

FEDERAL GOVERNMENT ISSUES INFORMAL GUIDANCE TO SPEED FFCRA TAX CREDITS TO EMPLOYERS

Hodgson Russ Tax and Labor & Employment Alert
March 24, 2020

On March 20, 2020, the U.S. Treasury Department, Internal Revenue Service (“IRS”) and Department of Labor (“DOL”) issued additional guidance relating to the federal tax incentives and employer compliance under the “Families First Coronavirus Response Act” (“FFCRA”). The new guidance can be found in its entirety [here](#).

Federal Tax Relief – Updated Guidance Regarding FFCRA Relief Implementation

As a brief recap to our earlier alert regarding employer relief efforts, which can be found [here](#), the FFCRA provided refundable payroll tax credits to employers, with the goal of reimbursing certain employers for the cost of providing Coronavirus-related leave to their employees. Many employers had questions regarding the real world implications for their business and how to take advantage of these credits.

In a recent Information Release (IR-2020-57), the IRS provided informal guidance designed to give employers insight into how to take advantage of the FFCRA relief provisions. While much of the information provided in this guidance was discussed at length in our previous update, this guidance does contain some new and helpful information for employers.

Most importantly, the informal guidance provides that instead of seeking a refund for the cost of providing leave, employers 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 the IRS.” This is an immensely helpful development, since the FFCRA provided relief in the form of reimbursement would likely have been received by employers long after the Coronavirus epidemic damage had been done. By allowing employers to keep a portion of the deposit they otherwise would pay as part of their employees’ federal, social security and Medicare taxes in order to pay for Coronavirus-related leave, the IRS allows employers to benefit from the FFCRA program immediately. While the IRS has only issued informal guidance at this point, detailed guidance is expected to be released later this week.

Attorneys

James Bandoblu Jr.
Brad Birmingham
Luisa Bostick
Joseph Braccio
Thomas Collura
Glen Doherty
Ariele Doolittle
Andrew Drilling
Ryan Everhart
Carol Fitzsimmons
Andrew Freedman
Peter Godfrey
John Godwin
Debra Herman
Charles H. Kaplan
Christopher Massaroni
Elizabeth McPhail
Lindsay Menasco
Thomas Nelson
Kinsey O'Brien
Jeffrey Swiatek
William Turkovich
Marla Waiss
Michael Zahler

Practices & Industries

Business Tax
Labor & Employment

FEDERAL GOVERNMENT ISSUES INFORMAL GUIDANCE TO SPEED FFCRA TAX CREDITS TO EMPLOYERS

The IRS guidance also provides examples detailing how employers will take advantage of the FFCRA credits. One such example is included below:

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.

Additionally, the Information Release provides that the IRS intends to issue refunds quickly in order to help alleviate the burden of the Coronavirus on employers. While no specific timeline is given, the IRS notes that refunds will be sent “as quickly as possible” when owed.

DOL Guidance – Compliance Window, Temporary Non-Enforcement Period, and Employer Exemptions

As discussed in our March 19, 2020 alert, the FFCRA expands the Family and Medical Leave Act and adopts an emergency paid sick leave act to address certain COVID-19 issues. The FFCRA takes effect on April 2, 2020, however, the DOL will observe a temporary non-enforcement period that provides thirty (30) days for employers to comply with the new leave requirements under the FFCRA. The informal guidance currently issued provides that the DOL will not bring an enforcement action against any employer for violations of the FFCRA so long as the employer has acted reasonably and in good faith to comply with FCCRA. For purposes of this non-enforcement position, “good faith” exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the DOL receives a written commitment from the employer to comply with the FFCRA in the future. During the non-enforcement period, the DOL will focus on compliance assistance.

Additionally, employers with fewer than 50 employees are eligible for an exemption from the expanded leave requirements relating to providing leave to care for a child whose school is closed, or child care unavailability in cases where the viability of the business is threatened. The DOL will provide emergency guidance and rulemaking to clearly articulate this exemption.

The federal guidance on COVID-19 relief efforts are continuously evolving. Hodgson Russ will continue to issue updated alerts as additional guidance is released.

If you have any questions regarding this alert, please contact a member of the Hodgson Russ Labor and Employment or Tax team.

Hodgson Russ remains on top of these circumstances as they develop. Our attorneys are working remotely, and ready, willing, and able to address the needs of our clients, so do not hesitate to contact us (attorney directory). **Please check our Coronavirus Resource Center to view many other alerts our attorneys in various practice areas have published on topics related to the pandemic.**

If you received this alert from a third party or from visiting our website, and would like to be added to any of our mailing lists, please visit us at: <https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications..html>.