859.626.9040 www.baldwincpas.com

baldwin CPAs

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

START

Employer has fewer than 500 employees

- No → FFCRA provisions do not apply
- Yes → Employer has closed its worksite due to lack of business or because it is required to close pursuant to a Federal, State, or local directive.
  - Yes → FFCRA provisions do not apply
  - No → Employee is unable to work or telework due to having to care for a child under age 18 because the child's school or place of child care has been closed (or the child care provider is unavailable), due to the COVID-19 health emergency.
    - Yes → Employer has fewer than 50 employees
      - Yes → An authorized officer of the company has determined that offering child care related sick pay and/or expanded FMLA would jeopardize the viability of the business as a going concern because **at least one** of the following is true:
        - The provision of paid sick leave or FMLA would result in the business's expenses exceeding available revenues and cause the business to cease operating at a minimal capacity.
        - The absence of the employee requesting leave would cause substantial operational risk to the business because of their specialized knowledge, skills or responsibilities.
        - There are not sufficient workers who are available and qualified to perform the services currently being performed by the employee requesting leave, and these services are needed for the business to continue operating at a minimal capacity.
        - Yes → To claim the small business exemption from FFCRA provisions, the employer should document why it meets the criteria above for exemption as set forth by the Department of Labor.
      - No → At the time of leave, the employee has been employed for at least 30 days.
        - Yes → Emergency Sick Leave / Emergency Family Medical Leave Act (FMLA) Expansion
        - No → Emergency Sick Leave / Emergency Family Medical Leave Act (FMLA) Expansion
    - No → Employee is unable to work or telework because the employee is experiencing **at least one** of the below:
      - Employee is subject to a Federal, State, or local COVID-19 quarantine or isolation order.
      - Employee has been advised by a health care provider to self-quarantine because of COVID-19.
      - Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
      - Yes → Emergency Sick Leave / Emergency Family Medical Leave Act (FMLA) Expansion
      - No → Employee is unable to work or telework because the employee is experiencing **at least one** of the below:
        - Employee is caring for a family member who is subject to or advised to quarantine or isolation or who is experiencing symptoms and needs care.
        - Employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.
        - Yes → Emergency Sick Leave / Emergency Family Medical Leave Act (FMLA) Expansion
        - No → FFCRA provisions do not apply

Emergency Sick Leave

- Full-time employee is entitled to 80 hours of emergency paid sick leave. Part-time employee would be entitled to a prorated number of hours.
  The employer cannot require the employee to use other paid leave before using emergency sick leave.
  - Employee is eligible for emergency paid sick leave at their regular rate of pay, capped at $511/day for up to 10 days (2 weeks). Maximum paid sick leave benefit is $5,110 per employee.
    The employer may elect to pay the employee more than is required above; however, any excess beyond what is required by law is not eligible for payroll tax credit.
- Full-time employee is entitled to 80 hours of emergency paid sick leave. Part-time employee would be entitled to a prorated number of hours.
  The employer cannot require the employee to use other paid leave before using emergency sick leave.
  - Employee is eligible for emergency paid sick leave at two-thirds of their regular rate of pay, capped at $200/day for up to 10 days (2 weeks). Maximum paid sick leave benefit is $2,000 per employee.
    The employer may elect to pay the employee more than is required above; however, any excess beyond what is required by law is not eligible for payroll tax credit.

Emergency Family Medical Leave Act (FMLA) Expansion

Employee is entitled to up to 12 weeks of job protected leave through December 31, 2020.

- The first 10 days (2 weeks) of expanded FMLA are unpaid. The employee may choose to use emergency paid sick leave during this period (see above), or employee may choose to use paid time off (e.g., vacation, sick days, etc.) under the employer's policy.
- After the first 10 days (2 weeks) of expanded FMLA, the employee is eligible for paid FMLA at two-thirds of the employee's regular rate of pay, capped at $200/day for up to 10 weeks. Maximum FMLA benefit is $10,000 per employee.
  The employer may elect to pay the employee more than is required above; however, any excess beyond what is required by law is not eligible for payroll tax credit.
- The employer is required to hold the employee's job open until the end of the leave period, except if the employer has fewer than 25 employees and the employee's position no longer exists due to economic conditions or operational changes caused by COVID-19, provided the employer agrees to rehire the employee if a position becomes available within the next twelve months.

Payroll Tax Credit

- Payroll tax credit is equal to 100% of required emergency paid sick leave, capped at $511/day per employee. (Maximum credit of $5,110 per employee.)
- Payroll tax credit is equal to 100% of required emergency paid sick leave, capped at $200/day per employee. (Maximum credit of $2,000 per employee.)
- Payroll tax credit is equal to 100% of required FMLA, capped at $200/day per employee. (Maximum credit of $10,000 per employee.)

Payroll tax credits are increased by 1.) the amount of the employer's liability for Medicare tax on required emergency paid sick leave and expanded FMLA wages; and 2.) any amounts paid or incurred by the employer to maintain a group health plan, to the extent those expenses are excluded from the employee's gross income under the tax code and "properly allocable" to the respective emergency paid sick leave or FMLA wages required to be paid.

Effective April 1, 2020

Material discussed is meant to provide general information and should not be acted on without professional advice tailored to your needs. © 2020 BDO USA, LLP. All rights reserved.

AN INDEPENDENT MEMBER OF BDO ALLIANCE USA