

Time for Employers that Were Subject to FFCRA Leave to Send Corrected W-2s?

Labor & Employment Law Update

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2020 was certainly a unique year for employers and employees. This includes complications with wage reporting.

Most employers have issued wage reports to their employees by the January 31st deadline and prior to the publication of this alert. These employers must now determine whether they are required to issue corrected Form W-2s.

Thanks to the Families First Coronavirus Response Act (FFCRA) (which required employers with fewer than 500 employees to provide paid sick and family leave for certain COVID-related reasons) certain employees received paid sick leave when unable to work and paid family leave to take care of a son or daughter in the event of a school closure or their child care provider was unavailable due to COVID-19. These payments are counted as wages.

The IRS has released guidance on the requirement that employers report qualified paid sick and family leave wages provided under the FFCRA. *See* IRS Notice 2020-54. Unfortunately, this guidance was not incorporated into the instructions for Form W-2. As a result, many employers likely misreported leave payments and must send corrected Form W-2s to their employees.

Reporting qualified leave wages on Form W-2.

Qualified sick and family leave wages must be reported in Boxes 1, 3 (up to the social security wage base), and 5 of Form W-2. In addition, employers must separately report in Box 14 of Form W-2 or on a separate statement the amounts it paid to the employee for the various forms of FFCRA leave:

- The total amount of qualified Emergency Paid Sick Leave wages paid while the employee was quarantined or experiencing symptoms and seeking a diagnosis, when applicable, using the following or similar language: “sick leave wages subject to the \$511 per day limit”;
- The total amount of qualified Emergency Paid Sick Leave wages paid while the employee was caring for someone else, when applicable, using the following or similar language: “sick leave wages subject to the \$200 per day limit”; and

- The total amount of qualified Emergency Family and Medical Leave Expansion Act leave wages paid using the following or similar language: “emergency family leave wages”.

If the employer opts to provide a separate statement to report qualified sick or family leave wages, it must be provided with the employee’s Form W-2 in the same manner (paper vs. electronic) and time as the W-2.

Bottom-Line

Most employers would likely have incorporated FFCRA wages in Boxes 1, 3 and 5 as the payments were issued to employees through the regular payroll process. However, separately delineating the exact amount of FFCRA wages paid in Box 14 (which is primarily for informational purposes) is important where an individual is self-employed. With the specific FFCRA wages delineated in Box 14, it is easier for the IRS and the taxpayer to ensure an individual does not collect duplicative FFCRA benefits.

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