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Non-Federal Government Employers Now Eligible for COVID-19 Leave Tax Credits

In new guidance¹, the IRS has confirmed that non-federal government employees may now claim a tax credit to cover the cost of voluntarily providing paid sick and family leave to employees for COVID-19 related reasons. Prior to the new IRS guidance, these credits were limited to private-sector employers with fewer than 500 employees. Now, the IRS has confirmed that this credit is now available to many state and local government organizations such as school districts and municipalities. The tax credits are available to eligible employers that provide paid sick and family leave for qualifying COVID-19 reasons from April 1, 2021 through September 30, 2021.

Background

In 2020, Congress enacted the Families First Coronavirus Response Act ("FFCRA"). FFCRA required private sector employers with fewer than 500 employees and all state and local government employers to provide sick and family leave to employees affected by COVID-19. The law allowed covered private-sector employers to claim a tax credit covering the full cost of the leave. The tax credit was not available to government employers. The mandatory FFCRA leave provisions expired on December 31, 2020.

In December 2020, Congress extended the aforementioned tax credit for private sector employers who voluntarily continued to provide paid leave that would previously have been required under FFCRA through March 31, 2021.

In March 2021, President Biden signed into the law the \$1.9 trillion American Rescue Plan Act ("ARPA"). ARPA did not reinstate mandatory leave provisions under FFCRA, but it did further extend the tax credits for those employers who voluntarily provide FFCRA leave to employees through September 30, 2021. ARPA was unclear as to whether the tax credits would be applicable to public sector employers.

¹ <https://www.irs.gov/newsroom/employer-tax-credits-for-employee-paid-leave-due-to-covid-19>



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IRS Guidance

Eligible Employers:

The IRS tax credit guidance specifically includes, “any business, including a tax-exempt organization, with fewer than 500 employees,” and also “a government employer, other than a federal government and any agency or instrumentality of the federal government that is not an organization described in section 501(c)(1) of the Internal Revenue Code.”

Employer Size:

Based on the wording, it does not appear that the 500-employee limit applies to governmental employers. As such, the tax credit appears now to be available to larger municipalities, school districts, public universities, etc.

Timing:

Unlike smaller private sector employers, governmental employers do not appear to be eligible to claim the credit for paid leave taken prior to April 1, 2021.

Claiming the tax credit:

Eligible employers can claim the tax credit on their quarterly federal employment tax return, typically Form 941². Employers claiming the credit are permitted to keep federal employment taxes that they otherwise would have deposited, including amounts withheld from employees and the employer share of Social Security and Medicare taxes, up to the amount for the credit for which they are eligible. Employers can also request an advance refund for tax credits using form 7200³.

Available credit:

The credit is available to cover the cost of paid sick and family leave for reasons previously covered by FFCRA, or for one or more of the following:

² <https://www.irs.gov/pub/irs-pdf/f941.pdf>

<https://www.irs.gov/pub/irs-pdf/i941.pdf>

³ <https://www.irs.gov/forms-pubs/about-form-7200>



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- The employee is obtaining a COVID-19 vaccination;
- The employee is recovering from an injury;
- The employee is seeking or awaiting the results of a diagnostic test or medical diagnosis for COVID-19, or the employer has requested such a test or diagnosis.

ARPA also resets the 10-day limit for the tax credit for paid sick leave under FFCRA beginning April 1, 2021. Therefore, employers can claim the credit for leave provided to employees who previously exhausted their emergency sick leave under FFCRA.

Non-Discrimination:

ARPA adds non-discrimination rules stating that no tax credit is available if the employer discriminates in favor of highly compensated employees, full-time employees, or employees on the basis of tenure with the employer, in determining paid leave availability.

Benecon will continue to monitor this topic and provide updates as they become available. In the meantime, government employers that wish to claim these tax credits should consult with their own legal counsel and tax professionals to ensure that they qualify and are taking all necessary steps to avail themselves of the credits.