Clients & Friends:

We know you've heard from us a lot over the last 7 days and we apologize for crowding your inbox. We truly feel it's our duty to kee you informed and to try and help you make sense of news that is changing rapidly for all of us.

That said, we do have a good bit to share today.

- Now that the Families First Response Act has been passed/signed, we wanted to provide a summary of the Act and how it affects employees and employers (see below).
- In addition, we've created a chart that gives you a side-by-side snapshot of the Emergency Paid Sick Leave Act and the Emergency Family & Medical Leave Expansion Act. Click here for the chart. Please click here to see our COVID-19 News Updates page.
- And finally, the federal tax filing deadline date has been moved from April 15 until July 15 (the same day as which tax paym were deferred).

Please don't hesitate to reach out to your tax advisor with any questions.

President Trump signed the Families First Coronavirus Response Act (the Act) late on March 18, 2020, soon after the Senate pass the amended House bill sent to the Senate on March 17, 2020.

Overview

The Act covers a broad array of programs and funding in response to the COVID-19 emergency. Many of these do not directly affe employers. However, parts of the Act focus on two types of mandatory paid leave for employees and on tax credits to help employe pay for the mandatory paid leave.

There are different paid leave types and amounts based on the reasons that the employees are unable to work, if the need for the arises out of the COVID-19 emergency. The mandatory paid leave amount varies based on the type of paid leave taken and based the reason the employee is unable to work. Employers may have to make the determination of the amount and duration of mandato paid sick leave based on an individual employee's facts.

Under the Act, employers will receive tax credits against FICA based on the amounts of mandatory sick leave paid and based on certain qualified health plan expenses the employer incurs with regard to the employees taking the mandatory paid leave.

Self-employed individuals who are unable to work because of the COVID-19 emergency will also receive credits against section 14 Self Employment Contributions Act (SECA) contributions. If a self-employed individual is also an employee of another employer, th individual cannot double dip.

Mandatory paid leave types

Public health emergency leave/Family leave

Under amendments to the Family and Medical Leave Act (FMLA), if an employee takes time off (and is unable to work or telework) care for a son or daughter under age 18 because the school or place of care has been closed due to the COVID-19 public health emergency, the employer must allow the employee to take time off.

This time off is unpaid job-protected leave for the first two weeks. During this two-week period, the employee can take other types paid time off that may be available from the employer or may be covered under the emergency paid sick leave described below.

However, after the first 10 workdays, the employer must provide mandatory paid leave for each day of leave. The paid leave amou no less than two-thirds of the employee's regular rate of pay based on the employee's normal work schedule, but is capped at $200 day and is capped at a total of $10,000 for each employee.

As a general rule, the employee's job must remain protected while the employee is on leave unless a special exception applies.

Emergency paid sick leave

An employer must provide up to 80 hours of emergency paid sick leave for each day a full-time employee cannot work (or telework based on one of the six criteria below. Part-time employees get sick leave based on their hours during a normal two-week schedule

The amount the employer has to pay depends on the criteria in use:

1. Employee is subject to federal, state or local quarantine restrictions.
2. The employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns.
3. The employee has COVID-19 symptoms and is seeking a medical diagnosis.
4. The employee is caring for someone under quarantine or self-quarantine as described above.
5. The employee is caring for a son or daughter if the school or day care provider has been closed due to COVID-19 precauti
6. Other similar conditions if posted by the Department of Health and Human Services (HHS).

If the individual is unable to work (or telework) because of criteria 1 to 3 above, the amount of paid sick leave is 100% of regular compensation up to a maximum amount of $511 per day. For criteria 4 to 6 above, the amount of paid sick leave is two-thirds of re pay with a maximum amount of $200 per day.

Employers subject to multiemployer collective bargaining agreements may have to fulfill the requirements above by paying into multiemployer paid leave plans under the collective bargaining agreement.

Definitions and requirements

- Employer
    - The mandatory paid leave rules generally apply to employers with fewer than 500 employees.
    - The Department of Labor can exempt small businesses with fewer than 50 employees if the requirements would jeopardize the business as a going concern.
- Eligible employee
    - An employee who has worked for the employer for at least 30 days.
    - Employers are allowed to exclude health providers or emergency responders from the benefits above.
- Employers must give employees notice that these types of leave are available.
- Employees must be allowed to use the appropriate types of leave described above before taking any regular paid time off otherwise available to the employee.

- These paid leave rights expire at the end of 2020.

Employer tax credits

The Act includes four new tax credits to help alleviate the cost to employers of the paid leave requirements described above. These credits are set forth in sections 7001 through 7004 of the Act.

Payroll credit for required paid sick leave

Employers can take tax credits for the amount of qualified sick leave wages actually paid in a quarter up to $200 per employee per (or $511 per employee per day for the quarantine reasons listed above). The aggregate number of days of sick leave taken into ac is limited to the aggregate number of days taken into account for all preceding quarters minus 10 days.

The credit cannot be greater than the payroll taxes for that quarter (reduced by certain other FICA credits) and applies only to wage paid for the period beginning on a date selected by Treasury during the 15-day period beginning on the date of enactment (March 2020) and ending on Dec. 31, 2020.

An employer can increase the tax credit for certain qualified health plan expenses incurred by the employer to provide employee gr health plan coverage while employees are on this paid leave. This only applies to employer group health plan coverage that is exe from employee income under section 106 (regular exemption for employer-provided health care plans). This amount needs to be p rated based on the number of covered employees and is with regard to periods of coverage while the emergency paid sick leave is being used. Presumably, this is in place because the employer cannot take the employee’s usual pre-tax salary reductions typically used to pay for health insurance from emergency paid sick leave wages.

To avoid a double benefit, the employer’s gross income must be increased by the amount of the tax credit.

Credit for sick leave for certain self-employed individuals

A credit similar to the payroll credit for required paid sick leave described above is available for self-employed individuals. The cred taken against section 1402 self-employment tax and the credit computation is substantially similar with some notable differences.

Payroll credit for required paid family leave

Like the required paid sick leave credit, an employer can take a tax credit against payroll amounts for each calendar quarter for req family leave payments. The credit is limited to $200 per day per employee covered with an aggregate credit limit of $10,000 per employee.

The employer can take a credit for the qualified group health plan expenses with regard to the employees taking paid family leave.

Credit for family leave for certain self-employed individuals

A credit similar to the payroll credit for required paid family leave described above is available for self-employed individuals. The c computation is substantially similar with some notable differences.

Special rules related to tax on employers

Wages required to be paid because of emergency paid family leave are not considered wages for FICA purposes (however, the pa leave amounts are considered wages for Medicare purposes). The payroll credits (but not the self-employment credits) are increas by the amount of Medicare tax imposed on the employer.

Takeaways

While necessary and very helpful to employees, the required paid leave provisions will be costly to employers and require additiona resources to administer. The Act provides several tax credits to mitigate these additional employer costs; however, these tax credit quite complex and bring forth many questions from employers that will need to be addressed. The biggest question now is when ar these tax credits effective? The Act states that it applies to wages paid beginning on a date selected by Treasury, which could be a time in the next 15 days.

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