

Families First Coronavirus Response Act: Employer Tax Credits

a Q&A by Andy Martone and HesseMartone staff

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QUESTION: How should an employer document employer-paid leaves under the Families First Coronavirus Response Act (FFCRA) in order to qualify for the tax credits?

ANSWER: During this crisis, health care documentation will be substantially delayed. When in doubt, err on the side of safety and follow up for documentation later.

The short answer is that it is not yet clear what documentation will be requested as proof for the tax credits because the Department of Labor and the Department of Treasury have not yet issued the regulations or guidance that will flesh out the statutory requirement. They have committed to putting out regulations on an expedited basis – probably by mid-June – and are issuing guidance even more quickly.

Attached is a link to the most recent IRS statement, indicating that more thorough guidance will be forthcoming next week. <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>.

Based on the type of documentation usually required for FMLA, and the clear intent of the government to liberally provide the tax credit, here's our current thinking on handling this:

1. **Common to All:** proof of payment of leave through your payroll. Be sure that your payroll clearly identifies this as COVID-19 leave and shows that the employee's PTO, sick leave or vacation time was not reduced as a result.
2. **The Employee's Illness, Treatment (including diagnostic or preventive) or Personal Quarantine for COVID-19:**
 - a. Obtain documentation from the employee's health care provider or the medical laboratory that tested the employee.
 - b. If the employee is self-quarantined due to having a high-risk condition, the employee's health care provider should at some point issue something in writing to this effect.

- c. If the employee has been exposed to someone with COVID-19, make a contemporaneous writing of all the details you know about it, but without personal identifying information concerning the person to whom the employee was exposed. If possible, have the employee write and sign the statement or email it back to you. If you wrote it, obtain the employee's signature on the writing or email it to the employee for a return email confirming the content.
 - d. Obtain a copy of an order of the government or of a public health agency directing the quarantine or isolation.
3. **The Employee's Caretaking of Someone Who Has Contracted or is Quarantined for COVID-19:**
- a. Obtain medical documentation for the person who has contracted or is quarantined for COVID-19 for which personal health information has been redacted but which still clearly links the patient with your employee. This can be tricky, but the health care providers should work with you because they want the patient cared for by your employee.
 - b. Obtain medical documentation from the same provider indicating the need for your employee to caretake the patient.
4. **Child Care Leave:**
- a. Request from the employee a copy of the email or letter s/he received from the school or childcare entity indicating that it would no longer be open or that the child could not return because of COVID-19 exposure. If this is not provided but you know the name of the school or childcare entity, you may be able to obtain proof directly through the school or entity's website.
 - b. Request proof of the age of the child, to show that you were providing leave related to a child under the age of 18. If this is not provided, you can research the child's birth certificate online at <https://www.vitalchek.com/>.
 - c. If the parent is divorced, you may also want to request written confirmation of the custody arrangement while the child is unable to attend school or childcare.

This is a quickly evolving area of law, so stay posted for future updates and more comprehensive guidance.