



COVID-19 Relief - Payroll Tax Credits for Emergency Sick Pay, Family Leave Wages and Employee Retention

- Emergency Paid Sick Leave Act tax credits
- Emergency Family and Medical Leave Expansion Act tax credits
- The Employee Retention Tax Credit

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There are three COVID-19 related tax credits that were introduced under the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act):

- Emergency Paid Sick Leave Act tax credits
- Emergency Family and Medical Leave Expansion Act tax credits
- The Employee Retention Tax Credit

This summary is also available at www.brinkersimpsoncares.com.

These credits are confusing and require administrative efforts for compliance. We are hosting a webinar to provide information, clarity and answers to your questions about your unique circumstances.

We will cover a summary of the credits, eligibility, how to claim them, what is the maximum amount that can be claimed, reporting and compliance considerations, recent guidance from DOL and IRS and end with a Q&A.



FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (“FFCRA”), requires employers with less than 500 employees to provide up to 80 hours of paid sick leave (i) the Employee Paid Sick Leave Act (“EPSL”) and the Emergency Family and Medical Leave Expansion Act (“Expanded FMLA”). Self-employed individuals are eligible to take the credit, but can not receive an advance using Form 7200.



FFCRA - Emergency Paid Sick Leave Act (EPSL)

Emergency Family and Medical Leave Expansion Act (EFMLE)

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Emergency Paid Sick Leave (EPSL) – effective date 4/1/20

Employers must provide up to 80 hours of fully-paid sick leave (capped at \$511 per day plus allocable cost of health insurance) if the employee is unable to work or telework due to being quarantined, self-quarantined, or has COVID-19 OR up to 80 hours of leave at two-thirds pay (capped at \$200 per day plus allocable cost of health insurance) if the employee is caring for children who are home because their schools or places of care are closed or care is unavailable due to the impact of COVID-19.

Employers with fewer than 50 employees are eligible for an exemption from the requirements to provide leave to care for a child whose school is closed, or child care is unavailable in cases where the viability of the business is threatened. There is currently no similar exemption for the paid sick leave (criteria 1-3 on next slide)



FFCRA QUALIFYING ELIGIBILITY CRITERIA FOR EMERGENCY SICK AND LEAVE WAGES

(2 important points to consider – telework; lack of work not qualified reason)

1. is subject to a federal, state, or local quarantine or isolation order related to COVID-19 (and can not telework; can not be due to lack of work);
2. has been advised by a health care provider to self-quarantine due to reasons related COVID-19 (and can not telework);
3. is experiencing symptoms of COVID-19 and is seeking a medical diagnosis (and can not telework);
4. is caring for a person (must be family or other close personal relationship) subject to a quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to reasons related to COVID-19;
5. is caring for a child of the employee whose school or place of care is closed (or whose childcare provider is unavailable) due to reasons related to COVID-19; 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.



Expanded Family Medical Leave (EFMLA)

Employers are required to provide an additional 10 weeks of leave at two-thirds pay if the employee is caring for children who are home because their schools or places of care are closed (or their child care providers are unavailable) due to the impact of COVID-19. Employees must have been employed for at least 30 days to qualify.

Employees are eligible for paid leave under the EFMLA only if the employee is unable to work or telework in order to care for to a child whose school or place of care is closed (or whose childcare provider is unavailable) for reasons related to COVID-19. Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue.

Special emphasis has been noted in the recently released IRS and DOL guidance to clarify that employees **are not** eligible for EPSL or EFMLA due to financial impact to the employer or lack of work available (even if related to COVID-19).



EMPLOYEE RETENTION CREDIT – CARES ACT

- The CARES Act encourages eligible employers who are financially impacted as a result of COVID-19 stay at home and isolation orders to retain their employees. Employers are not **required** to pay employees under the CARES Act Retention Credit, but must do so in order to receive the benefit of the tax credits (“employee retention credits”).
- The credit available to eligible employers for employee retention is limited to an amount equal to 50 percent of “qualified wages” that the employers pay to their employees. Qualified wages are wages paid by an eligible employer to employees after March 12, 2020, and before January 1, 2021. Qualified wages include the eligible employer’s qualified health plan expenses that are properly allocable to the wages.



Am I eligible?

Qualifying employers must fall into one of two categories:

- The employer's business is fully or partially suspended by government order due to COVID-19 during the calendar quarter; or
- The employer's gross receipts are below 50% of the comparable quarter in 2019. Once the employer's gross receipts go above 80% of a comparable quarter in 2019, the employer no longer qualifies after the end of that quarter.

These measures are calculated each calendar quarter. You can not participate in the Paycheck Protection Program and take advantage of the employee retention credit.



What Wages Qualify?

- Whether wages are qualified wages also depends on the average number of full-time employees employed by the eligible employer during 2019. Generally, a “full-time employee” means an employee who is employed on average at least 30 hours of service per week.
- If an eligible employer averaged more than 100 full-time employees in 2019, qualified wages are the wages paid to an employee during a period the employee is not providing services due to either (1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or (2) a significant decline in gross receipts.
- If an eligible employer averaged 100 or fewer full-time employees in 2019, qualified wages are the wages paid to any employee during any period of economic hardship.



How Much is Covered?

- The maximum amount of qualified wages taken into account with respect to each employee, for all calendar quarters is \$10,000, so that the maximum amount of the employee retention credit for an eligible employer for qualified wages paid to each employee is \$5,000.
- **Eligible employers may not receive both the employee retention credit and a small business interruption loan under the paycheck protection program under the CARES Act.**
- **Employers are eligible to claim both credits under the FFCRA and CARES Act, but the amount of qualified wages for which an employer may claim the credit under the CARES Act does not include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA.**
- *Note:* One question requiring clarification from the IRS is whether an employer that moves to tele-working could take the position that they had experienced a partial shutdown for purposes of determining qualified wages if the employer did so prior to a government restriction on going to work.



PAYING FOR & CLAIMING THE COVID-19 TAX CREDITS

- Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit.
- Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns or Form 941 beginning with the second quarter. If the employer's employment tax deposits exceed the credit, the employer may receive an advance payment from the IRS by submitting [Form 7200](#).
- Employers eligible for advance payments of the three credits can find IRS Form 7200 (advance Payment of Employer Credits Due to COVID-19)



Example: Advance Payments of COVID-19 Tax Credits

- The instructions to Form 7200 contain the following example showing how an employer could reduce its employment tax deposits and claim an advance payment for the excess of the employer's credit over the amount of the retained tax deposits:
- An employer entitled to a \$10,000 credit under the CARES Act that is required to deposit \$8,000 in employment taxes could retain the entire \$8,000 of taxes as a portion of the tax credit it is entitled to and file a request for an advance payment for the remaining \$2,000 using Form 7200.