



CLIENT ALERT EMPLOYMENT & LABOR

How to Document Paid Leave Under the FFCRA to Substantiate Eligibility for Tax Credits

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The Families First Coronavirus Response Act (“FFCRA”) provides for paid sick leave and paid leave under the Family Medical Leave Act (“FMLA”). Key for employers is the fact that the FFCRA provides refundable tax credits that reimburse employers, dollar-for-dollar, for the cost of providing paid sick and family leave wages to their employees for leave related to COVID-19.

The IRS has just posted detailed [guidance](#) and FAQs for employers on numerous questions about the FFCRA leave and tax credits. Employers need to start working **today** to make sure the FFCRA paid leave is properly documented to ensure that a claim for tax credit is properly substantiated. The IRS has provided this guidance:

What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

1. The employee’s name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person’s name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, a representation that no other person will be providing care for the child during the period for

which the employee is receiving family medical leave, and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

What additional records should an Eligible Employer maintain to substantiate eligibility for the sick leave or family leave credit?

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if, in addition to the information set forth above, the employer creates and maintains records that include the following information:

1. Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework, and qualified sick leave and qualified family leave.
2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. See FAQ 31 ("Determining the Amount of Allocable Qualified Health Plan Expenses") for methods to compute this allocation.
3. Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
4. Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer's entitlement to the credit claimed on Form 941).

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We can help you navigate this process, including providing forms for the required employee certification. Please contact any of us at 610.825.8400 or via email if you have concerns about the impact of COVID-19 in the workplace.

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