



LMHS, P.C.
Certified Public Accountants and Advisors

To: Our Clients and Friends
From: Your team at LMHS, P.C.
Date: March 23, 2020
Subject: Expanded Family and Medical Leave Act

The Families First Coronavirus Response Act (FFCRA) has implemented extended family and medical leave programs in response to the COVID-19 pandemic. Generally speaking, the FFCRA has implemented the following:

Extended Family and Sick Leave at employee's regular rate of pay. An employee is entitled to two (2) weeks or up to eighty (80) hours of their regular rate of pay if such employee is unable to work or telework due to any quarantine pursuant to a federal or state order, or the advice of a healthcare professional, or if such employee is experiencing COVID-19 symptoms and is awaiting a medical determination by a healthcare professional.

Extended Family and Sick Leave and Extended Family Medical Leave at two-thirds the employee's regular rate of pay. An employee is entitled to two-thirds their regular rate of pay for two (2) weeks or up to eighty (80) hours of their regular rate of pay if such employee is unable to work or telework in order to to care for an individual subject to quarantine pursuant to a federal or state order, or the advice of a healthcare professional; or to care for a child whose school or child care has been closed due to COVID-19. An employee that has been employed for at least 30 days prior to their leave is entitled to two-thirds their regular rate of pay for an additional ten (10) weeks if they are unable to work or telework due to a bona fide need to care for a child whose school or child care is closed due to COVID-19.

APPLICATION OF EXTENDED RULES

Which employers do the extended leave rules apply to? The FFCRA's extended leave rules apply to Covered Employers. A Covered Employer is defined as certain public employers, as well as any private employer with less than 500 employees. Certain employers with less than 50 employees may be exempted by the Department of Labor if the additional requirements would create undue hardship on the business going forward. Additional guidance on employers with less than 50 employees is forthcoming from the Department of Labor.

Which employees do the extended leave rules apply to? The FFCRA's extended leave rules apply to all employees, provided they are seeking two (2) weeks of full or two-thirds of their regular pay under the conditions outlined above. Any employee seeking two-thirds their regular pay for an additional ten (10) weeks under the conditions outlined above must have been employed for thirty (30) days prior to the commencement of their leave.

Cap of extended leave benefits. The extended leave amounts shall be capped at \$511 per day, or \$5,110 in the aggregate for full-time pay and shall be capped at \$200 per day, or \$2,000 in the aggregate for two-thirds pay.



No rollover. Any amount of extended leave granted by the FFCRA that goes unused by December 31, 2020 is not eligible to be rolled over into any subsequent year. If the employee's employment ends prior to December 31, 2020 they are not entitled to any payout for unused amounts of this extended leave.

TAX CREDITS FOR EMPLOYERS WHO PAY EXTENDED LEAVE

Any employer who incurs a cost under the FFCRA for extended leave shall be entitled to a tax credit for amounts paid to employees. These credits will be applied to the employer portion of the Social Security taxes owed by the employer. An employer may receive a credit equal to 100% of the wages paid under the FFCRA toward their Social Security taxes owed in the quarter the extended leave wages are paid. Self-employed persons may take any amounts paid as a reduction to their self-employment taxes. Employers may also receive an additional credit for any amount used to maintain health insurance coverage for an employee during the time of their leave.

Limitations. The credit allowed to each employer is limited to the following:

- For ten (10) days of leave at regular pay, an employer may claim \$511 per day, up to \$5,100 in the aggregate for the ten (10) days;
- For ten (10) days of leave at two-thirds pay, and employer may claim \$200 per day, up to \$2,000 in the aggregate for the ten (10) days;
- For ten (10) weeks of leave at two-thirds pay an employer may claim \$200 per day per employee, up to \$10,000 per quarter; and
- The Social Security taxes paid by the employer on all wages paid to all employees during a quarter.

Employer retention of payroll taxes. Under guidance from the IRS and the Department of the Treasury, employers are allowed to immediately retain amounts deemed payroll taxes traditionally withheld from an employee's paycheck. Items that may be retained and not remitted to the federal government by an employer include federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes. Any amounts retained from these taxes traditional remitted to the IRS on a quarterly basis **MUST** be used to pay extended leave amounts incurred by the employer. Any other use will not be permitted. If there is insufficient payroll taxes to fund the Extended Sick and Medical Leave incurred by the employer, an employer may apply for an accelerated payment with the IRS. Additional guidance on this program is expected in the coming days.