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Emergency Sick Pay Leave Act and Emergency Family and Medical Leave Expansion Act

The Families First Coronavirus Response Act contains two separate tax provisions that impact many small business employers, employees and self-employed individuals. A summary of these two provisions follows.

Emergency Paid Sick Leave Act (EPSLA)

- This act provides that employers with fewer than 500 employees must provide both paid and unpaid public health emergency leave to certain employees through December 31, 2020.
- The act provides that employers must pay an employee his or her regular pay rate for 80 hours over a two-week period subject to a maximum of \$511 per day and a total of \$5,110 if the employee falls under any one of the following criteria
 - The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19. **NOTE: It is our current understanding that Ohio's Stay at Home order in and of itself does not meet this criteria.**
 - Employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns
 - Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis
- The act also provides that employers must pay 2/3 of the regular pay rate up to \$200/day or \$2,000 total in sick leave for 80 hours over a two-week period if the employee falls under one of the following criteria
 - The employee is caring for an individual who is subject to one of the orders described above
 - The employee is caring for a son or daughter if the school or place of care has been closed or the childcare provider is unavailable due to COVID-19
 - The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services
- Part time employees are eligible for benefits under EPSLA based on the average number of hours worked in a given two week period
 - If part-time employee's hours change from week to week, the employer must determine the average number of hours worked during the prior six months and provide leave equal to the number of hours typically worked in a two week period.
- When an employee no longer needs EPSLA leave, the EPSLA benefits cease on the next regularly schedule pay date.
- EPSLA pay is exempt from Social Security but not Medicare withholding tax.
- Employers may receive a refundable tax credit equal to 100% of the qualified sick leave plus a pro-rata share of the employers qualified health plan expenses
 - The credit can be immediately applied against 941 deposits. Any excess credit can be requested as a refund. Details on procedures to request this refund are not available at this time.
 - Employers are not eligible for these credits if they have received a covered loan through one of the SBA Forgivable Loan programs.

Emergency Family and Medical Leave Expansion Act (EFMLEA)

- This act requires employers with fewer than 500 employees to provide employees with up to 12 weeks of leave for a qualifying need related to a public health emergency and to return the employee to work at the end of the leave
 - Employers with less than 25 employees may claim an exception to the requirement to return an employee to work at the end of the leave if they meet certain conditions
 - It is possible that employers with less than 50 employees may be completely exempt from this Act, however, it is unclear at this time how a business can request exemption and the guidelines that will be used to apply the exemption.
- EFMLEA requires employers to notify employees of the new family leave option. A link to this notification can be found below
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- EFMLEA provides that an employee must have a minimum period of 30 days with the employer to be eligible for family and medical leave benefits.
- Qualifying leave consists of an employee being unable to work or telework due to the need to care for child under 18 whose school or place of care is closed because of an emergency related to COVID-19.
- First 10 days of the employees leave may consist of unpaid leave, however employee may choose to substitute accrued paid leave such as vacation, personal , or sick leave.
 - Employees eligible for benefits under the Emergency Paid Sick Leave Act may use this sick leave for the first 10 days that are not covered by EFMLEA
- Following the first 10 days, the employer must provide paid leave to the employee at a rate not less than 2/3 of the employees regular rate of pay for the number of hours normally worked by the employee
 - Paid leave amount is capped at \$200 per day or \$10,000 in the aggregate.
- Employers may receive a refundable tax credit equal to 100% of the qualified sick leave plus a pro-rata share of the employers qualified health plan expenses
 - Employers are not eligible for these credits if they have received a covered loan through one of the SBA Forgivable Loan programs.

Application of EPSLA and EFMLEA to Self-Employed Individuals

- A self-employed individual is eligible for a tax credit if he or she would be entitled to receive paid sick leave or family medical leave if the individual were an employee
- Qualified sick leave to self-employed individuals for purposes of this credit is capped at the lesser of \$511 per day or 67% of the average daily self-employment income if self-employed person is personally affected. Limits are reduced to \$200 or 67% of average daily self-employment income if caring for a family member
- A similar credit for family leave for a self-employed individual is also available.
- Presumably both of these credits will be applied on the 2020 tax return, unless the IRS announces an alternative procedure.