

Swift 100% Reimbursement to Employers for Emergency Paid Sick and Family Leave

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Now that the devastating scope of the COVID-19 pandemic has become clear, the United States government is responding rapidly to address both its health care and economic impacts. Two emergency supplemental appropriations packages have already been enacted and a third is being prepared. We've recently [described](#) the requirements that employers provide emergency paid sick and family leave related to COVID-19 under the Families First Coronavirus Response Act, enacted on March 18, 2020 (the "Act"). In this alert, we'll focus on the method of reimbursement for employers who pay employees for this emergency leave under the Act.

"Quick and Easy" Reimbursement

Because of the cost to employers of implementing the emergency paid sick and family leave provisions, Congress has provided that employers will receive 100% reimbursement of these costs from the federal government. On Friday, March 20, the Treasury Department, IRS and Labor Department announced their plan to issue additional guidance this week that is intended to ensure that the reimbursement will be "quick and easy" for employers to obtain. Friday's announcement, generally describes the reimbursement procedures as follows:

First, employers who are paying qualifying sick or family leave compensation to employees will be given an immediate dollar-for-dollar tax offset ("credit") against payroll taxes. In particular, employers will be able to retain an amount of payroll taxes equal to the amount of the qualifying sick and family leave that they paid, rather than deposit those amounts with the IRS. The payroll taxes that are available 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, in each case, with respect to all employees. Employers also will not incur payroll tax liabilities on qualifying paid sick and family leave.

Second, if the credit against payroll tax deposits is not sufficient to cover the cost of paid sick and family leave, employers can seek an expedited advance refund from the IRS by submitting a streamlined claim form that is scheduled to be released this week. Where a refund is owed, the IRS will send the refund as quickly as possible, generally in two weeks or less. The details of this expedited refund procedure are scheduled to be announced this week.

Additional Credit for Group Health Plan Coverage

In the case of employers who offer group health plan coverage to their employees, the amount of the above reimbursement can generally be increased beyond the amount of the emergency paid sick and family leave. In general, the amount of the reimbursement is increased by the amount paid by the employer to maintain a group health plan that provides coverage for employees who are receiving sick leave coverage to the extent that the amount of premiums paid by the employer for that coverage are excluded from the employee's gross income (which would almost always be the case). Among other things, the benefit of this provision is that an employee who is receiving sick leave coverage would be able to maintain their health insurance coverage during the period that they are out of work.

No Double Benefit

An employer, of course, is not able to receive a double benefit for both receiving the reimbursement and deducting sick leave wages paid to an employee as an ordinary and necessary business expense. To avoid the double benefit, the employer's gross income will generally be increased by the amount of the reimbursement. Moreover, to the extent that an employer was, prior to the effective date of the law, providing paid family and medical leave and claiming a credit under section 45S of the Internal Revenue Code, the employer could not

claim both credits. Also of note: the reimbursement does not apply to the United States government as an employer, or to state and local governments as employers.

Should you have any questions about the reimbursement provisions, please contact [Nicola Lemay](#) in Foley Hoag's tax practice; [Allison Anderson](#) in Foley Hoag's labor and employment practice; or [Tom Barker](#) in Foley Hoag's health care practice. We will continue to monitor developments in this area as the IRS or Treasury Department issue additional guidance.

For timely updates and guidance on your COVID-19 issues, visit the [Foley Hoag COVID-19 Resource Page](#).

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