



COMPLIANCE ALERT

AGENCY GUIDANCE ON THE CORONAVIRUS RESPONSE ACT

written by, Suzanne D'Amato, Esq

The U.S. Treasury Department, Internal Revenue Service, and U.S. Department of Labor have begun to provide guidance on the Families First Coronavirus Response Act signed by President Trump on March 18, 2020 (the "Act").

The Act requires all employers with fewer than 500 employees to provide employees with paid leave, either for the employee's own health needs or to care for a child under age 18 whose school or care provider is closed or unavailable. Our March 19th Compliance Alert, available [here](#), has further details on the Act.

KEY TAKEAWAYS FROM TREASURY, IRS & DOL

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

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

Reimbursement will be quick and easy to obtain

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

Small business protection

- Employers with fewer than 50 employees are eligible for an exemption from the requirement to provide paid leave to care for a child whose school is closed, or whose childcare is unavailable in cases where the viability of the business is threatened

PROMPT PAYMENT FOR THE COST OF PROVIDING LEAVE

When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers are then required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941) with the IRS.

Under guidance that will be released this week, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with IRS.

The payroll taxes that are eligible for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able to file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced soon.

EXAMPLES

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.



SMALL BUSINESS EXEMPTION

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. 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 DOL will provide emergency guidance and rulemaking to clearly articulate this standard.

As always, please contact your Benefits Advisor if you have questions about how the forthcoming guidance may affect you. Hilb Group will continue to keep you up to date with relevant news, changing guidelines, new regulations, and other information during this unprecedented challenge.

