



Executive Series | What You Need To Know  
**COVID-19 | Employee Benefits Compliance Webinar**  
**Frequently Asked Questions (FAQs)**

FFCRA Payroll Tax Credit Considerations



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# FFCRA Payroll Tax Credit Considerations

April 20, 2020

*On March 31, 2020, USI's national Employee Benefits Compliance team hosted a COVID-19 Employee Benefits Compliance Update Webinar. During the call, many questions were submitted by participants. These questions have been collected and answered here, split into three topics: group health plan coverage considerations, FFCRA leave provision considerations, and FFCRA payroll tax credit considerations.*

*The following questions and answers address payroll tax credit considerations under the Families First Coronavirus Response Act ("FFCRA").*

*This information is up to date as of April 20, 2020. Due to the rapidly changing nature of this material, there may be new or updated information that is not included in this summary. The IRS regularly updates their website with FAQs related to the FFCRA paid leave tax credits – for more information, visit <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>.*

## **Q1: Employees still have to pay FICA taxes, correct? Is it only the employers who get the FICA relief?**

Correct. The CARES Act does not provide relief that would exempt employees from paying the Federal Insurance Contribution Act tax ("FICA"), Social Security tax, or the Medicare Tax. Employers are required to withhold federal income taxes and the employee's share of the Social Security and Medicare taxes, as applicable, from an employee's paychecks.

## **Q2: Do the employer payroll tax credits under FFCRA apply to public sector employers?**

No. Eligible Employers that are entitled to claim the refundable tax credits are private employers and nonprofit organizations that: (i) have fewer than 500 employees, and (ii) are required under the FFCRA to pay wages for employees who have a qualifying leave under the Emergency Paid Sick Leave Act ("EPSLA") or Emergency Family & Medical Leave Expansion Act ("EFMLEA") and certain self-employed individuals.

The law excludes state and local governments from claiming tax credits.

## **Q3: Caps on pay for the two leaves do not prohibit an employer from paying above the cap, only what they will be able to seek reimbursement for, correct?**

Correct.



**Q4: If our employees are health care workers, but we decide to allow them to use the new FFCRA leaves (instead of claiming an exemption), will we still receive the federal tax credit?**

Yes. Employers of health care providers that elect to comply with the paid leave requirements under FFCRA may apply for the tax credit if they are an eligible employer.

For additional information, see [IRS FAQ 67](#).

**Q5: Who is paying for the paid sick leave and emergency family and medical leave? Employer or state or federal government?**

Employers and the federal government. Employers are responsible for paying the wages of an employee who is on a COVID-19 related qualifying leave under FFCRA. In return, the federal government is providing for refundable payroll tax credits, designed to immediately and fully reimburse affected employers for the cost of providing FFCRA COVID-19 related leave to employees.

**Q6: What documentation is needed for payroll tax credits?**

According to the IRS Tax Credits FAQs, Eligible Employers claiming the credits for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare taxes), must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, and retain the Forms 941, Employer's Quarterly Federal Tax Return, and 7200, Advance of Employer Credits Due To COVID-19, and any other applicable filings made to the IRS requesting the credit.

For additional information, see [IRS FAQs 44-46](#).

**Q7: Are the Payroll Tax credits only for employers of 500 employees or less? Is there any credit for employer with more than 500 employees?**

The payroll tax credits available under the FFCRA for reimbursement of emergency paid sick and family leave are only available to employers with fewer than 500 employees. No tax credit is currently available to an employer with 500 or more employees for providing similar leave to employees. Tax credits are not available to government employers subject to the FFCRA paid leave requirements.

**Q8: Are tax credits permitted if an employer applies for an SBA Paycheck Protection Program ("PPP") loan?**

Yes. But, under the PPP rules, 75% of the PPP loan must be used for payroll costs. In calculating payroll costs, FFCRA paid Sick/Family Leave provided to employees is not included. In addition, PPP loan proceeds used to pay FFCRA Sick/Family Leave wages to employees will not be eligible for tax credits.

For more information, visit <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>.



**Q9: We are paying our employees their regular wages during this time and only asking them to notify us if they are sick or caring for a loved one. Are we eligible for the payroll tax credit?**

Probably not. According to the [IRS FAQ 44 and 45](#) on receiving the tax credits for paying out required Sick/Family Leave, employers need to receive documentation regarding the reasons why employees are taking the leave. This information includes the employee's name, the reason for leave, the dates of the leave and a statement that the employee is unable to work/telework due to COVID-19 reasons. In addition, depending upon the reason for the leave, the employer will also be required to collect some additional information.

**Q10: If we furlough employees without pay, but pay for the employer and employee portion of their benefit premiums, does the tax credit apply?**

No. These tax credits are only available to reimburse employer costs associated with employee taking paid sick leave under EPSLA or paid family leave under EFMLEA.

**Q11: How do you apply for the tax credit?**

An eligible employer may claim tax credits for qualified leave wages. These credits are available for leave beginning on April 1 and ending on December 31. The employer will also be eligible to claim a tax credit for the cost of qualified health plan expenses provided to the employee through the same period. Employers will claim their credits on federal employment tax Form 941, Employer's Quarterly Federal Tax Return. Employers can use the tax credits they are earning by reducing their federal employment tax deposits.

If there are insufficient federal employment taxes to cover the amount of the tax credit, an employer may request advance payment of the tax credit by submitting an IRS Form 7200, Advance Payment of Employer Credits Due to COVID-19. The IRS expects to begin processing those requests during April 2020.

For additional information, see [IRS FAQs 37-43](#).

**Q12: Is a tax-exempt organization or state agency employer eligible for payroll tax credits under the FFCRA?**

All private employers, including tax-exempt organizations with less than 500 employees who provide FFCRA paid Sick/Family Leave wages are eligible for payroll tax credits. However, public employers are not eligible for the payroll tax credits.

**Q13: If we gave sick leave ahead of April 1st, would that pay be eligible for tax credit?**

No. Tax credits and the paid leave provisions under the FFCRA are not eligible for tax credit until April 1. Any paid Sick/Family Leave wages paid on and after April 1 are eligible for tax credit.



#### Q14: Is the tax credit for health care portions in addition to the limits indicated in the legislation?

Yes. In order to calculate the tax credit for the health care provided to employees on FFCRA Sick/Family Leave, an employer is required to arrive at a “daily” rate for the health care and then apply that daily rate for each day that the FFCRA Paid Leave is provided. Employers can use any reasonable method to determine and allocate this amount including using the COBRA premium (not including the 2%), one average premium rate for all employees (regardless of which actual tier of coverage the employee is in) or any other method that takes into account the average premium rate determined separately for employees based on the tier of coverage that the employee is enrolled in.

For additional information, see [IRS FAQ 31-36](#).

### Helpful Resources

To help clients navigate these challenging times USI has implemented a **STEER (Steer Through Epidemic & Economic Recovery) Task Force**. This cross-functional team is working to provide timely COVID-19 information, understand cross-industry and geography impact and evolving responses, and to develop and deliver tailored solutions to help clients **steer** through this epidemic challenge and economic recovery.

For additional resources, tools, information, and links, please visit our COVID-19 resource page: [www.usi.com/public-health-emergencies](http://www.usi.com/public-health-emergencies)

