

Legislative Relief for Employers and Their Employees Affected by the Coronavirus Pandemic

Labor & Employment Law Update

on March 22, 2020

On March 18, the president signed into law H.R. 6201. Division G of the law provides tax credits for businesses that compensate their employees for time off due to the Coronavirus pandemic. The purpose of the law is to help employees.

A tax credit is more valuable than a tax deduction. For example, a \$10 credit reduces tax by \$10. But the value of a \$10 deduction depends on the taxpayer's tax rate. If that is 36%, the value of the deduction is \$3.60.

ADMINISTRATIVE EXPLANATION OF THE NEW LAW

On March 20, 2020, the Treasury Department, IRS and Department of Labor issued Release 2020-57 which provides guidance on how small and midsize employers can begin taking advantage of two new refundable payroll tax credits, designed to immediately and fully reimburse them, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees, under the Families First Coronavirus Response Act (Act).

The Release highlights that under the Act businesses with fewer than 500 employees can obtain necessary funds to provide employees with paid leave, either for the employee's own health needs or to care for family members. The Act will enable employers to keep their workers on their payrolls, while at the same time ensuring that workers are not forced to choose between their paychecks and the public health measures needed to combat the virus.

Key Takeaways from Release 2020-57

Paid Sick Leave for Workers

For COVID-19 related reasons, employees can receive up to 80 hours of paid sick leave and expanded childcare leave when employees' children's schools are closed or child care providers are unavailable.

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Complete Coverage

Employers receive 100% reimbursement for paid leave pursuant to the Act.

- Health insurance costs are also included in the credit.
- Employers face no payroll tax liability from paid leave.
- Self-employed individuals receive an equivalent credit.

Fast Funds

Reimbursement will be quick and easy to obtain.

- An immediate dollar-for-dollar tax offset against payroll taxes will be provided.
- Where a refund is owed, the IRS will send the refund as quickly as possible.

Small Business Protection

The Act also provides that employers with fewer than 50 employees will be eligible for an exemption when inapplicability of the Act would jeopardize the ability of the business to survive. The exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern. The Department of Labor will provide emergency guidance and rulemaking to clearly articulate this standard.

Easing Compliance

- Requirements are subject to 30-day non-enforcement period for good faith compliance efforts.

Immediate Advantage of Paid Leave Credits

Businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that will be released next week.

Examples

The Release gives the following two examples for employers:

- If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date

- If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.

State taxes

These changes have been made only on the federal level. Although states are working to make changes to their own laws, most states have not adopted comprehensive changes.

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