

Guidance on Reporting Qualified Sick Leave Wages and Qualified Family Leave Wages Paid Pursuant to the Families First Coronavirus Response Act

Notice 2020-54

I. PURPOSE

This notice provides guidance to employers on the requirement to report the amount of qualified sick leave wages and qualified family leave wages paid to employees under the Families First Coronavirus Response Act (Families First Act), Pub. L. No. 116-127, 134 Stat. 178 (March 18, 2020). Employers will be required to report these amounts either on Form W-2, Box 14, or on a separate statement. This required reporting provides employees who are also self-employed with information necessary for properly claiming qualified sick leave equivalent or qualified family leave equivalent credits under the Families First Act.

II. BACKGROUND

The Families First Act generally requires employers with fewer than 500 employees to provide paid leave due to certain circumstances related to the Coronavirus Disease 2019 (COVID-19) through two separate provisions: the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.

Division E of the Families First Act, the Emergency Paid Sick Leave Act (EPSLA), requires certain employers to provide employees with up to 80 hours of paid sick leave if the employee is unable to work or telework because the employee:

- (1) is subject to a Federal, State or local quarantine or isolation order related to COVID-19;
- (2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (3) is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- (4) is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (5) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
- (6) is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of the Treasury and Labor.¹

An employee who is unable to work or telework for reasons related to COVID-19 described in (1), (2), or (3) above is entitled to paid sick leave at the employee's regular rate of pay or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$511 per day and \$5,110 in the aggregate. An employee who is unable to work or telework for reasons related to COVID-19 described in (4), (5), or (6) above is entitled to paid sick leave at two-thirds the employee's regular rate of pay or, if

¹ As of the date this Notice is being released, the U.S. Department of Health and Human Services has not yet specified any other such conditions.

higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$200 per day and \$2,000 in the aggregate.

Division C of the Families First Act, the Emergency Family and Medical Leave Expansion Act (EFMLEA), amends the Family and Medical Leave Act of 1993 to require employers to provide expanded paid family and medical leave to employees who are unable to work or telework for reasons related to COVID-19. An employee can receive up to 10 weeks of paid family and medical leave at two-thirds the employee's regular rate of pay, up to \$200 per day and \$10,000 in the aggregate if the employee is unable to work or telework because the employee is caring for a son or daughter whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19.

Sections 7001 and 7003 of the Families First Act generally provide that employers subject to the paid leave requirements under EPSLA and EFMLEA ("eligible employers") are entitled to fully refundable tax credits to cover the cost of the leave required to be paid for those periods of time during which employees are unable to work or telework for reasons related to COVID-19.²

Eligible employers are entitled to receive a refundable credit equal to the amount of the qualified sick leave wages and qualified family leave wages (collectively "qualified leave wages"), plus allocable qualified health plan expenses. The credit is allowed against the taxes imposed on employers by section 3111(a) of the Internal Revenue Code (Code) (the Old-Age, Survivors, and Disability Insurance tax (social security tax)),

² Under sections 7001(d)(4) and 7003(d)(4) of the Families First Act, these credits do not apply to the government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

first reduced by any credits claimed under sections 3111(e) and (f) of the Code, and section 3221(a) of the Code (the Railroad Retirement Tax Act Tier 1 tax), on all wages and compensation paid to all employees. Under section 7005 of the Families First Act, the qualified leave wages are not subject to the taxes imposed on employers by sections 3111(a) and 3221(a) of the Code. In addition, section 7005 provides that the credits under sections 7001 and 7003 of the Families First Act are increased by the amount of the tax imposed by section 3111(b) of the Code (employer's share of Medicare tax) on qualified leave wages.³

Specifically, section 7001(b) of the Families First Act provides eligible employers with a refundable tax credit for qualified sick leave wages paid to an employee not to exceed \$200 (or \$511 in the case of any day any portion of which the employee is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the EPSLA) for any day (or portion thereof), and the maximum number of days that may be taken into account per employee is ten days. Section 7003(b) of the Families First Act provides eligible employers with a refundable tax credit for qualified family leave wages paid to an employee not to exceed \$200 per day, and the aggregate credit may not exceed \$10,000 per employee. Up to ten weeks of qualifying family leave wages can be taken into account for the credit.

Sections 7002(a) and 7004(a) of the Families First Act entitle a self-employed individual to a refundable credit against income tax imposed on self-employment income for qualified sick leave equivalent amounts and qualified family leave equivalent

³ The credit for the employer's share of Medicare tax does not apply to eligible employers that are subject to Railroad Retirement Tax Act (RRTA) because under section 7005(a) of the Families First Act qualified leave wages are not subject to Medicare tax under RRTA due to that section's reference to section 3221(a) of the Code, which includes both social security tax and Medicare tax.

amounts. The credit is available to self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Code if the self-employed individual would be entitled to receive paid leave under the EPSLA or the EFMLEA if the individual were an employee of an employer (other than himself or herself).

The refundable credits authorized under the Families First Act apply to qualified sick leave wages and qualified family leave wages paid with respect to the period beginning on April 1, 2020 and ending on December 31, 2020.⁴ The same period is used to determine the refundable credits for qualified sick leave equivalent amounts and qualified family leave equivalent amounts for self-employed individuals.

If a self-employed individual is entitled to a refundable credit for a qualified sick leave equivalent amount under section 7002(a) of the Families First Act and also receives qualified sick leave wages as an employee that are required to be paid under the EPSLA, section 7002(d)(3) of the Families First Act reduces the qualified sick leave equivalent amount for which the self-employed individual may claim a tax credit to the extent that the sum of the qualified sick leave equivalent amount described in section 7002(c) of the Families First Act and any qualified sick leave wages under section 7001(b)(1) of the Families First Act exceeds \$2,000 (or \$5,110 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the EPSLA). Similarly, if a self-employed individual is entitled to a refundable credit for a qualified family leave equivalent amount under section 7004(a) of the

⁴ Sections 7001(g) and 7003(g) of the Families First Act provide that sections 7001 and 7003 apply to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury which is during the 15-day period beginning on the date of the enactment of the Families First Act (March 18, 2020). Notice 2020-21, 2020-16 I.R.B. 660, provides that the tax credits for qualified sick leave wages and qualified family leave wages under sections 7001 and 7003 of the Families First Act apply to wages paid for the period beginning on April 1, 2020, and ending on December 31, 2020.

Families First Act and also receives qualified family leave wages as an employee under the EFMLEA, section 7004(d)(3) of the Families First Act reduces the qualified family leave equivalent amount for which the self-employed individual may claim a tax credit to the extent that the sum of the qualified family leave equivalent amount described in section 7004(c) of the Families First Act and the qualified family leave wages under section 7003(b)(1) of the Families First Act exceeds \$10,000.

Section 7002(g) and section 7004(e) of the Families First Act provide that the Secretary of the Treasury shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of sections 7002 and 7004 of the Families First Act, respectively.

III. REPORTING REQUIREMENTS

In order to provide self-employed individuals who also receive wages or compensation as employees with the information they need to properly claim any qualified sick leave equivalent or qualified family leave equivalent credits for which they are eligible, this notice requires employers to report to employees the amount of qualified sick leave wages and qualified family leave wages paid to the employees under sections 7001 or 7003 of the Families First Act, respectively. Employers must separately state the total amount of qualified sick leave wages paid pursuant to paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA, qualified sick leave wages paid pursuant to paragraphs (4), (5), and (6) of section 5102(a) of the EPSLA, and qualified family leave wages paid pursuant to section 3102(b) of the EFMLEA. Employers must separately state each of these wage amounts either on Form W-2, Box 14 or on a separate statement. Self-employed individuals claiming qualified sick leave

equivalent or qualified family leave equivalent credits must then report these qualified sick leave and qualified family leave wage amounts on Form 7202, *Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals*, included with their income tax returns, and reduce (but not below zero) any qualified sick leave or qualified family leave equivalent credits by the amount of these qualified leave wages.

Reporting Qualified Sick Leave Wages

In addition to including qualified sick leave wages in the amount of wages paid to the employee reported in Boxes 1, 3 (up to the social security wage base), and 5 of Form W-2 (or, in the case of compensation subject to the RRTA, in the amount of RRTA compensation paid to the employee reported in Boxes 1 and 14 of Form W-2⁵), employers must report to the employee the following type and amount of the wages that were paid, with each amount separately reported either in Box 14 of Form W-2 or on a separate statement:

- the total amount of qualified sick leave wages paid for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA; in labeling this amount, the employer must use the following, or similar, language: “sick leave wages subject to the \$511 per day limit;” and
- the total amount of qualified sick leave wages paid for reasons described in paragraphs (4), (5), or (6) of section 5102(a) of the EPSLA; in labeling this amount, the employer must use the following or similar language: “sick leave wages subject to the \$200 per day limit.”

⁵ Railroad employers are directed by the instructions to Form W-2 to report certain specified amounts in Box 14. Other employers are directed to use Box 14 “for any other information that you want to give to your employee. Label each item.” This notice directs all employers to use Box 14 to report qualified sick leave wages and qualified family leave wages, unless a separate statement is used instead.

If a separate statement is provided and the employee receives a paper Form W-2, then the statement must be included with the Form W-2 provided to the employee, and if the employee receives an electronic Form W-2, then the statement shall be provided in the same manner and at the same time as the Form W-2.

Reporting Qualified Family Leave Wages

In addition to including qualified family leave wages in the amount of wages paid to the employee reported in Boxes 1, 3 (up to the social security wage base), and 5 of Form W-2 (or, in the case of compensation subject to RRTA, in the amount of RRTA compensation paid to the employee reported in Boxes 1 and 14 of Form W-2), employers must separately report to the employee the total amount of qualified family leave wages paid to the employee under the EFMLEA either in Box 14 of Form W-2 or on a separate statement. In labeling this amount, the employer must use the following, or similar, language: “emergency family leave wages.” If a separate statement is provided and the employee receives a paper Form W-2, then the statement must be included with the Form W-2 sent to the employee, and if the employee receives an electronic Form W-2, then the statement shall be provided in the same manner and at the same time as the Form W-2.

Model Language for Employee Instructions

As part of the Instructions for Employee, under the instructions for Box 14, for the Forms W-2, or in a separate statement sent to the employee, the employer may provide additional information about qualified sick leave wages and qualified family leave wages and explain that these wages may limit the amount of the qualified sick leave equivalent or qualified family leave equivalent credits to which the employee may be entitled with

respect to any self-employment income. The following model language (modified as necessary) may be used:

“Included in Box 14, if applicable, are amounts paid to you as qualified sick leave wages or qualified family leave wages under the Families First Coronavirus Response Act. Specifically, up to three types of paid qualified sick leave wages or qualified family leave wages are reported in Box 14:

- Sick leave wages subject to the \$511 per day limit because of care you required;
- Sick leave wages subject to the \$200 per day limit because of care you provided to another; and
- Emergency family leave wages.

If you have self-employment income in addition to wages paid by your employer, and you intend to claim any qualified sick leave or qualified family leave equivalent credits, you must report the qualified sick leave or qualified family leave wages on Form 7202, *Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals*, included with your income tax return and reduce (but not below zero) any qualified sick leave or qualified family leave equivalent credits by the amount of these qualified leave wages. If you have self-employment income, you should refer to the instructions for your individual income tax return for more information.”

IV. PAPERWORK REDUCTION ACT

Any collection of information associated with this notice has been submitted to the Office of Management and Budget for review under OMB control number 1545-0008

in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

V. DRAFTING INFORMATION

The principal author of this notice is Michael Gitlin. For further information on the provisions of this notice, please contact Mr. Gitlin at 202-317-6798 (not a toll-free call).