

April 10, 2020

*COVID-19 Daily Briefing Recap*

## Overview of COVID-19 Tax Credits

Please note that the following is a recap of our COVID-19 Daily Briefing from 4/10/2020. Due to the rapidly evolving nature of the pandemic, we recommend that you consult the most up to date materials possible. Visit Jackson Lewis P.C.'s [COVID-19 resource page](#) for updates on workplace impacts and [sign up here](#) to receive invitations to future daily COVID-19 webinar briefings and email updates on ongoing legal and workplace health challenges.

### COVID-19 Tax Credits

Two separate but related tax credits are available to employers, including tax-exempt organizations, whose businesses are affected by COVID-19. Both tax credits are applied against the employer portion of the Social Security tax that normally would be on W-2 wages paid to all employees.

#### FFCRA Leave Tax Credit

Tax credit to cover the costs on a dollar-for-dollar basis of providing the FFCRA required qualified sick leave and family leave wages.

<b>Eligibility</b>	<b>Amount</b>
Businesses or tax-exempt organizations that: <ul style="list-style-type: none"><li>Have fewer than 500 employees (as determined under the DOL rules)</li></ul> <b>AND</b> <ul style="list-style-type: none"><li>Are required under the FFCRA to pay qualified sick leave wages and/or qualified family leave wages.</li></ul>	Three components: <ul style="list-style-type: none"><li>The full amount of the qualified leave wages paid for leave that is taken during the period beginning April 1, 2020 and ending December 31, 2020;</li></ul> <b>PLUS</b> <ul style="list-style-type: none"><li>The amount of the employer's share of the Medicare tax imposed on the qualified leave wages;</li></ul> <b>PLUS</b> <ul style="list-style-type: none"><li>Qualified health plan expenses paid by an employer to provide group health benefits for employees receiving qualified leave wages. This includes both the portion of the health plan expenses paid by the employer and the portion of the cost paid by the employee through pre-tax salary reduction contributions.</li></ul>

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## CARES Act Employee Retention Tax Credit

Tax credit to employers whose operations are suspended or reduced due to COVID-19 equal to 50% of “qualified wages” (up to \$10,000) paid to employees.

Eligibility	Amount
<p>Employers, including tax-exempt organizations, that experience either:</p> <ul style="list-style-type: none"> <li>The full or partial suspension<sup>1</sup> of its operations during any calendar quarter in 2020 because of governmental orders limiting commerce, travel, or group meetings due to COVID-19.</li> </ul> <p><u>OR</u></p> <ul style="list-style-type: none"> <li>A “significant decline in gross receipts”<sup>2</sup> during the calendar quarter in comparison to the same calendar quarter in 2019.</li> </ul>	<p>50% of “qualified wages” paid after March 12, 2020, and before January 1, 2021 (up to \$10,000 per employee).</p> <p>“Qualified wages” depends on average number of employees during 2019:</p> <ul style="list-style-type: none"> <li>If <u>greater than 100</u>, then qualified wages <b>ONLY</b> are the W-2 wages and qualified health plan expenses that are paid to employees <b>for the time that the employee is NOT providing services</b> because the employer's operations were fully or partially suspended or because of the significant decline of the employer's gross receipts.</li> <li>If <u>100 or less</u>, then qualified wages are paid to any employee during a COVID-19 suspension of business operations or the significant decline in gross receipts regardless of whether or not the employee is providing services during that period.</li> </ul>
Notes	
<ul style="list-style-type: none"> <li>Employers may claim the tax credit for qualified wages that they pay <b><u>after March 12, 2020, and before January 1, 2021.</u></b></li> <li>The maximum amount of qualified wages taken into account with respect to each employee is \$10,000, so that the maximum credit for qualified wages paid to any employee from March 13, 2020 to December 31, 2020 is \$5,000.</li> <li>If an employer received tax credits for FFCRA leave wages, those same wages cannot be included as qualified wages for purposes of the Employee Retention Tax Credit.</li> <li>An employer cannot claim the Employee Retention Tax Credit if it receives a Small Business Interruption Loan under the CARES Act Paycheck Protection Program (“Paycheck Protection Loan”).</li> </ul>	

## How to Claim the Tax Credits

- Employers report FFCRA qualified leave wages and the related credits, and CARES Act qualified wages on IRS Form 941, *Employer's Quarterly Federal Tax Return*.
- Employer may reduce federal employment taxes required to be deposited for the calendar quarter by the amount of qualified leave wages (and allocable qualified health plan expenses and the Employer's share of Medicare tax on the qualified leave wages) paid in that calendar quarter, and the CARES Act qualified wages paid in the calendar quarter.
- If the tax credits for a calendar quarter exceed the employer Social Security tax owed for that quarter, the excess amount is refundable to the employer. Alternatively, an employer can request an advance payment of the refund by filing IRS Form 7200, *Advance Payments of Employer Credits due to COVID-19*.

<sup>1</sup> There is no current clear definition or explanation from the IRS as to what qualifies as a “partial suspension.”

<sup>2</sup> If an employer's gross receipts (as per the Internal Revenue Code definition of gross receipts for tax purposes) for a current calendar quarter are less than 50 percent of the gross receipts for the same calendar quarter in 2019, that employer meets the significant decline rule. An employer maintains that status until the first calendar quarter when gross receipts are more than 80 percent of the same calendar quarter in 2019; for the following calendar quarter, the employer will no longer be considered to be in significant decline.

## Deferral of 2020 Social Security Tax Payment

- ANY employer can defer payment of the employer portion of Social Security taxes REGARDLESS of whether the employer is affected by COVID-19. The deferral can apply to the employer Social Security tax payable at any time beginning as of March 27, 2020 and ending before January 1, 2021.
- The deferred 2020 employer Social Security taxes will be paid in two installments:
  - 50% by December 31, 2021
  - Remaining 50% by December 31, 2022
- There is no interest or penalty related to this deferral.
- Special deferral rules apply to an employer who has received an SBA Paycheck Protection Loan that is forgiven:
  - Payment of Social Security taxes that are due on and after March 27, 2020 under the regular pre-COVID payment rules and prior to the loan forgiveness date can continue to be deferred until the applicable dates described above under the special CARES Act deferral rules.
  - Social Security tax payments that are due under the regular pre-COVID payment rules AFTER the loan forgiveness date CANNOT be deferred under the special CARES Act deferral rules. Those post loan forgiveness date taxes must be paid on the dates determined under the regular pre-COVID payment date rules.

## Tax and Benefit Treatment of FFCRA and CARES Act Wages

- FFCRA qualified leave wages and CARES Act qualified wages are taxable as W-2 wages to employees and subject to FICA (Social Security and Medicare) tax withholding and federal income tax withholding.
- Subject to the terms and conditions of the particular benefit plan:
  - To the extent that an employee has a salary reduction agreement in place with the Eligible Employer salary reduction contributions for any plan may be made from FFCRA qualified leave wages and CARES Act qualified wages.
  - FFCRA qualified leave wages and CARES Act qualified wages also are considered wages for purposes of other employer-provided benefits, such as contributions to 401(k) plans.

## What if I have more questions?

As issues and concerns around COVID-19 unfold daily, employers must prepare to address the threat as it relates to the health and safety of their workforce. Keep up to date with [Jackson Lewis' latest available information and resources](#).

If you have any questions, please contact the Jackson Lewis attorneys with whom you regularly work.