

**DEPARTMENT OF LABOR AND IRS ISSUE GUIDANCE REGARDING  
THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

The Department of Labor and the Internal Revenue Service have separately issued guidance regarding notification and documentation to be provided by employees to their employers in support of their request for paid sick or family leave pursuant to the Families First Coronavirus Response Act.

The Families First Coronavirus Response Act (“FFCRA”), which was passed into law on March 18, 2020 and went into effect on April 1, 2020, entitles employees affected by COVID-19 who cannot work or telework to receive paid benefits for qualifying reasons.

**Paid Family Leave**

Employees who cannot work (or telework) due to the need to care for a son or daughter as a result of a school or childcare service closure due to a public health emergency are entitled to up to two-thirds of their wages for up to 12 weeks. The first 10 days of qualified leave may be unpaid, but employees may substitute paid sick time or vacation pay during that initial time period. Thereafter, benefits are paid but are capped at \$200 a day (or \$10,000 total) and expire at the end of the year.

**Paid Sick Leave**

Employees who cannot work (or telework) as a result of certain qualifying events may receive up to two weeks (a maximum of 80 hours) of paid sick leave benefits. The employee qualifies for these benefits if the employee:

- Is subject to a Federal, State or local quarantine or self-isolation order related to COVID-19;
- Has been advised by a health care provider to self-quarantine related to COVID-19 concerns;
- Is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- Is caring for a relative who is in quarantine or isolation; or
- Is caring for a son or daughter as a result of the closure of the child’s school or childcare service due to a public health emergency.

Employees who are staying at home due to their own health concerns shall receive sick pay equal to their regular rate of pay, up to \$511 per day, or \$5,100 in aggregate.

Employees who are staying home to care for someone else (a relative who is in quarantine or isolation or a son or daughter as a result of a school or childcare closure) will receive two-thirds of their regular rate of pay, up to \$200 per day, or \$2,000 in aggregate.

### **Department of Labor Temporary Rule**

The U.S. Department of Labor (“DOL”) has issued a temporary rule which provides guidance for the administration of paid sick and family leave pursuant to the FFCRA.<sup>1</sup> Pursuant to the DOL regulations, an employee must notify their employer of the need for paid sick or family leave and provide required documentation “as soon as practicable.” However, notice need not be provided in advance. It will only be required after the first workday (or portion thereof) which the employee takes paid sick or family leave. The DOL allows an employer to accept oral notice from the employee and prohibits an employer from requiring documentation beyond what the DOL has specified.<sup>2</sup>

Pursuant to DOL regulations, an employee is required to provide the employer with documentation containing the following information in support of a request for paid sick or family leave under the FFCRA:

- 1) The employee’s name;
- 2) The date(s) for which leave is requested;
- 3) The qualifying reason for the leave; and
- 4) An oral or written statement that the employee is unable to work because of the qualified reason for the leave.

In addition, if an employee has requested paid sick leave due to a quarantine order, the employee must provide the employer with the name of the government entity that issued the quarantine or isolation order. If an employee desires to take paid sick leave in order to care for another, the employee must provide the employer with (as applicable) the name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject, or the name of the health care provider who advised the individual being cared for to self-quarantine. It should be noted that the DOL only requires the employee to provide the *name* of the health care provider, rather than a doctor’s note or other documentation. The Center for Disease Control has advised employers not to require such documentation from health care providers in light of the overwhelming demands on health care practitioners at this time.<sup>3</sup>

---

<sup>1</sup> <https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>

<sup>2</sup> 29 CFR §826.90

<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

If an employee desires to take paid sick or family leave to care for a son or daughter, the employee must additionally provide:

- a) The name of the son or daughter being cared for;
- b) The name of the school or childcare provider that has closed or become unavailable; and
- c) A representation that no other suitable person will be caring for the son or daughter during the period for which paid sick or family leave will be taken.

The DOL also permits an employer to request any additional materials needed to support the employer's request for tax credits pursuant to the FFCRA.<sup>4</sup>

### **IRS Guidance Regarding Tax Credits Claimed Pursuant to the FFCRA**

The IRS provided information regarding records and documentation that employers must retain in order to substantiate their claim for tax credits for paid sick and family leave payments made to employees pursuant to the FFCRA.<sup>5</sup> Employers should maintain these records for at least 4 years after the tax becomes due or is paid.

Employers should retain:

- 1) Form 941, Employer's Quarterly Federal Tax Return;
- 2) Form 7200, Advance of Employer Credits Due to COVID-19; and
- 3) Any other applicable filings made to the IRS requesting the tax credit

Employers should also receive and maintain from each applicable employee a written request that contains:

- 4) The employee's name;
- 5) The date(s) for which leave is requested;
- 6) A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
- 7) A statement that the employee is unable to work, including by means of telework, for such reason.

In addition, if an employee has requested paid sick leave due to a quarantine order or self-quarantine advice, the employee must provide the employer with the name of the government entity that issued the quarantine or isolation order. If an employee desires to

---

<sup>4</sup> 29 CFR §826.100

<sup>5</sup> [https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#substantiate\\_eligibility](https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#substantiate_eligibility)

take paid sick leave in order to care for another, the employee must provide the employer with the *name of the person to be cared for and that person's relationship to the employee*, and either (i) the name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject, or (ii) the name of the health care provider who advised the individual begin cared for to self-quarantine.

If an employee desires to take paid sick or family leave to care for a son or daughter, the employee must additionally provide:

- a) The name *and age* of the son or daughter being cared for;
- b) The name of the school or childcare provider that has closed or become unavailable; and
- c) A representation that no other suitable person will be caring for the son or daughter during the period for which paid sick or family leave will be taken or, with respect to the care of a child over the age of 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

Employers should keep in mind that, pursuant to both the DOL and IRS guidance, health information regarding employees (and potentially the family members of employees) will be collected and stored. Employers must take reasonable precautions to protect this confidential health information, including maintaining this information in separate files apart from general personnel files and limiting the circumstances in which the information is shared.

### **Momkus LLC is Here to Help**

Please feel free to contact your Momkus LLC attorney with questions or concerns. Our office is fully operating and has been designated as an “essential service” during the crisis. Your calls and emails will receive prompt attention.