

CARES ACT Business Provisions Related to Payroll Taxes

Employee retention credit for employers subject to closure due to COVID-19

The provision provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above.

For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.

The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

Tax credits for emergency leave payments to employees.

The new law grants tax credits to small employers to cover payments to eligible employees while they take time off under the mandatory emergency COVID-19 paid sick leave and paid family leave provisions. These provisions apply to employers with less than 500 employees.

Emergency paid sick leave under the new law is limited to \$511 per day for up to 10 days (up to \$5,110 in total) for an employee who's in COVID-19 quarantine or seeking a COVID-19 diagnosis. An employee can also receive emergency COVID-19 paid sick leave of up to \$200 per day for up to 10 days (up to \$2,000 in total) to care for a child whose school or childcare location has been closed or whose childcare is unavailable due to COVID-19.

In addition, the law gives an employee the right to take up to 12 weeks of job-protected family leave if the employee or a family member is in COVID-19 quarantine or if the school or childcare location of the employee's child is closed due to the outbreak. The employer must pay at least two-thirds of the employee's usual pay, up to a maximum of \$200 per day, subject to an overall maximum of \$10,000 in total family leave payments.

To help employers cover these now-mandatory emergency leave payments, the law allows a refundable tax credit equal to 100% of qualified sick leave wages and family and medical leave wages paid by the employer.

The credit applies only to eligible leave payments made during the period beginning within 15 days of March 18, 2020 and ending on December 31, 2020.

The new law increases the credit to cover a portion of an employer's qualified health plan expenses that are allocable to emergency sick leave wages and emergency family leave wages.

Delay of payment of employer payroll taxes

Qualified sick leave and family leave payments mandated by the new law are exempt from the 6.2% Social Security tax component of the employer FICA tax on wages.

Employers and self-employed individuals are allowed to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.

The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

The credit is first used to offset the Social Security tax component of the employer's FICA tax bill. Any excess credit is refundable, meaning the government will issue a check to the employer for the excess.

Employers must pay the 1.45% Medicare tax component of the FICA tax on qualified sick leave and family leave payments, but they can claim a credit for that outlay.

Important: The credit isn't available to employers that are already receiving the pre-existing credit for paid family and medical leave.