

The Association of Riverdale Cooperatives and Condominiums



DOCUMENTATION REQUIRED UNDER THE FEDERAL FAMILIES FIRST CORONAVIRUS RESPONSE ACT

We are grateful to Robert Sparer and the attorneys of the law firm
Clifton, Budd & DeMaria, LLP for the following information:

The Federal Families First Coronavirus Response Act (“FFCRA”) became effective on April 1, 2020. Among other requirements, FFCRA requires employers with fewer than 500 employees to provide expanded paid leave pursuant to the Emergency Family and Medical Leave Expansion Act and paid sick leave benefits pursuant to the Emergency Paid Sick Leave Act, in addition to existing paid leave, to those employees affected by the COVID-19 pandemic.

FFCRA permits eligible employers to receive tax credits for the cost of wages paid during such leave, allocable qualified health care expenses, and the employer’s share of Medicare tax paid for leave. The Internal Revenue Service (“IRS”) released guidance and the U.S. Department of Labor (“DOL”) released regulations outlining the documentation that employers must have in order to approve a leave request and obtain a tax credit. Below is a summary of the DOL regulations and IRS guidance on this issue.

Reasons for Leave under FFCRA

Under FFCRA, employees are eligible for enhanced paid family and medical leave and/or paid sick leave, if one or more of the following criteria are met:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis from a healthcare provider.
- The employee is caring for an individual who is subject to federal, state, or local quarantine or isolation order or who has been advised by a healthcare provider to self-quarantine.

- The employee is caring for their child if the school or place of care for the child has been closed, or the childcare provider of the child is unavailable, due to COVID-19 precautions.
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Required Documentation

Below is a summary of the information needed under the DOL regulations and IRS guidance for an employer to approve leave and obtain a tax credit. Notably, the IRS requires more documentation than the DOL in order to support a tax credit, and such differences are noted below. The DOL regulations state that an employer may require documentation necessary to support an employer's application for a tax credit. An employer planning on applying for a tax credit needs specific information from its employees to comply with the IRS guidance. All medical information about employees should still be kept secured and access should be given on a strict need-to-know basis.

An employer is not required to grant leave under FFCRA unless the employee provided the legally required documentation. Employers should allow their employees ample opportunity to provide the mandatory documentation prior to denying a request for leave, because an employer who grants a leave request without the documentation required by the IRS may later find itself ineligible for a tax credit. Employers must maintain the below documentation for four years.

Employee-Related Documentation.

Employers must have the following information from employees in order to approve leave and obtain an IRS tax credit for such leave and related expenses:

- A written request for leave from the employee which states:
 - The employee's name;
 - The date(s) for which leave is requested;
 - A statement of the COVID-19-related reason the employee is requesting leave; and,
 - A statement that the employee is unable to work, including by means of telework, because of the above COVID-19 qualifying reason.
- In the case of a leave request for the employee's quarantine or isolation order or self-quarantine advice, the statement from the employee must include the name of the governmental entity ordering quarantine or isolation, or the name of the health care professional advising self-quarantine.
- In the case of a leave request for an employee who is caring for an individual subject to a quarantine or isolation order or self-quarantine advice, the statement from the employee must include the name of the governmental entity ordering quarantine or isolation, or the name of the health care professional advising self-quarantine. Under IRS guidance, the employee must also provide the name of the individual for whom the employee is caring,

and the individual's relation to the employee.

- In the case of a leave request based on a school closing or child care provider unavailability, the employee statement must include the name of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave. IRS guidance also provides that employees must disclose the age of the child for whom they are caring. With respect to the employee's inability to work or telework because of a need to provide care for a child older than 14 during daylight hours, IRS guidance provides that the employee must provide a statement that special circumstances exist requiring the employee to provide care.

The DOL requires that employees taking qualifying leave under the Family and Medical Leave Act of 1993 ("FMLA") for the employee's own serious health condition related to COVID-19, or to care for the employee's spouse, son, daughter, or parent with a serious health condition related to COVID-19, follow the standard certification requirements. This documentation is not required to obtain a tax credit.

Employer-Related Documentation.

Under IRS guidance, an employer must create and maintain the following documentation to claim a tax credit:

- Documentation demonstrating how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.
- Documentation showing how the employer determined the amount of qualified health plan expenses it allocated to wages.
- Copies of any completed Form 7200 (Advance of Employer Credits Due To COVID-19), that the employer submitted to the IRS, if applicable.
- Copies of the completed Form 941 (Employer's Quarterly Federal Tax Return), that the employer submitted to the IRS. For employers that use third party payers to meet their employment tax obligations, employers should maintain records of information provided to the third-party payer regarding the employer's entitlement to the credit claimed on Form 941.

Process for Claiming a Tax Credit

Under IRS guidelines, eligible employers are entitled to receive a tax credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and the employer's share of Medicare tax paid on the leave wages between April 1, 2020 and December 31, 2020.

Eligible employers will report their total qualified leave wages and the related credits for each quarter on their federal employment tax returns, usually the Form 941 (Employer's Quarterly Federal Tax Return). The Form 941 is used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer's portion of social security and Medicare tax.

In anticipation of receiving the credits, eligible employers that pay qualified leave wages may retain the amount of all federal employment taxes equal to the amount of the qualified leave wages paid, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages – instead of depositing payment with the IRS. These taxes available for retention include federal income tax withholdings, the employees' share of social security and Medicare taxes, and the employer's share of their employees' social security and Medicare taxes.

If the estimated federal employment taxes will not cover an eligible employer's cost of qualified leave wages, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, the employer may request an advance payment from the IRS by filing Form 7200 (Advance Payment of Employer Credits Due to COVID-19).

*The above is not intended to be tax advice,
but an overview of the released guidance; therefore,
consult your tax professional for advice on claiming a tax credit.*