

# HR COMPLIANCE BULLETIN

## IRS FAQs: FFCRA Tax Credits for Small and Midsize Businesses

The Internal Revenue Service (IRS) has issued answers to frequently asked questions (FAQs) about how the Families First Coronavirus Response Act (the FFCRA) tax credits apply to small and midsize businesses. The FFCRA, signed by President Trump on March 18, 2020, provides small and midsize employers refundable tax credits that reimburse them, dollar-for-dollar, for the cost of providing paid sick and family leave wages to their employees for leave related to COVID-19.

The FFCRA gives businesses with fewer than 500 employees (referred to throughout these FAQs as "Eligible Employers") funds to provide employees with paid sick and family and medical leave for reasons related to COVID-19, either for the employee's own health needs or to care for family members. Workers may receive up to 80 hours of paid sick leave for their own health needs or to care for others and up to an additional 10 weeks of paid family leave to care for a child whose school or place of care is closed or child care provider is closed or unavailable due to COVID-19 precautions.

For a more detailed overview of the law, see "Overview of COVID-19-Related Tax Credits for Small and Midsize Businesses," below. For FAQs, see "[Basic FAQs](#)," and the sections that follow. The FAQs will be updated to address changes in the law or additional questions as they are raised.

This Compliance Bulletin provides the FAQs issued by the IRS on how the FFCRA tax credits apply to businesses with fewer than 500 employees and self-employed individuals.

### Action Steps

Employers should become familiar with this guidance and use IRS instructions to determine their eligibility for the tax credits approved by the FFCRA.

Provided to you by [Zywave, Inc.](#)

### Highlights

#### The FFCRA

The FFCRA provides workers with paid leave for reasons related to COVID-19.

#### FFCRA Tax Credits

The FFCRA covers the costs of this paid leave by providing small businesses with refundable tax credits. Certain self-employed individuals in similar circumstances are entitled to similar credits.

#### Administration and Guidance

The DOL administers the FFCRA and has posted [FAQs](#) about its requirements.

### Relevant IRS Guidance

- [Filing and Payment Deadline Extended to July 15, 2020 - Updated Statement](#)
- [FAQs: Employee Retention Credit under the CARES Act](#)
- [Filing and Payment Deadlines Questions and Answers](#)





## Overview of COVID-19-Related Tax Credits for Small and Midsize Businesses

The FFCRA requires employers to provide paid leave through two separate provisions: (i) the Emergency Paid Sick Leave Act (EPSLA), which entitles workers to up to 80 hours of paid sick time when they are unable to work for certain reasons related to COVID-19, and (ii) the Emergency Family and Medical Leave Expansion Act (Expanded FMLA), which entitles workers to certain paid family and medical leave. The FFCRA provides that employers subject to the EPSLA and the Expanded FMLA paid leave requirements are entitled to fully refundable tax credits to cover the cost of the leave required to be paid for these periods of time during which employees are unable to work (which for purposes of these rules, includes telework). Certain self-employed persons in similar circumstances are entitled to similar credits.

The following section provides an overview of FFCRA's refundable tax credit provisions, and the FAQs that follow provide more detailed information regarding the requirements, limitations and application of the paid leave credits. The Wage and Hour Division of the Department of Labor (DOL) administers the EPSLA and the Expanded FMLA and has posted FAQs and relevant information about the paid leave requirements at the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

Eligible Employers are entitled to refundable tax credits for qualified sick leave wages and qualified family leave wages (collectively "qualified leave wages"), under sections 7001 and 7003 of the FFCRA respectively. These tax credits are increased by the qualified health plan expenses allocable to, and the Eligible Employer's share of Medicare tax on, the qualified leave wages. Eligible Employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide paid sick leave under the EPSLA and to provide paid family leave under the Expanded FMLA (note that although the FFCRA requires most government employers to provide paid leave, it does not entitle those governmental employers to tax credits for this leave). For more information about Eligible Employers, see "[What employers may claim the tax credits?](#)" Under sections 7002 and 7004 of the FFCRA, self-employed individuals are entitled to equivalent credits based on similar circumstances in which the individual is unable to work. For more information about how self-employed individuals can claim the credits see "[Specific Provisions Related to Self-Employed Individuals](#)." The refundable tax credits apply to qualified sick leave wages and qualified family leave wages paid for certain periods when an employee is unable to work, as described below, during the period beginning April 1, 2020, and ending December 31, 2020. The same period is used to determine credits for qualified sick leave equivalent amounts and qualified family leave equivalent amounts for certain self-employed individuals.

## Overview of Paid Sick Leave Refundable Credit

The EPSLA requires Eligible Employers to provide employees with paid sick leave if the employee is unable to work (including telework) due to any of the following:

1. The employee is under a Federal, State, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. The employee is caring for the child of such employee if the school or place of care of the child has been closed, or the child care provider of such child is unavailable, due to COVID-19 precautions;



6. The employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

An employee who is unable to work for reasons due to a COVID-19 circumstance described in (1), (2) or (3) above is entitled to paid sick leave for up to two weeks (up to 80 hours) at the employee's regular rate of pay, or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$511 per day and \$5,110 in the aggregate. For more information, see ["What is the rate of pay for qualified sick leave wages if an employee is unable to work due to their own health needs?"](#)

An employee who is unable to work due to a COVID-19 circumstance described in (4), (5) or (6) above is entitled to paid sick leave for up to two weeks (up to 80 hours) at 2/3 the employee's regular rate of pay or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$200 per day and \$2,000 in the aggregate. For more information, see ["What is the rate of pay for qualified sick leave wages if an employee is unable to work because he or she needs to care for others?"](#)

The Eligible Employer is entitled to a fully refundable tax credit equal to the required paid sick leave. This tax credit also includes the Eligible Employer's share of Medicare tax imposed on those wages and its allocable cost of maintaining health insurance coverage for the employee during the sick leave period (qualified health plan expenses). The Eligible Employer is not subject to the employer portion of social security tax imposed on those wages. (Eligible Employers subject to the Railroad Retirement Tax Act are not subject to either social security tax or Medicare tax on the qualified sick leave wages; accordingly, they do not get a credit for Medicare tax.)

## Overview of Paid Family Leave Refundable Credit

In addition to the paid sick leave credit, under the expanded FMLA, an employee who is unable to work (including telework) because of a need to care for a child whose school or place of care is closed or whose child care provider is unavailable due to COVID-19, as described in (5) above, is entitled to paid family and medical leave equal to two-thirds of the employee's regular pay, up to \$200 per day and \$10,000 in the aggregate. Up to ten weeks of qualifying leave can be counted towards the family leave credit. For more information, see ["What is included in "qualified family leave wages"?"](#)

The Eligible Employer is entitled to a fully refundable tax credit equal to the required paid family and medical leave (qualified family leave wages). This tax credit also includes the Eligible Employer's share of Medicare tax imposed on those wages and its cost of maintaining health insurance coverage for the employee during the family leave period (qualified health plan expenses). The Eligible Employer is not subject to the employer portion of social security tax imposed on those wages. (Eligible Employers subject to the Railroad Retirement Tax Act are not subject to either social security tax or Medicare tax on the qualified family leave wages; accordingly, they do not get a credit for Medicare tax.) For more information, see ["How does an Eligible Employer determine the amounts of the qualified family leave wages it is required to pay?"](#)

## Payment of the Sick and Family Leave Credit

Eligible Employers are entitled to receive a credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and the employer's share of Medicare tax, paid for leave during the period beginning April 1, 2020, and ending December 31, 2020. The credit is allowed against the taxes imposed on employers by section 3111(a) of the Internal Revenue Code (the "Code") (the Old-Age, Survivors, and Disability Insurance



tax (social security tax)) and section 3221(a) of the Code (the Railroad Retirement Tax Act Tier 1 rate) on all wages and compensation paid to all employees. If the amount of the credit exceeds the employer portion of these federal employment taxes, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) or 6413(a) of the Code. The qualified sick leave wages and qualified family leave wages are not subject to the taxes imposed on employers by sections 3111(a) and 3221(a) of the Code and employers (other than those that are subject to the Railroad Retirement Tax Act) are entitled to an additional credit for the taxes on employers imposed by section 3111(b) of the Code (Hospital Insurance (Medicare tax)) on such wages.

Eligible Employers that pay qualified leave wages will be able to retain an amount of all federal employment taxes equal to the amount of the qualified leave wages paid, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, rather than depositing them with the IRS. The federal employment taxes that are available for retention by Eligible Employers include federal income taxes withheld from employees, the employees' share of social security and Medicare taxes, and the employer's share of social security and Medicare taxes with respect to all employees.

If the federal employment taxes yet to be deposited are not sufficient to cover the Eligible Employer's cost of qualified leave wages, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, the employer will be able to file a request for an advance payment from the IRS. The IRS expects to begin processing these requests in April 2020.

Eligible Employers claiming the credits for qualified leave wages, plus allocable qualified health plan expenses and the Eligible Employer's share of Medicare taxes, must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, as well retaining the Forms 941, Employer's Quarterly Federal Tax Return, and 7200, Advance of Employer Credits Due To COVID-19, and any other applicable filings made to the IRS requesting the credit.

For more detail on the refundable tax credits and the procedures to receive payment of the advance credit, see "[How to Claim the Credits.](#)"

Eligible Employers claiming the credits for qualified leave wages, plus allocable qualified health plan expenses and the Eligible Employer's share of Medicare taxes, must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, as well retaining the Forms 941, Employer's Quarterly Federal Tax Return, and 7200, Advance of Employer Credits Due To COVID-19, and any other applicable filings made to the IRS requesting the credit.

For more detail on the refundable tax credits and the procedures to receive payment of the advance credit, see "[How to Claim the Credits.](#)"

## Basic FAQs

### **1. What tax credits does the FFCRA provide?**

The FFCRA provides businesses with tax credits to cover certain costs of providing employees with required paid sick leave and expanded family and medical leave for reasons related to COVID-19, from April 1, 2020, through December 31, 2020.

### **2. When can employers start claiming the credits? (Updated Nov. 25, 2020)**



Eligible Employers may claim tax credits for qualified leave wages paid to employees on leave due to paid sick leave or expanded family and medical leave for reasons related to COVID-19 for leave taken beginning on April 1, 2020, and ending on December 31, 2020.

Eligible Employers may claim the credits on their federal employment tax returns (e.g., Form 941, Employer's Quarterly Federal Tax Return), but they can benefit more quickly from the credits by reducing their federal employment tax deposits. If there are insufficient federal employment taxes to cover the amount of the credits, an Eligible Employer may request an advance payment of the credits from the IRS by submitting a [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#). The IRS expects to begin processing these requests during April 2020.

For the circumstances, amounts, and period for which the credits are available, see "[Determining the Amount of the Tax Credit for Qualified Sick Leave Wages](#)" and "[Determining the Amount of the Tax Credit for Qualified Family Leave Wages](#)."

### **3. When will employers start to receive the credits?**

After qualified leave wage payments have been made, Eligible Employers may receive payment of the credits in accordance with applicable IRS procedures.

For more information, see "[How do Eligible Employers claim the credit?](#)"

### **4. What documentation must an Eligible Employer retain to substantiate eligibility to claim the tax credits? (Updated Nov. 25, 2020)**

Eligible Employers claiming the credits for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax), must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, and retain the Forms 941, Employer's Quarterly Federal Tax Return, and 7200, Advance of Employer Credits Due To COVID-19, and any other applicable filings made to the IRS requesting the credit.

For more information, see "[How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?](#)"

### **5. What employers may claim the tax credits? (Updated Nov. 25, 2020)**

Eligible Employers that are entitled to claim the refundable tax credits are businesses and tax-exempt organizations that: (i) have fewer than 500 employees, and (ii) are required under the FFCRA to pay "qualified sick leave wages" and/or "qualified family leave wages."

Note that the Federal government, the government of any state or political subdivision thereof, and any agencies or instrumentalities of those governments are not Eligible Employers and are not entitled to receive tax credits for providing paid leave wages under the FFCRA. Tribal governments that provide paid sick and paid family and medical leave pursuant to the FFCRA are eligible to claim the tax credits for qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see "[Only businesses that employ fewer than 500 employees are eligible for the credit, because only those businesses are required to provide qualified leave wages. How is the "fewer than 500 employees" threshold determined?](#)," and "What is an Eligible Employer?"

### **6. What is the amount of the refundable tax credits available to Eligible Employers? (Updated Nov. 25, 2020)**



The credits cover 100 percent of up to ten days of the qualified sick leave wages and up to ten weeks of the qualified family leave wages (and any qualified health plan expenses allocable to those wages) that an Eligible Employer paid during a calendar quarter, plus the amount of the Eligible Employer's share of Medicare taxes imposed on those wages. Qualified sick leave and qualified family leave under the FFCRA are in addition to employees' preexisting leave entitlements. See the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#) for rules regarding required FFCRA paid sick leave and expanded family and medical leave and other leave entitlements. Eligible Employers may only claim a credit for qualified leave wages.

Example: An Eligible Employer pays \$10,000 in qualified sick leave wages and qualified family leave wages in Q2 2020. It does not owe the employer's share of social security tax on the \$10,000, but it will owe \$145 for the employer's share of Medicare tax. Its credits equal \$10,145, which include the \$10,000 in qualified leave wages plus \$145 for the Eligible Employer's share of Medicare tax (this example does not include any qualified health plan expenses allocable to the qualified leave wages). This amount may be applied against any federal employment taxes that Eligible Employer is liable for on any wages paid in Q2 2020. Any excess over the federal employment tax liabilities is refunded in accordance with normal procedures. Eligible Employer must still withhold the employee's share of social security and Medicare taxes on the qualified leave wages paid, except to the extent the employer opts to defer the withholding and payment of the employee's share of social security tax in accordance with Notice 2020-65.

For more information, see ["What is included in "qualified sick leave wages"?"](#) and ["What is included in "qualified family leave wages"?"](#)

## **7. What are "qualified sick leave wages"? (Updated Nov. 25, 2020)**

Qualified sick leave wages are wages (as defined in section 3121 of the Internal Revenue Code (the "Code")) or compensation (as defined in section 3231(e) of the Code) that the FFCRA requires an employer to pay to an employee who is unable to work or telework because of either the employee's personal health status (that is, the employee is under COVID-19 quarantine or self-quarantine or has COVID-19 symptoms and is seeking a medical diagnosis) or the employee's need to care for others (that is, the employee is caring for someone with COVID-19 or for a child whose school or place of care is closed or child care provider is unavailable).

For more information, see ["What is included in "qualified sick leave wages"?"](#)

## **8. What are "qualified family leave wages"? (Updated Nov. 25, 2020)**

Qualified family leave wages are wages (as defined in section 3121 of the Internal Revenue Code (the "Code")) or compensation (as defined in section 3231(e) of the Code) that the FFCRA requires an employer to pay to an employee who is unable to work or telework because the employee is caring for a child whose school or place of care is closed or child care provider is unavailable due to COVID-19-related reasons.

For more information, see ["What is included in "qualified family leave wages"?"](#)

### **8.a. Do qualified leave wages include wages paid to an employee who must care for a child because the child's summer camp is closed? (Added Nov. 25, 2020)**

Yes. Among the reasons that the FFCRA requires employers to pay an employee qualified leave wages is if the employee is unable to work or telework due to a need to care for his or her child whose place of care is closed for reasons related to COVID-19. An employee would satisfy this criteria if he or she cannot work or telework in order to care for a child due to the closure of a summer camp, summer enrichment program, or other summer program for reasons related to COVID-19.



For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

## **9. What are “qualified health plan expenses”?**

Qualified health plan expenses are amounts paid or incurred by an Eligible Employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code) that are allocable to the employee’s qualified leave wages.

For more information, see “[Determining the Amount of Allocable Qualified Health Plan Expenses](#).”

## **10. What is the Eligible Employer’s share of Medicare tax on qualified leave wages?**

The FFCRA adds to the tax credits the amount of the Hospital Insurance tax, also known as Medicare tax, that Eligible Employers are required to pay on qualified leave wages. The rate for this tax is 1.45 percent of wages. (Eligible employers subject to the Railroad Retirement Tax Act do not get this credit.)

**Note:** There is no credit for the employer portion of OASDI tax, also known as social security tax, that Eligible Employers are required to pay on the qualified leave wages because the qualified leave wages are not subject to this tax.

## **11. Are any small businesses exempt from the requirements to provide qualified sick or family leave wages? (Updated Nov. 25, 2020)**

The FFCRA permits the Department of Labor to provide rules that a business with fewer than 50 employees may use to claim an exemption from providing paid sick leave and expanded family and medical leave for the purpose of caring for a child whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19 if providing these qualified leave wages would jeopardize the viability of their businesses as a going concern. Any business that claims the exemption is not entitled to tax credits for any qualified leave wages that they are exempt from providing.

Also note that the FFCRA permits employers whose employees are health care providers or emergency responders not to provide qualified sick leave or qualified family leave wages to those employees.

For more information about exemptions from the requirement to provide paid sick leave and expanded family and medical leave under the FFCRA, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

## **12. How do Eligible Employers claim the credits? (Updated Nov. 25, 2020)**

Eligible Employers report their total qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer’s share of Medicare tax on the qualified leave wages) for each quarter on their federal employment tax return, usually Form 941, Employer’s Quarterly Federal Tax Return. Form 941 is used by most Eligible Employers to report income tax and social security and Medicare taxes withheld from employee wages, as well as the Eligible Employer’s own share of social security and Medicare taxes.

In anticipation of receiving the credits, Eligible Employers can recover qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer’s share of Medicare tax on the qualified leave wages) by accessing federal employment taxes related to wages paid between April 1, 2020, and December 31, 2020, including withheld taxes, that would otherwise be required to be deposited with the IRS. This means that in anticipation of claiming the credits on the Form 941, Eligible Employers can retain the federal employment taxes that they otherwise would have deposited, including federal income tax withheld from employees, the employees’ share of social security and Medicare taxes, and the Eligible Employer’s share of social security and Medicare taxes with respect to all employees. The Form 941 instructions explain how to reflect the reduced liabilities for the quarter related to the deposit schedule.

Prior to retaining deposits in anticipation of the credit, Eligible Employers are permitted to defer the deposit and payment of the employer's share of social security tax under section 2302 of the CARES Act. For more information, see [Deferral of employment tax deposits and payments through December 31, 2020](#). In addition, employers may opt to defer withholding and payment of the employee's share of social security tax under [Notice 2020-65](#) on certain wages paid between September 1, 2020 through December 31, 2020.

For more information, see "[How to Claim the Credits](#)."

### **13. What if an Eligible Employer does not have enough federal employment taxes set aside for deposit to cover its obligation to provide qualified leave wages?**

If an Eligible Employer does not have enough federal employment taxes set aside for deposit to cover its obligation to provide qualified leave wages (and allocable qualified health plan expenses and the Employer's share of Medicare tax on the qualified leave wages), the employer may request an advance of the credits by completing [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#). The Eligible Employer will account for the amounts received as an advance when it files its Form 941, Employer's Quarterly Federal Tax Return, for the relevant quarter.

For more information about claiming the tax credits for providing qualified leave wages, see "[How to Claim the Credits](#)."

### **14. What makes the credits "fully refundable"? (Updated Nov. 25, 2020)**

The credits are fully refundable because the Eligible Employer may get a refund if the amount of the credits is more than certain federal employment taxes the Eligible Employer owes. That is, if for any calendar quarter the amount of the credits the Eligible Employer is entitled to exceeds the employer portion of the social security tax on all wages (or the employer portion of the social security tax and Medicare tax on all compensation for employers subject to RRTA) paid to all employees, then the excess is treated as an overpayment and refunded to the Eligible Employer under sections 6402(a) or 6413(b) of the Internal Revenue Code.

### **15. Are similar tax credits available to self-employed individuals? (Updated Nov. 25, 2020)**

Yes. The FFCRA also provides comparable credits for self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Internal Revenue Code if the self-employed individual would be entitled to receive paid leave under the EPSLA or Expanded FMLA if the individual were an employee of an employer (other than him or herself).

For more information about how the credits apply to self-employed individuals, see "[Specific Provisions Related to Self-Employed Individuals](#)."

### **16. Only businesses that employ fewer than 500 employees are eligible for the credits, because only those businesses are required to provide qualified leave wages. How is the "fewer than 500 employees" threshold determined?**

A business is considered to have fewer than 500 employees if, at the time an employee's leave is to be taken, the business employs fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. The DOL guidance provides a more detailed summary of which workers must be taken into account for purposes of the fewer than 500 employee threshold. DOL guidance also explains when business entities should be treated as separate employers and when they should be aggregated as a single employer for purposes of determining their total number of employees.

For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).



**17. May an Eligible Employer reduce its federal employment tax deposit by the qualified leave wages that it has paid without incurring a failure to deposit penalty? (Updated Nov. 25, 2020)**

Yes. An Eligible Employer that pays qualified leave wages in a calendar quarter will not be subject to a penalty under section 6656 of the Internal Revenue Code (the “Code”) for failing to deposit federal employment taxes if:

1. the Eligible Employer paid qualified leave wages to its employees in the calendar quarter before the required deposit,
2. the amount of federal employment taxes that the Eligible Employer does not timely deposit (reduced by any amount of the employer’s share of social security tax deferred under section 2302 of the CARES Act) is less than or equal to the amount of the Eligible Employer’s anticipated tax credit for the qualified leave wages for the calendar quarter as of the time of the required deposit, and
3. the Eligible Employer did not seek payment of an advance credit by filing [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), with respect to any portion of the anticipated credits it relied upon to reduce its deposits.

For more information about the relief from the penalty for failure to deposit federal employment taxes on account of qualified leave wages, see [Notice 2020-22](#) and FAQs addressing the deferral of the deposit of all of the employer's share of social security tax under section 2302 of the CARES Act and the reduction in deposits for credits, "Deferral of employment tax deposits and payments through December 31, 2020." In addition, employers may opt to defer withholding and payment of the employee's share of social security tax under [Notice 2020-65](#) on certain wages paid between September 1, 2020, through December 31, 2020.

**18. May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and the Employee Retention Credit under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)? (Updated Nov. 25, 2020)**

Yes, if an Eligible Employer also meets the requirements for the employee retention credit, it may receive both credits, but not for the same wage payments.

Section 2301 of the CARES Act allows certain employers subject to a full or partial closure order due to COVID-19 or experiencing a significant decline in gross receipts a tax credit for retaining their employees. This employee retention credit is equal to 50% of qualified wages (including allocable qualified health plan expenses) paid to employees after March 12, 2020, and before January 1, 2021, up to \$10,000 in qualified wages for each employee for all calendar quarters. However, the qualified wages for the employee retention credit do not include the amount of qualified leave wages for which the employer received tax credits under the FFCRA.

**Note:** For more information on the Employee Retention Credit, see [FAQs: Employee Retention Credit under the CARES Act](#).

**19. May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and a Small Business Interruption Loan (Paycheck Protection Program) under the CARES Act? (Updated Nov. 25, 2020)**

Yes. However, if an Eligible Employer receives tax credits for qualified leave wages, those wages are not eligible as “payroll costs” for purposes of receiving loan forgiveness under section 1106 of the CARES Act.



## Determining the Amount of the Tax Credit for Qualified Sick Leave Wages

### **20. What is included in “qualified sick leave wages”? (Updated Nov. 25, 2020)**

Qualified sick leave wages are wages (as defined in section 3121(a) of the Internal Revenue Code (the “Code”) for social security and Medicare tax purposes) or compensation (as defined in section 3231(e) of the Code) that Eligible Employers must pay eligible employees for periods of leave during which they are unable to work or telework because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. is caring for a child of such employee if the school or place of care of the child has been closed (including the closure of a summer camp, summer enrichment program, or other summer program), or the child care provider of such child is unavailable due to COVID-19 precautions; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

### **20a. Do “qualified sick leave wages” include taxes imposed on or withheld from the wages? (Added Nov. 25, 2020)**

Qualified sick leave wages for purposes of the credit are calculated without regard to federal taxes imposed on or withheld from the wages, including the employee's share of social security taxes, the employee's and employer's shares of Medicare tax, and federal income taxes required to be withheld.

Note: The FFCRA exempts qualified sick leave wages from the employer's share of social security tax.

### **21. How much credit may an Eligible Employer receive for qualified sick leave wages that it pays?**

An Eligible Employer may claim a fully refundable tax credit equal to 100 percent of the qualified sick leave wages (and allocable qualified health plan expenses and the Eligible Employer’s share of Medicare tax on the qualified sick leave wages) it pays.

For more information about how to determine the amount of sick leave wages for which an Eligible Employer may receive credit, see “How does an Eligible Employer determine the amounts of the qualified sick leave wages it is required to pay?”

### **22. How does an Eligible Employer determine the amounts of the qualified sick leave wages it is required to pay?**

The amounts that an Eligible Employer must pay for qualified sick leave wages vary depending on the reason for which the employee is unable to work or telework, the duration of the employee’s absence, the employee’s hours, and the employee’s regular rate of pay (or, if higher, the federal minimum wage or any applicable State or local minimum wage).

### **22a. What is the rate of pay for qualified sick leave wages if an employee is unable to work or telework due to his or her own health needs? (Updated Nov. 25, 2020)**

If an employee is unable to work or telework because he or she:

1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
3. Is experiencing symptoms of COVID-19 and seeking a medical diagnosis;



the Eligible Employer must pay qualified sick leave wages for up to two weeks (up to 80 hours) at a rate for each hour of the **greatest of** the following:

1. The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938);
2. The minimum wage rate in effect under section 6(a)(1) of the Fair Labor Standards Act of 1938; or
3. The minimum wage rate in effect for the employee in the applicable State or locality, whichever is greater, in which the employee is employed.

The maximum amount of qualified sick leave wages paid for these reasons is up to \$511 per day and \$5,110 in the aggregate.

For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

## ***22b. What is the rate of pay for qualified sick leave wages if an employee is unable to work or telework because he or she needs to care for others? (Updated Nov. 25, 2020)***

If an employee is unable to work or telework because he or she:

1. Is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
2. Is caring for a child of such employee if the school or place of care of the child has been closed, or the child care provider of such child is unavailable due to COVID-19 precautions; or
3. Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor;

the Eligible Employer must pay qualified sick leave wages for up to two weeks (up to 80 hours) at a rate for each hour of **2/3 of the greatest of** the following:

1. The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938);
2. The minimum wage rate in effect under section 6(a)(1) of the Fair Labor Standards Act of 1938; or
3. The minimum wage rate in effect for the employee in the applicable State or locality, whichever is greater, in which the employee is employed.

The maximum amount of qualified sick leave wages paid due to the need to care for others as described above is up to \$200 per day and \$2,000 in the aggregate.

For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

## ***22c. How are employees' hours determined for purposes of the qualified paid sick leave requirements? (Updated Nov. 25, 2020)***

Full-time employees are entitled to up to 80 hours of paid sick leave between April 1, 2020, and December 31, 2020. Part-time employees are entitled to the number of hours of paid sick leave that the employee works, on average, in a two-week period, or if the employee's normal scheduled hours are unknown or variable, under other alternative determinations, as provided by DOL guidance.



For more information, including how to determine whether an employee is full-time or part-time and how to determine the number of hours to be paid to employees who are entitled to paid sick leave, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

### **23. Are amounts other than qualified sick leave wages included in the tax credit for required sick leave?**

Yes. The credit also includes the amount of the Eligible Employer's share of Medicare tax imposed on the qualified sick leave wages and any qualified health plan expenses allocable to those wages. Qualified health plan expenses are amounts paid or incurred by the Eligible Employer to provide and maintain a group health plan to the extent that the amounts are excluded from the employees' gross income under section 106(a) of the Internal Revenue Code. The qualified sick leave wages are not subject to the employer portion of social security tax.

**Note:** The credit for the employer's share of Medicare tax does not apply to Eligible Employers that are subject to Railroad Retirement Tax Act (RRTA) because qualified sick leave wages are not subject to Medicare tax under RRTA.

For more information about the additions to the tax credit for allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax, see "[Determining the Amount of Allocable Qualified Health Plan Expenses](#)," and "[Determining the Amount of the Increase to the Credits for the Eligible Employer's Share of Medicare Tax](#)."

### **24. Is a similar tax credit available to self-employed individuals?**

Yes. The FFCRA also provides a comparable credit for self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Internal Revenue Code if the self-employed individual would be entitled to receive paid sick leave under the EPSLA if the individual were an employee of an employer (other than him or herself).

For more information, see "[Specific Provisions Related to Self-Employed Individuals](#)."

## **Determining the Amount of the Tax Credit for Qualified Family Leave Wages**

The Family and Medical Leave Act (FMLA) generally entitles eligible employees of covered employers to unpaid, job-protected leave for specified family and medical reasons. The FFCRA amended the FMLA (these FAQs refer to this portion of the FFCRA as "the Expanded FMLA") to require an Eligible Employer to provide qualified family leave wages when an employee is unable to work or telework due to a need for leave to care for a child of the employee if the child's school or place of care has been closed, or because the child care provider of the child is unavailable, for reasons related to COVID-19.

For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

### **25. What is included in "qualified family leave wages"? (Updated Nov. 25, 2020)**

Qualified family leave wages are wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code") for social security and Medicare tax purposes) that Eligible Employers must pay eligible employees for periods of leave during which they are unable to work or telework due to a need for leave to care for a child of such employee if the child's school or place of care has been closed (including the closure of a summer camp, summer enrichment program, or other summer program), or because the child care provider of the child is unavailable, for reasons related to COVID-19. The first ten days for which an employee takes leave for this reason may be unpaid. However, during that 10-day period, an employee may be entitled to receive qualified sick leave wages as provided under the ESPLA or may receive other forms of paid leave, such as accrued sick leave, annual leave, or other paid time off under the Eligible Employer's policy. After an employee



takes leave for ten days, the Eligible Employer must provide the employee with qualified family leave wages for up to ten weeks.

For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

**25a. Do “qualified family leave wages” include taxes imposed or withheld from the wages? (Updated Nov. 25, 2020)**

Qualified family leave wages for purposes of the credit are calculated without regard to federal taxes imposed on or withheld from the wages, including the employee’s share of social security taxes, the employee’s and employer’s shares of Medicare tax, and federal income taxes required to be withheld.

Note: The FFCRA exempts qualified family leave wages from the employer’s share of social security tax.

**26. How much credit may an Eligible Employer receive for qualified family leave wages?**

An Eligible Employer may claim a fully refundable tax credit equal to 100 percent of the qualified family leave wages (and allocable qualified health plan expenses and the Eligible Employer’s share of Medicare tax on the qualified family leave wages) it pays.

For more information about how to determine the amount of family leave wages for which an Eligible Employer may receive credit, see “[How does an Eligible Employer determine the amounts of the qualified family leave wages it is required to pay?](#)”

**27. How does an Eligible Employer determine the amounts of the qualified family leave wages it is required to pay?**

The Eligible Employer is required to pay the employee qualified family leave wages in an amount equal to at least two-thirds of the employee’s regular rate of pay, multiplied by the number of hours the employee otherwise would have been scheduled to work, not to exceed \$200 per day and \$10,000 in the aggregate for the calendar year.

**28. What is the rate of pay for qualified family leave wages?**

An Eligible Employer must pay qualified family leave wages for up to ten weeks at a rate that is 2/3 of the employee’s regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938).

**29. Are amounts other than qualified family leave wages included in the tax credit for required paid family leave?**

Yes. The credit also includes the allocable qualified health expenses and the amount of the Eligible Employer’s share of Medicare tax imposed on the qualified family leave wages.

Note: The amount of the Eligible Employer’s share of Medicare tax is based only on the qualified family leave wages, not on the qualified health plan expenses allocable to those wages. The credit for the employer’s share of Medicare tax does not apply to Eligible Employers that are subject to Railroad Retirement Tax Act (RRTA) because qualified family leave wages are not subject to Medicare tax under RRTA. For all employers, the qualified sick leave wages are not subject to the employer portion of social security tax.

For more information about the additions to the tax credit for allocable qualified health plan expenses, see “[Determining the Amount of Allocable Qualified Health Plan Expenses](#).” For more information about determining the Eligible Employer’s share of Medicare tax, see “[What is the Eligible Employer’s share of Medicare tax on qualified leave wages?](#)”



### **30. Is a similar tax credit available to self-employed individuals?**

Yes. The FFCRA also provides a comparable credit for self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Internal Revenue Code if the self-employed individual would be entitled to receive paid leave under the Expanded FMLA if the individual were an employee of an employer (other than him or herself).

For more information, "[Specific Provisions Related to Self-Employed Individuals.](#)"

## **Determining the Amount of Allocable Qualified Health Plan Expenses**

"Qualified health plan expenses" are amounts paid or incurred by the Eligible Employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code (the "Code")), but only to the extent that those amounts are excluded from the gross income of employees by reason of section 106(a) of the Code.

Generally, the tax credits for qualified sick leave wages and qualified family leave wages are increased by the qualified health plan expenses allocable to each type of qualified leave wages. Qualified health plan expenses are properly allocated to the qualified sick or family leave wages if the allocation is made on a pro rata basis among covered employees (for example, the average premium for all employees covered by a policy) and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

### **31. Does the amount of qualified health plan expenses include both the portion of the cost paid by the Eligible Employer and the portion of the cost paid by the employee? (Updated Nov. 25, 2020)**

The amount of qualified health plan expenses taken into account in determining the credits generally includes both the portion of the cost paid by the Eligible Employer and the portion of the cost paid by the employee with pre-tax salary reduction contributions. However, the qualified health plan expenses should not include amounts that the employee paid for with after-tax contributions.

### **32. For an Eligible Employer that sponsors more than one plan for its employees (for example, both a group health plan and a health flexible spending arrangement (health FSA)), or more than one plan covering different employees, how are the qualified health plan expenses for each employee determined? (Updated Nov. 25, 2020)**

The qualified health plan expenses are determined separately for each plan. Therefore, for each plan, those expenses are allocated to the employees who participate in that plan. In the case of an employee who participates in more than one plan, the allocated expenses of each plan in which the employee participates are aggregated for that employee.

### **33. For an Eligible Employer that sponsors a fully-insured group health plan, how are the qualified health plan expenses of that plan allocated to the qualified sick or family leave wages on a pro rata basis? (Updated Nov. 25, 2020)**

An Eligible Employer who sponsors a fully-insured group health plan may use any reasonable method to determine and allocate the plan expenses, including (1) the COBRA applicable premium for the employee typically available from the insurer, (2) one average premium rate for all employees, or (3) a substantially similar method that takes into account the average premium rate determined separately for employees with self-only and other than self-only coverage.

If an Eligible Employer chooses to use one average premium rate for all employees, the allocable amount for each day an employee covered by the insured group health plan is entitled to qualified leave wages could be determined using the following steps:



1. The Eligible Employer's overall annual premium for the employees covered by the policy is divided by the number of employees covered by the policy to determine the average annual premium per employee.
2. The average annual premium per employee is divided by the average number of work days during the year by all covered employees (treating days of paid leave as a work day and a work day as including any day on which work is performed) to determine the average daily premium per employee. For example, a full-year employee working five days per week may be treated as working 52 weeks x 5 days or 260 days. Calculations for part-time and seasonal employees who participate in the plan should be adjusted as appropriate. Eligible Employers may use any reasonable method for calculating part-time employee work days.
3. The resulting premium should be adjusted to reflect any portion that employees contribute after tax.
4. The resulting amount is the amount allocated to each day of qualified sick or family leave wages.

**Example:** An Eligible Employer sponsors an insured group health plan that covers 400 employees, some with self-only coverage and some with family coverage. Each employee is expected to have 260 work days a year. (Five days a week for 52 weeks.) The employees contribute a portion of their premium by pre-tax salary reduction, with different amounts for self-only and family. The total annual premium for the 400 employees is \$5.2 million. (This includes both the amount paid by the Eligible Employer and the amounts paid by employees through salary reduction.)

For an Eligible Employer using one average premium rate for all employees, the average annual premium rate is \$5.2 million divided by 400, or \$13,000. For each employee expected to have 260 work days a year, this results in a daily average premium rate equal to \$13,000 divided by 260, or \$50. That \$50 is the amount of qualified health expenses allocated to each day of paid sick or family leave per employee.

**34. For an Eligible Employer who sponsors a self-insured group health plan, how are the qualified health plan expenses of that plan allocated to the qualified leave wages on a pro rata basis? (Updated Nov. 25, 2020)**

An Eligible Employer who sponsors a self-insured group health plan may use any reasonable method to determine and allocate the qualified health plan expenses, including (1) the COBRA applicable premium for the employee typically available from the administrator, or (2) any reasonable actuarial method to determine the estimated annual expenses of the plan.

If the Eligible Employer uses a reasonable actuarial method to determine the estimated annual expenses of the plan, then rules similar to the rules for insured plans are used to determine the amount of expenses allocated to an employee. That is, the estimated annual expense is divided by the number of employees covered by the plan, and that amount is divided by the average number of work days during the year by the employees (treating days of paid leave as work days and any day on which an employee performs any work as work days). The resulting amount is the amount allocated to each day of qualified sick or family leave wages.

**35. For an Eligible Employer who sponsors a health savings account (HSA), or Archer Medical Saving Account (Archer MSA) and a high deductible health plan (HDHP), are contributions to the HSA or Archer MSA included in the qualified health plan expenses? (Updated Nov. 25, 2020)**

The amount of qualified health plan expenses does not include Eligible Employer contributions to HSAs or Archer MSAs. Eligible Employers who sponsor an HDHP should calculate the amount of qualified health plan expenses in the same manner as an insured group health plan, or a self-insured plan, as applicable.



**36. For an Eligible Employer who sponsors a health reimbursement arrangement (HRA), a health flexible spending arrangement (health FSA), or a qualified small employer health reimbursement arrangement (QSEHRA), are contributions to the HRA, health FSA, or QSEHRA included in the qualified health plan expenses? (Updated Nov. 25, 2020)**

The amount of qualified health plan expenses may include contributions to an HRA (including an individual coverage HRA), or a health FSA, but does not include contributions to a QSEHRA. To allocate contributions to an HRA or a health FSA, Eligible Employers should use the amount of contributions made on behalf of the particular employee.

## How to Claim the Credits

**37. How does an Eligible Employer claim the refundable tax credits for qualified leave wages (plus any allocable qualified health plan expenses and the amount of the Eligible Employer's share of Medicare tax)? (Updated Nov. 25, 2020)**

Eligible Employers report their total qualified leave wages for each calendar quarter on their federal employment tax returns, usually Form 941, Employer's Quarterly Federal Tax Return. Employers also report any qualified wages for which they are entitled to an Employee Retention Credit under the CARES Act on Form 941. The Form 941 is used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer's share of social security and Medicare taxes.

In anticipation of receiving the credit, Eligible Employers can cover the amount of qualified leave wages by (1) accessing federal employment taxes, including withheld taxes that would otherwise be required to be deposited with the IRS, and (2) requesting an advance of the credit from the IRS for the amount of the credit that is not covered by accessing the federal employment tax deposits, by filing [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#).

Prior to retaining deposits in anticipation of the credit, Eligible Employers are permitted to defer the deposit and payment of the employer's share of social security tax under section 2302 of the CARES Act. For more information, see [Deferral of employment tax deposits and payments through December 31, 2020](#). In addition, employers may opt to defer withholding and payment of the employee's share of social security tax under [Notice 2020-65](#) on certain wages paid between September 1, 2020, through December 31, 2020.

**38. Can an Eligible Employer required to pay qualified leave wages cover these payments before receiving the credits by reducing its federal employment tax deposits? (Updated Nov. 25, 2020)**

An Eligible Employer may cover the qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) by accessing federal employment taxes, including those that the Eligible Employer already withheld, that are set aside for deposit with the IRS, (reduced by any amount of the employer's share of social security tax deferred under section 2302 of the CARES Act or any amount of the employee's share of social security tax that the employer opted to defer under [Notice 2020-65](#)), for all wage payments made during the same quarter as the qualified leave wages.

That is, an Eligible Employer that pays qualified leave wages to its employees in a calendar quarter before it is required to deposit federal employment taxes with the IRS for that quarter may, after deferring the employer's and employee's share of social security tax under section 2302 of the CARES Act and Notice 2020-65, respectively, reduce the amount of federal employment taxes it deposits for that quarter by the amount of the qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) paid in that calendar



quarter. The Eligible Employer must account for the reduction in deposits on the Form 941, Employer's Quarterly Federal Tax Return, for the quarter.

**Example:** In the second quarter of 2020, an Eligible Employer that did not claim the Employee Retention Credit paid \$5,000 in qualified sick leave wages and qualified family leave wages (and allocable health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) and is otherwise required to deposit \$10,000 in federal employment taxes, including taxes withheld from all of its employees, for wage payments made during the same quarter as the \$5,000 in qualified leave wages was paid. The Eligible Employer defers \$2,000 for its share of social security tax under section 2302 of the CARES Act. The Eligible Employer may keep up to \$5,000 of the remaining \$8,000 of taxes the Eligible Employer was going to deposit, and it will not owe a penalty for keeping the \$5,000. The Eligible Employer is then only required to deposit the remaining \$3,000 on its required deposit date. The Eligible Employer will later account for the \$5,000 it retained when it files [Form 941, Employer's Quarterly Federal Tax Return](#), for the quarter.

For more information about relief under the FFCRA from failure to deposit penalties for failure to timely deposit certain federal employment taxes, see [Notice 2020-22 \(PDF\)](#) and "[May an Eligible Employer reduce its federal employment tax deposit by the qualified leave wages that it has paid without incurring a failure to deposit penalty?](#)"

### **39. *May an Eligible Employer reduce its federal employment tax deposits to cover qualified leave wages that it has paid without incurring a penalty for failing to deposit federal employment taxes? (Updated Nov. 25, 2020)***

Yes. An Eligible Employer that pays qualified leave wages in a calendar quarter will not be subject to a penalty under section 6656 of the Internal Revenue Code (the "Code") for failing to deposit federal employment taxes if:

1. the Eligible Employer paid qualified leave wages to its employees in the calendar quarter before the required deposit,
2. the total amount of federal employment taxes that the Eligible Employer does not timely deposit (reduced by any amount of the employer's and employee's share of social security tax deferred under section 2302 of the CARES Act and Notice 2020-65, respectively) is less than or equal to the amount of the Eligible Employer's anticipated credit for the qualified leave wages for the calendar quarter as of the time of the required deposit, and
3. the Eligible Employer did not seek payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to any portion of the anticipated credits it relied upon to reduce its deposits.

For more information, about the relief from the penalty for failure to deposit federal employment taxes on account of qualified wages, see [Notice 2020-22](#), FAQs addressing the deferral of the deposit of all of the employer's share of social security tax under section 2302 of the CARES Act and the reduction in deposits for credits, "[Deferral of employment tax deposits and payments through December 31, 2020](#)." In addition, employers may opt to defer withholding and payment of the employee's share of social security tax under [Notice 2020-65](#) on certain wages paid between September 1, 2020, through December 31, 2020.

**Example:** In its first payroll period of the second quarter of 2020, Employer F pays \$10,000 in qualified wages for purposes of the Employee Retention Credit and \$3,500 in qualified sick and family leave wages under the FFCRA, among other wages for the payroll period. Employer F has a federal employment tax deposit obligation of \$9,000 for the first payroll period of the second quarter of 2020 (of which \$1,500 relates to the employer's share of social security tax) prior to (1) any deferral



of the deposit of the employer's share of social security tax under section 2302 of the CARES Act and (2) any amount of federal employment taxes not deposited in anticipation of credits for qualified sick and family leave wages under the FFCRA. Employer F reasonably anticipates a \$5,000 Employee Retention Credit (50 percent of qualified wages) and a \$3,500 credit for paid sick and family leave (100 percent of qualified sick and family leave wages) thus far for the second quarter.

Employer F first defers deposit of the \$1,500 employer's share of social security tax under section 2302 of the CARES Act. This preliminarily results in a remaining federal employment tax deposit obligation of \$7,500. Employer F then reduces this federal employment tax deposit obligation by the \$3,500 anticipated credit for qualified sick and family leave wages, leaving a federal employment tax deposit obligation of \$4,000. Finally, Employer F further reduces the deposit of all remaining federal employment taxes by \$4,000 for the \$5,000 anticipated Employee Retention Credit for qualified wages.

Employer F will not incur a failure to deposit penalty under section 6656 of the Code for reducing its federal employment tax deposit for the first payroll period of the second quarter to \$0.

The amount of the excess \$1,000 in Employee Retention Credit available is refundable as an overpayment. Employer F may file a [Form 7200](#) to request an advance payment of the remaining Employee Retention Credit (but not for any amount of the Employee Retention Credit that was already used to reduce the deposit obligation). If Employer F does not request an advance payment of the credit, it may request that the \$1,000 overpayment be credited or refunded when it files its second quarter Form 941, Employer's Quarterly Federal Tax Return. Regardless of whether Employer F requests an advance payment of the credit, Employer F must report all qualified wages, the credit for qualified sick and family leave wages, the Employee Retention Credit, and any advance credit received from Forms 7200 filed for the quarter on the Form 941 for the quarter.

Employer F may defer payment of the \$1,500 employer's share of social security tax (along with any other employer social security tax imposed under section 3111(a) for the quarter) on its Form 941 for the second quarter of 2020. Employer F will not be required to pay any portion of the deferred amount until December 31, 2021, at which time 50 percent is due (\$750), with the remaining amount (\$750) due December 31, 2022.

**40. How can an Eligible Employer that is required to pay qualified leave wages cover the payment of these wages if the Eligible Employer does not have sufficient federal employment taxes set aside for deposit to cover those payments? Can the employer get an advance of the credits? (Updated Nov. 25, 2020)**

Because quarterly employment tax returns are not filed until after qualified wages are paid, some Eligible Employers may not have sufficient federal employment taxes set aside for deposit to the IRS to cover their qualified leave wages through reduction of the amount to be deposited, particularly after taking into account the permitted deferral of the employer's share of social security tax under section 2302 of the CARES Act and the permitted deferral of the employee's share of social security tax under [Notice 2020-65](#). Accordingly, the IRS has a procedure for obtaining an advance payment of the refundable credits.

The Eligible Employer is permitted to defer the deposit and payment of the employer's share of social security tax under section 2302 of the CARES Act and may do so prior to reducing any deposits in anticipation of the credit. See "Deferral of employment tax deposits and payments through December 31, 2020." The Eligible Employer may also opt to defer the withholding and payment of the employee's share of social security tax in accordance with [Notice 2020-65](#). If the remaining employment tax deposits set aside, after taking into account any deferral of the employer's share of social security tax or any amount of the employee's share of social security tax that the employer opted to defer under Notice



2020-65, are less than the qualified leave wages, the Eligible Employer can file a [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), to request an advance payment of the credit for the remaining qualified leave wages it has paid for which it did not have sufficient federal employment tax deposits.

If an Eligible Employer fully reduces its required deposits of federal employment taxes otherwise due on wages paid in the same calendar quarter to its employees in anticipation of receiving the credits, and it has not paid qualified leave wages in excess of this amount, it should not file a Form 7200. If it files a Form 7200, it will need to reconcile this advance payment of the credit and its deposits with the qualified leave wages on Form 941, Employer's Quarterly Federal Tax Return (or other applicable federal employment tax return such as Form 944 or Form CT-1), beginning with the Form 941 for the second quarter, and it may have an underpayment of federal employment taxes for the quarter.

**Example:** During the second quarter, Employer G paid \$10,000 in qualified leave wages and is otherwise required to deposit \$8,000 in federal employment taxes on all wages paid, after deferring its employer's share of social security tax under section 2302 of the CARES Act. Employer G has not claimed the Employee Retention Credit for any wages under the CARES Act. Employer G can keep the entire \$8,000 of taxes that Employer G was otherwise required to deposit without penalty as a portion of the credits it is otherwise entitled to claim on the [Form 941](#). Employer G may file a request for an advance payment for the remaining \$2,000 by completing [Form 7200](#).

**41. If the qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) exceed the Eligible Employer's share of social security tax owed for a quarter, how does the Eligible Employer get a refund of the excess credits? Does this affect what the Eligible Employer puts on its Form 941? (Updated Nov. 25, 2020)**

The amount of qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of the Medicare tax on the qualified leave wages) in excess of the social security tax the Eligible Employer owes for the quarter is refundable. If the amount of the credits exceeds the employer portion of social security tax, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) or 6413(b) of the Internal Revenue Code. Consistent with its treatment as an overpayment, the excess will be applied to offset any remaining tax liability on the Form 941, Employer's Quarterly Federal Tax Return, and the amount of any remaining excess will be reflected as an overpayment on the Form 941. Like other overpayments of federal taxes, the overpayment will be subject to offset under section 6402(a) of the Code prior to being refunded to the employer.

**42. How does an Eligible Employer obtain Form 7200 and where should it send its completed form to receive the advance credit? (Updated July 2, 2020)**

An Eligible Employer may obtain the [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), and may fax its completed form to [855-248-0552](tel:855-248-0552). After July 2, 2020, the minimum advance amount that can be claimed on a Form 7200 is \$25. A Form 7200 requesting an advance payment of less than \$25 will not be processed. Taxpayers can claim credits of less than \$25 on the Form 941 PDF.

**42a. Who can sign a Form 7200? Should a taxpayer submit additional documents to confirm that a person is authorized to sign a Form 7200? (updated July 9, 2020, and Nov. 25, 2020)**

The [instructions for Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), provide information on who may properly sign a Form 7200 for each type of entity. For corporations, the instructions provide that the president, vice president, or other principal officer who is duly authorized may sign a Form 7200. For partnerships (including an LLC treated as a partnership) or unincorporated organizations, a responsible and duly authorized partner, member, or officer having knowledge of the entity's affairs may sign a Form 7200. For a single-member LLC treated as a disregarded entity



for federal income tax purposes, the instructions provide that the owner or a principal officer who is duly authorized may sign the Form. For trusts or estates, the instructions provide that the fiduciary may sign the Form 7200. Additionally, the instructions provide that a Form 7200 may be signed by a duly authorized agent of the taxpayer if a valid power of attorney has been filed.

In many circumstances, whether the person signing the Form 7200 is duly authorized or has knowledge of the partnership's or unincorporated organization's affairs is not apparent on the Form 7200. To help expedite and ensure proper processing of Forms 7200, if a taxpayer has duly authorized an officer, partner, or member to sign Form 7200 (and that person is not otherwise explicitly permitted to sign the Form 7200 by nature of their job title), the taxpayer should submit a copy of the [Form 2848, Power of Attorney and Declaration of Representative](#), authorizing the person to sign the Form 7200 with the Form 7200.

***42b. When should the name and EIN of a third-party payer be included on Form 7200? (added Sept. 25, 2020; updated Nov. 25, 2020)***

Employers who file Form 7200, [Advance Payment of Employer Credits Due to COVID-19](#), to claim an advance payment of credits are required to include on the form the name and EIN of the third-party payer they use to file their federal employment tax returns (such as the Form 941) if the third-party payer uses its own EIN on the federal employment tax returns. This will ensure advance payment of the credits received by the common law employer is properly reconciled to the federal employment tax return filed by the third-party payer for the calendar quarter for which the advance payment of the credits is received.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the federal employment tax return for the calendar quarter, only those third-party payers who will file a federal employment tax return on behalf of an employer using the third-party payer's name and EIN should be listed on the Form 7200. Typically, CPEOs, PEOs, and other section 3504 agents fall into this category of third-party payers.

If a third-party payer will file the federal employment tax return on an employer's behalf using the employer's name and EIN and not the name and EIN of the third-party payer, the employer should not include the name and EIN of the third-party payer on the Form 7200. Typically, reporting agents and payroll service providers fall into this category of third-party payers.

***42c. If a common law employer uses a third-party payer for only a portion of its workforce, should the employer list the third-party payer on the Form 7200? (added Sept. 25, 2020 and updated Nov. 25, 2020)***

In some cases, a common law employer may use the services of a third-party payer (such as a CPEO, PEO, or other section 3504 agent) to pay wages for only a portion of its workforce. In those circumstances, the third-party payer files an employment tax return (such as the Form 941) for wages it paid to employees under its name and EIN, and the common law employer files an employment tax return for wages it paid directly to employees under its own name and EIN.

If the common law employer is claiming advance payments of credits for both wages paid directly to employees that will be reported on its own employment tax return and wages paid to other employees by a third-party payer that will be reported on the third-party payer's employment tax return, two separate Forms 7200, Advance Payment of Employer Credits Due to COVID-19, should be filed: one for the wages paid by the common law employer with the name and EIN of the employer, and one for the wages paid by the third-party payer with the name and EIN of both the common law employer and the third-party payer.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the employment tax return when an employer uses a third-party payer such as a CPEO, PEO, or other section 3504 agent for only a portion of its workforce, a common law employer should include the name and EIN of the third-party payer only on the Form 7200 for advance payment of the credits for wages paid by the third-party payer and reported on the third-party payer's employment tax return. The common law employer should not include the name and EIN of the third-party payer on the Form 7200 for advance payments of the credits claimed for wages paid by the common law employer and reported on the common law employer's employment tax return.

#### ***42d. What is the last day taxpayers may submit a Form 7200, Advance Payment of Employer Credits Due to Covid-19, requesting an advance payment of credits? (updated Dec. 4, 2020)***

Taxpayers filing a Form 941, Employer's QUARTERLY Federal Tax Return, may submit a Form 7200, Advance Payment of Employer Credits Due to COVID-19, up to the earlier of February 1, 2021, or the date they file the Form 941 for the fourth quarter of 2020. Taxpayers filing a Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, or Form 944, Employer's ANNUAL Federal Tax Return, may submit a Form 7200 up to the earlier of February 1, 2021, or the date they file the applicable employment tax return for 2020. Taxpayers filing a Form CT-1, Employer's Annual Railroad Retirement Tax Return, may submit a Form 7200 up to the earlier of March 1, 2021, or the date they file the Form CT-1.

#### ***43. What if an Eligible Employer does not initially pay an employee qualified leave wages when the employee is entitled to those wages, but pays those wages at a later date? (added Nov. 25, 2020)***

An Eligible Employer can claim the credits once it has paid the employee for the period of paid sick leave or expanded family and medical leave, as long as the qualified leave wages relate to leave taken during the period beginning on April 1, 2020, and ending on December 31, 2020.

## **How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?**

#### ***44. What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits? (Updated Nov. 25, 2020)***

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 government 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 (or summer camp, summer enrichment program, or other summer program) that has closed or place of care that is unavailable, and



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 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

#### **45. What additional records should an Eligible Employer maintain to substantiate eligibility for the sick leave or family leave credit? (Updated Nov. 25, 2020)**

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if, in addition to the information set forth in FAQ 44 (“**What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?**”), 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).

#### **46. How long should an Eligible Employer maintain records to substantiate eligibility for the sick leave or family leave credit? (Added Nov. 25, 2020)**

An Eligible Employer should keep all records of employment taxes for at least four years after the date the tax becomes due or is paid, whichever comes later. These should be available for IRS review.

#### **46a. May an employer choose to require information from employees in addition to that described in these FAQs? (Added Nov. 25, 2020)**

Yes. An employer may choose to require additional information from the employee.

## **Periods of Time for Which Credits are Available**

#### **47. How long are the refundable tax credits for qualified leave wages available?**

(This Q&A was deleted by the IRS.)

#### **48. Are wage payments for qualified leave wages made after December 31, 2020, but for periods of leave taken before December 31, 2020, eligible for the credits?**

(This Q&A was deleted by the IRS.)

## **Special Issues for Employers: Taxation and Deductibility of Tax Credits**

#### **49. What amount does an Eligible Employer receiving tax credits for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) need to include in income?**



An Eligible Employer must include the full amount of the credits for qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of the Medicare tax on the qualified leave wages) in gross income.

**50. May an Eligible Employer deduct as a business expense an amount paid to an employee for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) for which it expects to claim the tax credits?**

Generally, an Eligible Employer's payments of qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of the Medicare tax on the qualified wages) are deductible by the Eligible Employer as ordinary and necessary business expenses in the taxable year that these wages are paid or incurred. An Eligible Employer may deduct as a business expense the amounts paid to an employee for qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) for which the Eligible Employer expects to claim the tax credits under sections 7001 or 7003 of the FFCRA, if the Eligible Employer is otherwise eligible to take the deduction.

**50a. What are the tax consequences of claiming the tax credits for a tax-exempt Eligible Employer? (Added Nov 25, 20.20)**

An Eligible Employer that is exempt from federal income taxation under section 501(a) of the Internal Revenue Code (Code) must allocate the credits for qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) ("tax credits") between activities substantially related to its exempt purposes and any unrelated trade or business activities, using the same allocation it uses in allocating the qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) for purposes of calculating its unrelated business taxable income for the year.

The portion (if any) of the tax credits that is allocable to an unrelated trade or business must be included in gross income from that unrelated trade or business for purposes of the tax imposed by section 511 of the Code. The portion (if any) of the tax credits that is allocable to the tax-exempt Eligible Employer's exempt activities is exempt from federal income taxation under section 501(a) of the Code.

A tax-exempt Eligible Employer may deduct from gross income from an unrelated trade or business the amounts paid to an employee for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) that are directly connected with carrying on that unrelated trade or business.

Note that the Federal government, the government of any State or political subdivision thereof, and any agencies or instrumentalities of those governments are not Eligible Employers and are not entitled to receive tax credits for providing paid leave wages under the FFCRA. Tribal governments that provide paid sick and paid family and medical leave pursuant to the FFCRA are eligible to claim the tax credits for qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see "[What is an Eligible Employer?](#)"

**Example.** X, a tax-exempt Eligible Employer, derives gross income from the conduct of an unrelated trade or business. X employs Y who devotes 90% of her time to X's exempt activities and 10% of her time to X's unrelated business activity. X receives \$2,000 in tax credits for qualified leave wages paid to Y.

X allocates \$200 (10% of \$2,000) of the tax credits to gross income from its unrelated trade or business. X may deduct \$200 (10% of \$2,000), the portion of Y's qualified leave wages that is allocable to X's unrelated business activity, from its gross income from the unrelated trade or business.



**51. Do the tax credits under sections 7001 and 7003 of the FFCRA reduce the amount deductible as federal employment taxes on an Eligible Employer's income tax return?**

Generally, an employer's payment of certain federal employment taxes is deductible by the employer as an ordinary and necessary business expense in the taxable year that these taxes are paid or incurred, and the amount deductible is generally reduced by credits allowed. Although the tax credits under sections 7001 and 7003 of the FFCRA are allowed against the Eligible Employer's portion of the social security tax, the credits are treated as government payments to the employer that must be included in the Eligible Employer's gross income. If the employer is otherwise eligible to deduct its portion of the social security tax on all wages, the proper amount deductible by the employer is the amount of federal employment taxes before reduction by the tax credits.

**51a. Does a government employer that is required to provide paid leave wages under the FFCRA have to pay the employer's share of social security tax on the paid leave wages? (Added Nov. 25, 2020)**

No. Section 7005(a) of the FFCRA states that paid leave wages are not considered wages under section 3111(a) of the Internal Revenue Code (the "Code"), which covers the employer portion of the Old-Age, Survivors, and Disability Insurance tax (social security tax), or compensation under section 3221(a) of the Code, which covers the Railroad Retirement Tax Act Tier 1 rate.

**51b. Does a government employer receive a credit for the employer's share of Medicare tax on paid leave wages it provides under the FFCRA? (Added Nov. 25, 2020)**

No. Government employers are not Eligible Employers and are not entitled to receive tax credits for providing paid leave wages under the FFCRA.

Note that Tribal governments that provide paid sick and paid family and medical leave pursuant to the FFCRA are eligible to claim the tax credits for qualified leave wages, including for the employer's share of Medicare tax on the qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see ["What is an Eligible Employer?"](#)

**51c. Does a government employer receive a credit for the health care expenses allocable to the qualified leave wages? (Added Nov. 25, 2020)**

No. Government employers are not Eligible Employers and are not entitled to receive tax credits for any health care expenses allocable to paid leave they provide under the FFCRA.

Note that Tribal governments that provide paid sick and paid family and medical leave pursuant to the FFCRA are eligible to claim the tax credits for qualified leave wages, including for any qualified health care expenses allocable to the qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see ["What is an Eligible Employer?"](#)

## Special Issues for Employers: Interaction of FFCRA Tax Credits with Other Tax Credits

**52. May Eligible Employers receive credits under both section 45S of the Internal Revenue Code and tax credits for qualified leave wages under the FFCRA?**

No. There is no double benefit allowed. Under sections 7001(e)(1) and 7003(e)(1) of the FFCRA, any qualified leave wages taken into account for the tax credits may not be taken into account for purposes of determining a credit under section 45S of the Internal Revenue Code. Thus, an Eligible Employer may not claim a credit under section 45S with respect to the



qualified sick leave wages or qualified family leave wages for which it receives a tax credit under FFCRA, but may be able to take a credit under section 45S with respect to any additional wages paid, provided the requirements of section 45S are met with respect to the additional wages.

***52a. Can an employer receive both the Paycheck Protection Program Loan ("PPP loan") and the leave credit during the same period? (Added Nov. 25, 2020)***

Yes. Receiving credits for qualified leave wages does not disqualify an eligible recipient from receiving the PPP loan to which it is otherwise entitled under section 1102 of the CARES Act. However, the amount of the PPP loan is reduced by the amount of the qualified leave wages for which an employer is allowed tax credits, and those wages are not eligible as "payroll costs" for purposes of receiving loan forgiveness under section 1106 of the CARES Act.

## Special Issues for Employers: Use of Third-Party Payers

***53. Can an eligible common law employer that uses a third party to report and pay employment taxes to the IRS get the sick and family leave credits? (Updated Nov. 25, 2020)***

Yes. If a common law employer is otherwise eligible to claim the sick and family leave credits, it is entitled to the credit, regardless of whether it uses a third-party payer (such as a reporting agent, payroll service provider, professional employer organization (PEO), certified professional employer organization (CPEO), or section 3504 agent) to report and pay its federal employment taxes. The third-party payer is not entitled to the tax credits with respect to the wages it remits on the common law employer's behalf (regardless of whether the third-party is considered an "employer" for other purposes of the Internal Revenue Code). If a common law employer uses a third-party to file, report, and pay employment taxes, different rules will apply depending on the type of third-party payer the common law employer uses for claiming/reporting the sick and family leave credits.

If an eligible common law employer uses a reporting agent to file its federal employment tax returns the reporting agent will need to reflect the tax credits for qualified leave wages on the federal employment tax returns it files on the common law employer's behalf.

If an eligible common law employer uses a CPEO or a section 3504 agent that received its designation as an agent by submitting [Form 2678, Employer/Payer Appointment of Agent](#), to report its federal employment taxes on an aggregate [Form 941](#), the CPEO or section 3504 agent will report the tax credits for qualified leave wages on its aggregate [Form 941](#) and [Schedule R, Allocation Schedule for Aggregate Form 941 Filers](#), that it already files. An eligible common law employer can submit its own [Form 7200](#) to claim the advance credit. The eligible common law employer will need to provide a copy of the [Form 7200](#) to the CPEO or section 3504 agent so the CPEO or section 3504 agent can properly report the sick and family leave credits on the [Form 941](#).

If an eligible common law employer uses a non-certified PEO or other third-party payer (other than a CPEO or section 3504 agent that submitted [Form 2678](#)) that reports and pays the common law employer's federal employment taxes under the third-party's Employer Identification Number (EIN), the PEO or other third-party payer will need to report the tax credits for qualified leave wages on an aggregate [Form 941](#) and separately report the tax credits for qualified leave wages allocable to the common law employers for which it is filing the aggregate [Form 941](#) on an accompanying [Schedule R](#). The PEO or other third-party payer does not have to complete Schedule R with respect any common law employer for which it is not claiming tax credits for qualified leave wages. The eligible common law employer will need to provide a copy of any [Form 7200](#) that it submitted for an advance payment of the credit to the PEO or other third-party payer so the PEO or other third-party payer can properly report the tax credits for qualified leave wages on the [Form 941](#). These rules are



similar to the rules that apply with respect to the payroll tax election available under section 41(h) of the Code for the credit for certain research and development expenses.

**53a. May a payroll reporting agent sign and submit Form 7200 on behalf of a client employer? (Added Nov. 25, 2020)**

A payroll reporting agent may sign [Form 7200](#) for a client employer for which it has the authority, via [Form 8655, Reporting Agent Authorization](#), to sign and file the federal employment tax return. The signatory must be the Principal or Responsible Official listed on the RA's e-file application. The signatory may sign with ink on paper or may use the alternative signature method (rubber stamp, mechanical device, or computer software program; for details and required documentation, see [Rev. Proc. 2005-39](#), 2005-28 I.R.B. 82). Consistent with [Rev. Proc. 2005-39](#), an alternative signature must be in the form of a facsimile signature.

The reporting agent must obtain written authorization from the client employer (paper, fax, or e-mail) to perform these actions regarding the Form 7200. The reporting agent need not submit that authorization to the IRS, but should retain it in its files so that the reporting agent can furnish it to the IRS upon request. For a client employer for which a third-party does not have a Reporting Agent Authorization, it may complete and print the form, or it may provide the client employer a means to complete and print the form, but the client employer will have to sign it.

The signatory for the reporting agent must sign, date, and print his or her name in the relevant boxes on [Form 7200](#). In the box, "Printed Title," the signatory must include the reporting agent company name or name of business as it appeared on line 9 of the [Form 8655](#). If the reporting agent company name or name of business from the [Form 8655](#) is missing, the [Form 7200](#) cannot be processed.

**53b. What information must third-party payers obtain from their client employers to claim the sick leave and family leave credits on their client employer's behalf? (Added Nov. 25, 2020)**

If a third-party payer (CPEO, PEO, or section 3504 agent) is claiming the sick leave and family leave credits on behalf of the client employer, it must collect from the client employer any information necessary to accurately claim the credit on its client employer's behalf. This includes obtaining information with respect to the client employer's claims for credits under section 45S of the Internal Revenue Code and the employee retention credit.

**53c. When should the name and EIN of a third-party payer be included on Form 7200? (Added Nov. 25, 2020)**

Common law employers who file [Form 7200](#) to claim an advance payment of credits are required to include on the form the name and EIN of the third-party payer they use to file their federal employment tax returns (such as the [Form 941](#)) if the third-party payer uses its own EIN on the federal employment tax returns. This will ensure advance payment of the credits received by the common law employer is properly reconciled to the federal employment tax return filed by the third-party payer for the calendar quarter for which the advance payment of the credits is received.

To help expedite and ensure proper processing of [Form 7200](#) and reconciliation of advance payment of the credits to the federal employment tax return for the calendar quarter, only those third-party payers who will file a federal employment tax return on behalf of a common law employer using the third-party payer's name and EIN should be listed on the [Form 7200](#). Typically, CPEOs, PEOs, and other section 3504 agents fall into this category of third-party payers.

If a third-party payer will file the federal employment tax return on a common law employer's behalf using the common law employer's name and EIN and not the name and EIN of the third-party payer, the common law employer should not

include the name and EIN of the third-party payer on the Form 7200. Typically, reporting agents and payroll service providers fall into this category of third-party payers.

***53d. If a common law employer uses a third-party payer for only a portion of their workforce, should they list the third-party payer on the Form 7200? (Added Nov 25, 2020)***

In some cases, a common law employer may use the services of a third-party payer (such as a CPEO, PEO, or other section 3504 agent) to pay wages for only a portion of its workforce. In those circumstances, the third-party payer files a federal employment tax return for the wages it paid to the common law employer's employees under its name and EIN, and the common law employer files a federal employment tax return for wages it paid directly to employees under its own name and EIN.

If the common law employer is claiming advance payments of credits for both wages paid directly to employees that will be reported on its own federal employment tax return and wages paid to other employees by a third-party payer that will be reported on the third-party payer's federal employment tax return, two separate [Forms 7200](#) should be filed: one for the wages paid by the common law employer with the name and EIN of the common law employer, and one for the wages paid by the third-party payer with the name and EIN of both the common law employer and the third-party payer.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the federal employment tax return when a common law employer uses a third-party payer such as a CPEO, PEO, or other section 3504 agent for only a portion of their workforce, a common law employer should include the name and EIN of the third-party payer only on the [Form 7200](#) for advance payment of the credits for wages paid by the third-party payer and reported on the third-party payer's federal employment tax return. The common law employer should not include the name and EIN of the third-party payer on the [Form 7200](#) for advance payments of the credits claimed for wages paid by the common law employer and reported on the common law employer's federal employment tax return.

***53e. What information must third-party payers obtain from their client employers to claim the sick and family leave credits on their client's behalf? (Added Nov. 25, 2020)***

If a third-party payer (such as a CPEO, PEO, or other section 3504 agent) is claiming the sick and family leave credits on behalf of the client employer, it must collect from the client employer any information necessary to accurately claim the sick and family leave credits on its client employer's behalf.

***53f. May third-party payers rely on client employer information regarding the sick and family leave credits? (Added Nov. 25, 2020)***

Yes. If a third-party payer (such as a CPEO, PEO, or other section 3504 agent) is claiming the sick and family leave credits on behalf of the client employer, the third-party payer may rely on the client employer's information regarding the client employer's eligibility to claim the sick and family leave credits, and the client employer may maintain all records which substantiate the client employer's eligibility for the sick and family leave credits.

However, upon request by the IRS, the third-party payer must obtain from the client employer and provide to the IRS records that substantiate the client employer's eligibility for the sick and family leave credits. The client employer and the third-party payer will each be liable for employment taxes that are due as a result of any improper claim of the sick and family leave credits in accordance with their liability under the Internal Revenue Code and applicable regulations for the employment taxes reported on the federal employment tax return filed by the third-party payer on which the credits were claimed.



**53g. Upon request by the IRS, what records must third-party payers obtain from their client employers to substantiate the client employer's eligibility for the sick and family leave credits? (Added Nov. 25, 2020)**

If a third-party payer is claiming the sick and family leave credits on behalf of the client employer, it must, at the IRS's request, be able to obtain from the client employer and provide to the IRS records that substantiate client employer's eligibility for the sick and family leave credits.

**53h. Are client employers responsible for avoiding a "double benefit" with respect to the sick and family leave credits and the credit under section 45S of the Code? (Added Nov. 25, 2020)**

Yes. The client employer is responsible for avoiding a "double benefit" with respect to the sick and family leave credits and the credit under section 45S of the Internal Revenue Code. The client employer cannot use wages that were used to claim the sick and family leave credits, and reported by the third-party payer on the client employer's behalf, to claim the section 45S of the Code credit on its income tax return.

## Special Issues for Employers: Other Issues

**54. Can employees make salary reduction contributions from the amounts paid as qualified leave wages for their employer sponsored health plan, a 401(k) or other retirement plan, or any other benefits?**

The FFCRA does not distinguish qualified leave wages from other wages an employee may receive from the employee's standpoint as a taxpayer; thus, the same rules that generally apply to an employee's regular wages (or compensation, for RRTA purposes) would apply from the employee's standpoint. To the extent that an employee has a salary reduction agreement in place with the Eligible Employer, the FFCRA does not include any provisions that explicitly prohibit taking salary reduction contributions for any plan from qualified sick leave wages or qualified family leave wages.

**54a. If the amount of paid sick leave or paid family leave an Eligible Employer pays to an employee is exempt from social security and Medicare taxes, can the Eligible Employer still claim tax credit for paying that amount to the employee? (Added Nov. 25, 2020)**

No. The tax credit for providing paid sick leave or paid family leave is only allowed for qualified leave wages paid to employees. An amount must constitute wages within the meaning of section 3121(a) of the Internal Revenue Code (the "Code") (or must constitute qualified health plan expenses allocable to those wages) in order to be qualified leave wages.

**Example 1:** A church in State X employs an ordained minister; the minister is a common law employee of the church. The church pays the ordained minister sick leave for periods during which he is unable to work because he is experiencing symptoms of COVID-19 and seeking a medical diagnosis. The minister's salary and parsonage allowance do not constitute wages within the meaning of section 3121(a) of the Code. Therefore, the paid sick leave is not qualified leave wages for which the church may claim tax credits under the FFCRA.

**Example 2:** A licensed real estate agent at Brokerage Firm Y receives substantially all of her payments for services directly related to home sales and performs services under a written contract providing that she will not be treated as an employee for federal tax purposes. Therefore, the licensed real estate agent at Brokerage Firm Y is treated as a statutory nonemployee under the Code. Brokerage Firm Y pays the agent sick leave for periods during which she is unable to work because she has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. Amounts paid to the agent by Brokerage Firm Y do not constitute wages within the meaning of section 3121(a) of the Code. Therefore, the paid sick leave is not qualified leave wages for which Brokerage Firm Y may claim tax credits under the FFCRA.



**Example 3:** Employer Z provides its employees with, and the employees make, pre-tax salary reduction contributions to or for, a qualified 401(k) plan, a fully-insured group health plan, a dependent care assistance program satisfying the requirements of section 129 of the Code, and qualified transportation benefits satisfying the requirements of section 132(f) of the Code. Employer Z also makes matching and nonelective contributions to the qualified 401(k) plan and pays for the remaining portion of the cost of maintaining the fully-insured group health plan.

Employer Z may treat as qualified leave wages the amounts its employees contribute as pre-tax salary reduction contributions to the qualified 401(k) plan because those amounts are wages within the meaning of section 3121(a) of the Code. Employer Z may also treat all amounts paid toward maintaining the fully-insured group health plan (including any employee pre-tax salary reduction contribution) as qualified health plan expenses that are allocable to qualified leave wages. See [“Does the amount of qualified health plan expenses include both the portion of the cost paid by the Eligible Employer and the portion of the cost paid by the employee?”](#)

Employer Z may not treat as qualified leave wages the amounts Employer Z contributes as matching or nonelective contributions to the qualified 401(k) plan, nor may it treat as qualified leave wages any employee pre-tax salary reduction contributions toward the dependent care assistance program or qualified transportation benefits. These amounts do not constitute wages within the meaning of section 3121(a) of the Code and are not qualified health plan expenses; therefore, these amounts are not qualified leave wages under the FFCRA.

#### ***54b. How do Eligible Employers report qualified leave wages? (Added Nov. 25, 2020)***

Eligible Employers must report the amount of qualified sick and family leave wages paid to employees under the FFCRA) on [Form W-2, Wage and Tax Statement](#). Employers must report these amounts either on Form W-2, Box 14, or in a statement provided with the Form W-2.

For more information, including optional language that Eligible Employers may use in the Form W-2 instructions for employees, see [Notice 2020-54](#).

#### ***55. Should Eligible Employers withhold federal employment taxes on qualified leave wages paid to employees? (Updated Nov. 25, 2020)***

Yes. Qualified leave wages are wages subject to withholding of federal income tax and the employee’s share of social security and Medicare taxes. Qualified leave wages are also considered wages for purposes of other benefits that the Eligible Employer provides, such as contributions to 401(k) plans.

#### ***56. Is a tax-exempt employer eligible for the tax credit? (Updated Nov. 25, 2020)***

Yes. The FFCRA entitles Eligible Employers that pay qualified sick leave wages and qualified family leave wages to refundable tax credits. Qualified sick leave wages and qualified family leave wages are those wages for paid sick leave and paid family and medical leave that are required to be paid under the FFCRA. Tax-exempt organizations that are required to provide such paid sick leave or expanded paid family and medical leave may claim the tax credits.

#### ***56a. Can an employer choose not to claim the tax credits? (added Nov. 25, 2020)***

Yes. An employer is not required to claim the tax credits even if it is an Eligible Employer entitled to the tax credits. However, even if the employer does not claim the tax credit, it must provide the paid sick leave and paid family required by the FFCRA.

#### ***56b. Can an employer claim the tax credits for employees if it has closed its worksite after April 1, 2020 (the effective date of the FFCRA)? (Added Nov. 25, 2020)***



Yes. Regardless of whether an employer has closed its worksite after the FFCRA took effect, the employer is entitled to claim the tax credits to the extent it is obligated to provide an employee with qualified leave wages, for example, for periods before the worksite closure, and it is otherwise an Eligible Employer. Similarly, the tax credits for qualified health plan expenses and for Medicare tax may be claimed only for periods for which the employer is obligated to provide paid sick or family leave.

For more information on an employer's obligation to provide paid family or sick leave under the FFCRA in the event of worksite closures and other suspensions of operations, see the [Department of Labor's Families First Coronavirus Response Act: Questions and Answers](#).

### ***56c. Can an employer claim the tax credit for employees it has rehired? (Added Nov. 25, 2020)***

Yes. Eligible Employers must provide qualified leave wages to certain rehired employees who take sick or family leave for reasons related to COVID-19. A rehired employee for this purpose is one that the Eligible Employer laid off or otherwise terminated on or after March 1, 2020, rehired or otherwise reemployed on or before December 31, 2020, and had been on the Eligible Employer's payroll for 30 or more of the 60 calendar days prior to the date the employee was laid off or otherwise terminated. The Eligible Employer would be entitled to a tax credit for these qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on qualified leave wages).

Example: An Eligible Employer originally hires an employee on January 15, 2020, lays the employee off on March 14, 2020, and rehires the employee on October 1, 2020. The Eligible Employer may receive a tax credit for any qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on qualified leave wages) that it subsequently provides.

### ***56d. Can an employer receive tax credits for providing paid leave that an employee is entitled to under the employer's policy? (Added Nov. 25, 2020)***

Generally, no. An employer is entitled to tax credits for paid leave only to the extent that it is required to be paid under the FFCRA. Accordingly, an employer may not require an employee to use provided or accrued paid vacation, personal, medical, or sick leave before the paid leave mandated by the FFCRA. An employer may not require an employee to use such existing leave concurrently with the paid sick leave under the FFCRA, either.

For more information regarding circumstances in which, for example, paid sick leave under the FFCRA may be substituted for paid sick leave to which an employee is already entitled, see the [Department of Labor's Families First Coronavirus Response Act: Questions and Answers](#).

### ***56e. May an employer increase the tax credit for its share of Medicare tax by taking into account amounts contributed on a pretax basis to a cafeteria plan under section 125 of the Internal Revenue Code (the "Code")? (Added Nov. 25, 2020)***

A: No. An employer may claim a tax credit under the FFCRA only for those payments that are qualified leave wages, which must be either wages (as defined in section 3121(a) of the Code) or compensation (as defined in section 3231(e) of the Code). Section 7005(b)(1) of the FFCRA increases this tax credit by the employer's share of Medicare tax imposed on these qualified leave wages. However, amounts contributed on a pretax basis to a plan that meets the requirements of section 125 of the Code do not constitute wages or compensation. See [Publication 15-B, Employers' Tax Guide to Fringe Benefits](#), for more information. Accordingly, those amounts are not qualified leave wages and are not factored into the calculation of the amount by which the FFCRA increases the employer's credit on account of the employer's share of Medicare tax.



## Special Issues for Employees

### **57. Are qualified sick leave wages and qualified family leave wages taxable to employees?**

Yes. Under sections 7001(c) and 7003(c) of the FFCRA, qualified leave wages are wages as defined in section 3121(a) of the Internal Revenue Code (the “Code”) and compensation as defined in section 3231(e) of the Code, so the employee must pay social security and Medicare taxes (and for railroad employees, Tier II of the Railroad Retirement Tax Act tax). In addition, wages are generally compensation for services subject to income tax under section 61 of the Code and federal income tax withholding under section 3402 of the Code unless an exception applies. The FFCRA did not include an exception for qualified leave wages from income.

### **58. Are qualified sick leave wages and qualified family leave wages excluded from gross income as “qualified disaster relief payments”?**

No. Section 139 of the Internal Revenue Code (Code) excludes from a taxpayer’s gross income certain payments to individuals to reimburse or pay for expenses related to a qualified disaster (“qualified disaster relief payments”). Although the COVID-19 outbreak is a “qualified disaster” for purposes of section 139 the Code (see below), qualified leave wages are not excludible qualified disaster relief payments, because qualified leave wages are intended to replace wages or compensation that an individual would otherwise earn, rather than to serve as payments to offset any particular expenses that an individual would incur due to COVID-19.

Section 139(c)(2) of the Code provides that for purposes of section 139 of the Code, the term “qualified disaster” includes a federally declared disaster, as defined by 165(i)(5)(A) of the Code. The COVID-19 pandemic is a “federally declared disaster,” as defined by section 165(i)(5)(A) of the Code. On March 13, 2020, the President of the United States issued a Proclamation declaring a national emergency concerning the Novel Coronavirus Disease (COVID-19) outbreak, stating that the ongoing COVID-19 pandemic warrants an emergency determination under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 – 5207. A “qualified disaster relief payment” is defined by section 139(b) of the Code to include any amount paid to or for the benefit of an individual to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster. Qualified disaster relief payments do not include income replacements such as sick leave or other paid time off paid by an employer.

### **59. Can an employee receive both “qualified sick leave wages” and “qualified family leave wages”? (Updated Nov. 25, 2020)**

Yes, but at different times. Qualified sick leave wages are available for up to 80 hours during which an employee cannot work or telework for any of six reasons related to COVID-19, including because the employee must care for his or her child whose school or place of care is closed, or whose child care provider is unavailable, for reasons related to COVID-19. By contrast, qualified family leave wages are available only because the employee must care for his or her child whose school or place of care is closed, or whose child care provider is unavailable, for reasons related to COVID-19, and only after an employee has been unable to work or telework for this reason for 80 hours.

**Example:** Your child-care provider is unavailable indefinitely due to the COVID-19 outbreak, leaving you unable to work or telework to care for your child. For up to the first 80 hours of any period of leave to care for your child, you are entitled to qualified sick leave wages, up to \$200 per day and \$2,000 in the aggregate. After that, you are entitled to qualified family leave wages for up to 10 weeks of additional leave you need, up to \$200 per day and \$10,000 in the aggregate.



## Specific Provisions Related to Self-Employed Individuals

### **60. Who is an eligible self-employed individual for purposes of the qualified sick leave credit and the qualified family leave credit? (Updated Nov. 25, 2020)**

An eligible self-employed individual is defined as an individual who regularly carries on any trade or business within the meaning of section 1402 of the Internal Revenue Code, and would be entitled to receive qualified sick leave wages or qualified family leave wages under the FFCRA if the individual were an employee of an Eligible Employer (other than himself or herself) that is subject to the requirements of the FFCRA.

Eligible self-employed individuals are allowed an income tax credit to offset their federal self-employment tax for any taxable year equal to their “qualified sick leave equivalent amount” or “qualified family leave equivalent amount.”

### **61. How is the “qualified sick leave equivalent amount” for an eligible self-employed individual calculated?**

For an eligible self-employed individual who is unable to work or telework because the individual:

1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
3. Is experiencing symptoms of COVID-19 and seeking a medical diagnosis,

the qualified sick leave equivalent amount is equal to the number of days during the taxable year that the individual cannot perform services in the applicable trade or business for one of the three above reasons, multiplied by the lesser of \$511 or 100 percent of the “average daily self-employment income” of the individual for the taxable year.

For an eligible self-employed individual who is unable to work or telework because the individual:

1. Is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
2. Is caring for a child if the child’s school or place of care has been closed, or child care provider is unavailable due to COVID-19 precautions; or
3. Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor,

the qualified sick leave equivalent amount is equal to the number of days during the taxable year that the individual cannot perform services in the applicable trade or business for one of the three above reasons, multiplied by the lesser of \$200 or 67 percent of the “average daily self-employment income” of the individual for the taxable year.

In either case, the maximum number of days a self-employed individual may take into account in determining the qualified sick leave equivalent amount is ten.

**Note:** The only days that may be taken into account in determining the qualified sick leave equivalent amount are days occurring during the period beginning on April 1, 2020, and ending on December 31, 2020.

### **62. How is the “average daily self-employment income” for an eligible self-employed individual calculated?**

Average daily self-employment income is an amount equal to the net earnings from self-employment for the taxable year divided by 260. A taxpayer’s net earnings from self-employment are based on the gross income that he or she derives from the taxpayer’s trade or business minus ordinary and necessary trade or business expenses.



## **63. How is the “qualified family leave equivalent amount” for an eligible self-employed individual calculated?**

The qualified family leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days (up to 50) during the taxable year that the self-employed individual cannot perform services for which that individual would be entitled to paid family leave (if the individual were employed by an Eligible Employer (other than himself or herself)), multiplied by the lesser of two amounts: (1) \$200, or (2) 67 percent of the average daily self-employment income of the individual for the taxable year.

## **64. Can a self-employed individual receive both qualified sick or family leave wages and qualified sick or family leave equivalent amounts? (Updated Nov. 25, 2020)**

Yes, but the qualified sick or family leave equivalent amounts are offset by the qualified sick or family leave wages.

That is, if a self-employed individual is entitled to a refundable credit for a qualified sick leave equivalent amount under section 7002(a) of the FFCRA, and also receives qualified sick leave wages as an employee, section 7002(d)(3) of the FFCRA reduces the qualified sick leave equivalent amount for which the self-employed individual may claim a tax credit to the extent that the sum of the qualified sick leave equivalent amount described in section 7002(c) of the FFCRA and any qualified sick leave wages under section 7001(b)(1) of the FFCRA, exceeds \$2,000 (or \$5,110 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act (EPSLA)).

Similarly, if a self-employed individual is entitled to a refundable credit for a qualified family leave equivalent amount under section 7004(a) of the FFCRA, and also receives qualified family leave wages as an employee under the Emergency Family and Medical Leave Expansion Act (EFMLEA), section 7004(d)(3) of the FFCRA reduces the qualified family leave equivalent amount for which the self-employed individual may claim a tax credit to the extent that the sum of the qualified family leave equivalent amount described in section 7004(c) of the FFCRA and the qualified family leave wages under section 7003(b)(1) of the FFCRA, exceeds \$10,000.

**Example:** In her capacity as an employee, Taxpayer A receives \$4000 in qualified sick leave wages, comprised of:

- \$3000 in qualified sick leave wages for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA; and
- \$1000 in qualified sick leave wages for reasons described in paragraphs (4), (5), or (6) of the EPSLA.

In addition, in her capacity as a self-employed individual, Taxpayer A is eligible for \$3300 in qualified sick leave equivalent credits, comprised of:

- \$2500 in qualified sick leave equivalent credits for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA; and
- \$800 in qualified sick leave equivalent credits for reasons described in paragraphs (4), (5), or (6) of section 5102(a) of the EPSLA.

Taxpayer A must reduce the \$3300 of total qualified sick leave equivalent credit for which she is eligible by \$2190, which is comprised of:

- The excess of the qualified sick leave wages and qualified sick leave equivalent credits for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA over \$5110 (that is, \$390); plus



- The excess of the qualified sick leave wages and qualified sick leave equivalent credits for reasons described in paragraphs (4), (5), or (6) of section 5102(a) of the EPSLA over \$2000 (that is, \$0); plus
- The remaining excess of the total leave credits to which Taxpayer A is entitled in her capacity as either an employee or a self-employed individual over \$5110 (that is, \$1800).

Accordingly, Taxpayer A may claim a qualified sick leave equivalent credit of \$1110.

**Example:** In his capacity as an employee, Taxpayer B receives \$6000 in qualified family leave wages. In addition, in his capacity as a self-employed individual, Taxpayer B is eligible for \$4500 in qualified family leave equivalent credits. Taxpayer B may claim a qualified family leave equivalent credit of \$4000, because he must offset the total qualified family leave wages and qualified family leave equivalent credits to which he is entitled under the EFMLEA (that is, \$10,500) by the excess of this amount over \$10,000 (that is, \$500).

## ***65. How does a self-employed individual claim the credits for qualified sick leave equivalent amounts or qualified family leave equivalent amounts?***

The refundable credits are claimed on the self-employed individual's Form 1040, U.S. Individual Income Tax Return, tax return for the 2020 tax year.

### ***65a. How does a self-employed individual determine the sick and family leave equivalent tax credit that he or she may claim? (Added Nov. 25, 2020)***

A self-employed individual will determine the sick and family leave equivalent tax credit to which he or she is entitled by completing Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals. This form will be available during the fourth quarter of 2020 at [irs.gov](https://www.irs.gov). To complete the Form 7202, self-employed individuals who are also employees will need any amount of qualified sick and family leave wages that their employers reported on the [Form W-2, Wage and Tax Statement](#). For more information on the requirement for Eligible Employers to report the amount of qualified sick and family leave wages paid to employees on Form W-2, see [Notice 2020-54](#).

### ***66. How can a self-employed individual cover his or her qualified sick leave equivalent and qualified paid family leave equivalent amounts before filing his or her Form 1040? (Updated Nov. 25, 2020)***

The self-employed individual may cover sick leave and family leave equivalents by taking into account the credit to which the individual is entitled and will claim on Form 1040, U.S. Individual Income Tax Return, in determining required estimated tax payments. This means that a self-employed individual can effectively reduce payments of estimated income taxes that the individual would otherwise be required to make if the individual was not entitled to the credit on the Form 1040.

Section 2302 of the CARES Act provides that self-employed individuals may defer the payment of 50% of the social security tax imposed under section 1401(a) of the Internal Revenue Code on net earnings from self-employment income for the period beginning on March 27, 2020, and ending Dec. 31, 2020. Self-employed individuals may defer these taxes in addition to the credits for qualified sick leave equivalent amounts or qualified family leave equivalent amounts. Accordingly, if the self-employed individual is eligible for these credits, the individual should take into account these credits in addition to any amount of self-employment tax the individual plans to defer under section 2302 of the CARES Act in determining required estimated tax payments.



**66a. Can an independent contractor who generally performs services for multiple clients as a nonemployee claim the tax credit with regard to the lost services due to COVID-19? (Added Nov. 25, 2020)**

Yes. If an individual is an independent contractor who generally performs services for multiple clients as a nonemployee, he or she is self-employed and is eligible for the tax credits for days he or she is not able to work or telework for reasons related to COVID-19.

For more information on whether an individual is an independent contractor or an employee, and the tax consequences of either status, see [Self-Employed Individuals Tax Center](#).

**66b. Can a partner in a partnership claim the tax credits? (Added Nov. 25, 2020)**

Maybe. A partner in a partnership is a self-employed individual if the partner's distributive share constitutes net earnings from self-employment or if the partner receives guaranteed payments for his or her services. If the partner is a self-employed individual and is not able to work or telework for reasons related to COVID-19, the partner is eligible for the tax credits.

Generally, partners in a partnership (including members of a limited liability company (LLC) that is treated as a partnership for federal tax purposes) are considered to be self-employed, not employees, when performing services for the partnership.

**66c. Can a self-employed individual use the Form 7200 to apply for an advance of the tax credits? (Added Nov. 25, 2020)**

No. [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), is only available for employers that file [Form 941, Employer's Quarterly Federal Tax Return](#), or certain other employment tax returns. However, a self-employed individual may reduce payments of estimated income taxes equal to the credit to which the individual is entitled.

For more information about how a self-employed individual can reduce his or her estimated income taxes to cover a credit for qualified sick leave equivalent amounts and qualified family leave equivalent amounts, see "[How can a self-employed individual cover his or her qualified sick leave equivalent and qualified paid family leave equivalent amounts before filing his or her Form 1040?](#)"

**67. Does an eligible self-employed individual who is allowed a credit under section 7002 of the FFCRA for the qualified sick leave equivalent amount or a credit under section 7004 of the FFCRA for the qualified family leave equivalent amount include any amount of these credits in gross income? (Added Nov. 25, 2020)**

No, the amount of the credits allowed under sections 7002 and 7004 of the FFCRA are not included in the gross income of the eligible self-employed individual.

**68. How Should a Self-Employed Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wage Equivalents? (Added Nov. 25, 2020)**

Self-employed individuals should maintain documentation establishing their eligibility for the credits as a self-employed individual. That documentation should be similar to the documentation that employers claiming the credits for qualified leave wages under FFCRA sections 7001 and 7003 should maintain under "[How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?](#)"



## Where can I get more information?

- [Coronavirus Tax Relief](#)
- Department of Labor's [COVID-19 and the American Workplace](#)

Source: [Internal Revenue Service](#)