



Tax Credits under FFCRA: Qualified leave wages & health plan expenses

The Families First Coronavirus Response Act (“FFCRA”) created two new refundable tax credits intended to reimburse employers for costs associated with their financial obligations to provide leave benefits created by the Act plus the cost of continuing health insurance for employees on FFCRA leave.

Employers with fewer than 500 employees (“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.

Determining what is meant by “costs associated” and to understand what is included in the tax credits, the [DOL’s guidance](#) references the Internal Revenue Code.

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.

Qualified leave wages are wages as defined in section 3121(a) of the Internal Revenue Code for social security and Medicare tax purposes.

In general, the term “group health plan” as defined in Section 5000(b)(1) includes all plans that are subject to continuation coverage under COBRA, such as medical, dental, vision, health FSA and HRA.

(1) Group health plan The term “group health plan” means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families

However, the provisions related to determining which contributions by an employer to these health plans are allowed to be included for purposes of claiming payroll tax credits and the extent these amounts are excluded from the gross income of employees under Section 106(a) of the Code is not black and white.

26 CFR 1.106-1: Contributions by employer to accident and health plans indicates:

(a) The gross income of an employee does not include the contributions that the employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by the employee, the employee's spouse, the employee's dependents (as defined in section 152 determined without regard to section 152(b)(1), (b)(2), or (d)(1)(B)), or any child (as defined in section 152(f)(1)) of the employee who as of the end of the taxable year has not attained age 27. The employer may contribute to an accident or health plan either by paying the premium (or a portion of the premium) on a policy of accident or health insurance covering one or more of his employees, or by contributing to a separate trust or fund (including a fund referred to in section 105(e)) which provides accident or health benefits directly or through insurance to one or more of his employees. However, if such insurance policy, trust, or fund provides other benefits in addition to accident or health benefits, section 106 applies only to the portion of the employer's contribution which is allocable to accident or health benefits. See paragraph (d) of §1.104-1 and §§ 1.105-1 through 1.105-5, inclusive, for regulations relating to exclusion from an employee's gross income of amounts received through accident or health insurance and through accident or health plans. For the treatment of the payment of premiums for accident or health insurance from a qualified trust under section 401(a), see §§ 1.72-15 and 1.402(a)-1(e).

These are complicated issues and determining the deductible costs is not easy. Therefore, we recommend employers who are uncertain should reach out to their legal counsel or qualified accountant for guidance.

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