Morty has a very successful vintage clothing store. The state in which Morty resides has declared a state-wide isolation order for 2 weeks so he is unable to work. During 2020 he had net SE earnings of \$130,000. He is entitled to a \$5,000 credit against SE tax on his 2020 tax return calculated as follows:

**Average Daily SE Income = \$130,000 ÷ 260 = \$500**

**Credit = 10 days x Lesser of: \$511 or \$500 = \$5,000**



# FFCRA Employer Credits for the Self-Employed

- › Paid Family and Medical Leave Credit for SE Individual
  - › If SE individual is unable to work because they are caring for someone else - reasons (iv), (v), or (vi) described earlier: **lesser of \$200 or 67% of average daily self-employment income per day for a maximum of 50 days**
- › Denial of double benefit –SE tax credits are reduced by any amount of Paid Leave or EFML wages the individual receives as an employee



# FFCRA Employer Credits Documentation

- › Documentation
  - › Written leave request from employee containing
    - › Employee name
    - › Date or dates leave is requested
    - › Statement of the COVID-19 related reason for leave and support for such reason
      - » Doctors Note, Proof of school/daycare closure
    - › Statement that the employee is unable to work or telework for such reasons
  - › Calculation of components of credit including qualified wages and qualified health plan expenses
  - › Copies of all related tax forms (Forms 941 and 7200)



# Coronavirus Aid, Relief, and Economic Security Act (CARES)

Payroll tax relief provisions:

- › Employee Retention Credit
- › Delay of Payment of Employer Payroll Taxes



# Employee Retention Credit

Refundable payroll tax credit for eligible employers experiencing business losses due to COVID19 and continue to pay its employees.

## Eligible Employers:

- › Business with operations that have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings.
- › Businesses who have experienced a significant decline in gross receipts.
  - › A significant decline begins the first quarter gross receipts for 2020 are less than 50% of the gross receipts from the same calendar quarter in 2019.
  - › A significant decline ends quarter for which receipts returns to at least 80% of receipts for the same quarter in 2019.



# Employee Retention Credit

Significant decline in gross receipts:

	Q1	Q2	Q3
GR 2020	100,000	190,000	230,000
GR 2019	210,000	230,000	250,000
% Change	-52%	-17%	
	Q1 - Eligible	Q2 - Eligible	Q3 - Not Eligible



# Employee Retention Credit

- › Certain Employees:
  - › Employers that average more than 100 full-time employees in 2019, only the wages of those furloughed or have reduced hours are eligible for the credit
  - › Employers that averaged 100 or fewer full-time employees in 2019, all wages are eligible.





# Employee Retention Credit

- › Eligible Wages:
  - › Paid after March 12, 2020 and before Jan. 1, 2021
  - › Includes health benefits
  - › Maxed at \$10,000 of wages per employee per year
- › Excluded Wages:
  - › Amounts paid under FFCRA 2 weeks of paid sick leave
  - › Amounts paid under FFCRA EFML
  - › Amounts paid under Section 45S FML



# Employee Retention Credit

## How the credit works: Surf Board Repair and Rental Q2

- › April 1st an employer must furlough 4 of its 5 employees until June 1st because operations have been partially suspended.
- › Before the furlough, all employees earn \$3,000 a month.

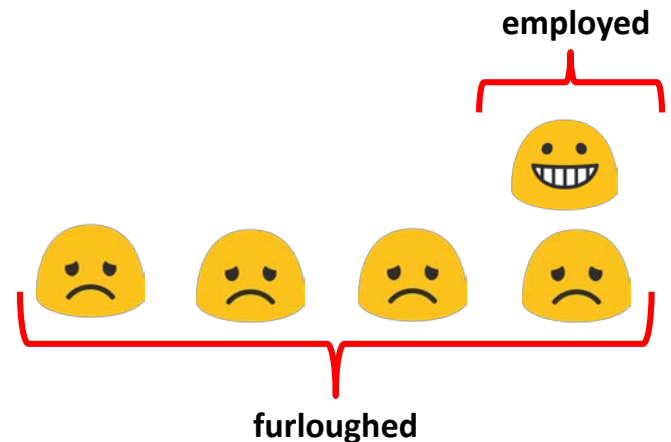
At the end of Q2

- › Eligible wages are \$9,000 (\$3K \* 3mths)
- › Credit is \$4,500 = \$9K \* 50%

Payroll Exp = \$9,000 --> Qualified Wage for Credit = \$9,000

Payroll Exp = \$0 --> Qualified Wage for Credit = \$0

Total Payroll = \$9,000 --> Total Qualified Wages = \$9,000





# Employee Retention Credit

How the credit works: Surf Board Repair and Rental Q3

- › June 1st the furloughed employees come back to work at their previous pay, \$3,000 a month.
- › Even though travel restrictions have been lifted people are hesitant to return to the beach and sales are down. September 1st, the owner determined that gross receipts for 2020 Q3 are 53% less than they were for 2019 Q3.

At the end of Q3

- › Eligible wages = \$37,000 (\$1K + \$36K) the employee that was not furloughed hit max \$10K.
- › Credit = \$18,500 (\$37K \* 50%)

Payroll Exp = \$9,000 --> Qualified Wage for Credit = \$1,000

Payroll Exp = \$36,000 --> Qualified Wage for Credit = \$36,000

Tot Payroll = \$45,000 --> Total Qualified Wages = \$37,000





# Employee Retention Credit

## Limitations:

- › Employers receiving the Small Business Interruption Loans
- › Employers allowed a Work Opportunity Credit (Code Sec 21)
- › Self-employed individuals are not eligible for this credit for their self-employment services or earnings.



# Delay of Payment of Employer Payroll Taxes

- › Certain payroll tax deferral through the end of 2020
- › Installment deferred taxes due:
  - › December 31, 2021
  - › December 31, 2022
- › The deferral is not available to employers who have received debt forgiveness of a Small Business Act loan under other CARES Act provision.



# Questions?

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