

DOL: Employers Must Document Paid Leave for Payroll Tax Credit

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Employers must document employees' need for leave if they wish to take advantage of payroll tax credits provided by the Families First Coronavirus Relief Act, the U.S. Department of Labor announced last week.

The act requires employers to provide employees with paid sick leave and expanded family leave for certain reasons related to the COVID-19 outbreak, as we [explained in a previous alert](#). Employers, however, may recoup the costs of providing this leave in the form of a tax credit (in an amount equal to the cost of the leave) on their quarterly filed IRS Form 941. Instead of requiring employers to file form 941 and wait for a refund, the department is permitting employers to receive an advance on this credit by allowing employers to reduce their next required payroll tax deposit by the amount of such leave costs.

Unlike ordinary forms of family leave under the Family Medical Leave Act, employers cannot require that employees' health care providers certify their need for paid sick leave or expanded family leave provided by the Families First Coronavirus Relief Act.

With implementation fast approaching on April 1, the department's announcement on Thursday clarified that employers who wish to take advantage of the act's payroll tax credit must require that employees provide the employer with "appropriate documentation" demonstrating the employee's entitlement to the paid leave. According to the department, this includes "the employee's name, qualifying reason for requesting leave, statement that the employee is unable to work . . . and the date(s) for which leave is requested." Employers also must retain documentation of the reason for the leave, such as "the source of any quarantine or isolation order, or the name of the health care provider who has advised you to self-quarantine." According to the department, employers intending to claim the act's payroll tax credit "should retain this documentation" so that it can be provided to the IRS.

For example, if an employee takes leave to care for a child whose school or child care provider is closed, the employer should require the employee to provide "a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider."

Employers also will need to document whether teleworking is feasible to claim the payroll tax credit for providing paid sick leave or expanded family leave. Teleworking employees may be entitled to receive paid sick leave or expanded family leave if their situation prevents them from working from home. But employees are not eligible for the act's paid leave entitlements if they are able to work virtually. As a result, employers wishing to claim the payroll tax credit must document that the employee could not continue to work for the employer remotely.

Additional guidance from the U.S. Treasury Department regarding this issue is expected within days.

If you have any questions on this guidance from the U.S. Department of Labor and how it can affect your business, please contact [David Freedman](#), [Lori McElroy](#) or any attorney in the [Barley Snyder Employment Practice Group](#).

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