

Monthly Minute Memo: *April 1, 2020 - Coronavirus Update: IRS Guidance for Tax Credits under FFCRA*

Late yesterday, the Internal Revenue Service (“IRS”) issued guidance outlining employee notice and documentation requirements for requesting FFCRA leave. The IRS guidance also specifies that once the employer determines the employee is eligible for FFCRA leave, it is required to maintain certain records in order to obtain the tax credit under the FFCRA. The following is a summary of the new IRS guidelines.

When can an employer claim the tax credit?

An employer can claim the tax credit beginning April 1, 2020 through December 31, 2020. Any covered leave payments made to an employee after December 31, 2020, which were for FFCRA leave before December 31, 2020, are eligible for the tax credit.

How does an employer claim the tax credit?

An employer can claim the credit on its federal employment tax returns (Form 941 – Employer’s Quarterly Federal Tax Return) or may reduce their federal employment tax deposits. If there are insufficient federal employment taxes to cover the amount of credits, an employer can request advance payments from the IRS by submitting Form 7200, Advance of Employer Credits Due to COVID-19. Copies of the form are available on the IRS website: <https://www.irs.gov/pub/irs-pdf/f7200.pdf>.

What is required for the employee to request leave?

Under the IRS guidelines, an employee seeking FFCRA must provide a written request with the following information:

- Employee’s name.
- Date(s) for which leave is requested.
- Statement of the COVID-19 related reason for the leave requested and written support for the reason.
- Statement as to the reason the employee is unable to work, including telework.

The written support requirement of the IRS expands the DOL guidelines regarding documentation an employee must provide to the employer to request FFCRA leave. For example, for a quarantine or self-quarantine request upon advice, the IRS requires the employee’s written statement to include the name of the governmental entity ordering the quarantine or the name of the health care professional advising self-quarantine. Additionally, if the employee is caring for another

individual, who is under quarantine or advised to quarantine, the employee must provide that person's name and relation to the employee.

The IRS guidelines also provide new requirements for employees seeking leave as a result of school or childcare closures. The employee must provide the names and ages of the children requiring care and the name of the school or daycare that is closed or unavailable. Additionally, while the FFCRA allowed an individual to take leave to care for a child under the age of 18, the IRS now requires for any child over the age of 14, the employee must provide a statement that special circumstances exist requiring the employee to provide care during daylight hours. The IRS did not provide any further guidance as to "special circumstances" or situations involving employees who work in the evenings.

The IRS guidance further requires the employee to include a statement that no other individual will be providing care for the child during the employee's FFCRA leave. Under the IRS guidelines, an employee is not eligible for leave if a spouse or other individual is present during the employee's FFCRA leave to care for the child.

What records is an employer required to maintain?

Once an employer substantiates eligibility for the FFCRA leave, the employer must create and maintain records that include the following information:

- Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to an eligible employee – records of work, telework and qualified sick and family leave.
- Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages.
 - Portion of the cost paid by the employer and the portion paid by employee with pre-tax salary reduction contributions. Expenses should not include amounts an employee paid for with after-tax contributions.
- Copies of any completed Form 7200, Advance of Employer Credits Due to COVID-19, that the employer submitted to the IRS.
- Copies of any completed Form 941, Employer's Quarterly Federal Tax Return the employer submitted to the IRS.

These records must be maintained for 4 years after the tax is due or is paid, whichever is first. **Employers should work closely with their accountants to ensure compliance with the IRS guidelines regarding the FFCRA tax credit.**

You are receiving this email as you are a valued client of K|D. If you no longer want to receive K|D's Monthly Minute Memos, please reply to this email and ask to be unsubscribed from any future emails. This material is provided for informational purposes only. It is not intended to constitute legal advice, nor does it create a client-lawyer relationship between K|D and

any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions.