



Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021

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This Fact Sheet updates frequently asked questions (FAQs) for the Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021.

These FAQs additions are as follows:

- New — Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021: Special Issues for Employers: Other Issues: Q54g
- New — Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021: Specific Provisions Related to Self-Employed Individuals: Q65c

These FAQs are being issued to provide general information to taxpayers and tax professionals as expeditiously as possible. Accordingly, these FAQs may not address any particular taxpayer's specific facts and circumstances, and they may be updated or modified upon further review. Because these FAQs have not been published in the Internal Revenue Bulletin, they will not be relied on or used by the IRS to resolve a case. Similarly, if an FAQ turns out to be an inaccurate statement of the law as applied to a particular taxpayer's case, the law will control the taxpayer's tax liability. Nonetheless, a taxpayer who reasonably and in good faith relies on these FAQs will not be subject to a penalty that provides a reasonable cause standard for relief, including a negligence penalty or other accuracy-related penalty, to the extent that reliance results in an underpayment of tax. Any later updates or modifications to these FAQs will be dated to enable taxpayers to confirm the date on which any changes to the FAQs were made. Additionally, prior versions of these FAQs will be maintained on IRS.gov to ensure that taxpayers, who may have relied on a prior version, can locate that version if they later need to do so.

More information about available. These FAQs were announced in [IR-2022-48](#).

Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021

Background

Note that the American Rescue Plan Act of 2021 (ARP), enacted March 11, 2021, amended and extended the tax credits (and the availability of advance payments of the tax credits) for paid sick and family leave for wages paid with respect to the period beginning April 1, 2021, and ending on September 30, 2021. For information about the tax credits that may be claimed for qualified leave wages under the ARP, see [Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021 for Leave After March 31, 2021](#).

Those who are still eligible to claim the credit, may want to see how the credit has changed since it was originally enacted by the FFCRA. The [Paid Sick and Family Leave Credit – 2020 vs 2021 Comparison Chart](#) addresses changes that were made by the Tax Relief Act of 2020 (the Tax Relief Act) and then further changes made by the American Rescue Plan Act (ARP).



Frequently Asked Questions

- [General Information](#)
- [What is an Eligible Employer](#)
- [Determining the Amount of the Tax Credit for Qualified Sick Leave Wages](#)
- [Determining the Amount of the Tax Credit for Qualified Family Leave Wages](#)
- [Determining the Amount of Allocable Qualified Health Plan Expenses](#)
- [How to Claim the Credits](#)
- [How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?](#)
- [Periods of Time for Which Credits are Available](#)
- [Special Issues for Employers: Taxation and Deductibility of Tax Credits](#)
- [Special Issues for Employers: Interaction of the FFCRA Tax Credits with Other Tax Credits](#)
- [Special Issues for Employers: Use of Third-Party Payers](#)
- [Special Issues for Employers: Other Issues](#)
- [Special Issues for Employees](#)
- [Specific Provisions Related to Self-Employed Individuals](#)

COVID-19-Related Tax Credits: Basic FAQs

Note that the American Rescue Plan Act of 2021, enacted March 11, 2021, amended and extended the tax credits (and the availability of advance payments of the tax credits) for paid sick and family leave for wages paid with respect to the period beginning April 1, 2021, and ending on September 30, 2021. These FAQs do not currently reflect the changes made by the American Rescue Plan Act; however, please continue to check IRS.gov for any updates related to the change in law.

1. What tax credits does the FFCRA provide? (Updated January 28, 2021)

The FFCRA provides businesses with tax credits to cover certain costs of providing employees with paid sick leave and expanded family and medical leave for reasons related to COVID-19, for periods of leave from April 1, 2020, through March 31, 2021.

Note: The COVID-related Tax Relief Act of 2020 extends the tax credits available to Eligible Employers for paid sick and family leave provided under the EPSLA or Expanded FMLA through March 31, 2021. Therefore, any references to these credits expiring on December 31, 2020 have been updated to March 31, 2021.

2. When can employers start claiming the credits? (Updated January 28, 2021)

Eligible Employers may claim tax credits for qualified leave wages paid to employees on leave due to paid sick leave or expanded family and medical leave for reasons related to COVID-19 taken for periods of leave beginning on April 1, 2020 and ending on March 31, 2021.

Eligible Employers may claim the credits on their federal employment tax returns (e.g., [Form 941, Employer's Quarterly Federal Tax Return](#) PDF), but they can benefit more quickly from the credits by reducing their federal employment tax deposits. If there are insufficient federal employment taxes to cover the amount of the credits, an Eligible Employer may request an advance payment of the credits from the IRS by submitting a [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#).



For the circumstances, amounts, and period for which the credits are available, see "[Determining the Amount of the Tax Credit for Qualified Sick Leave Wages](#)", "[Determining the Amount of the Tax Credit for Qualified Family Leave Wages](#)", and "[Periods of Time for Which Credits are Available](#)."

3. When will employers start to receive the credits?

After qualified leave wage payments have been made, Eligible Employers may receive payment of the credits in accordance with applicable IRS procedures.

For more information, see "[How do Eligible Employers claim the credit?](#)"

4. What documentation must an Eligible Employer retain to substantiate eligibility to claim the tax credits? (Updated November 25, 2020)

Eligible Employers claiming the credits for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax), must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, and retain the [Forms 941, Employer's Quarterly Federal Tax Return](#) PDF, and [7200, Advance of Employer Credits Due To COVID-19](#) PDF, and any other applicable filings made to the IRS requesting the credit.

For more information, see "[How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?](#)"

5. What employers may claim the tax credits? (Updated January 28, 2021)

Eligible Employers that are entitled to claim the refundable tax credits are businesses and tax-exempt organizations that: (1) have fewer than 500 employees, and (2) pay "qualified sick leave wages" and/or "qualified family leave wages" under the EPSLA and/or the Expanded FMLA, respectively.

Note that the Federal government, the governments of any state or political subdivision thereof, and any agencies or instrumentalities of those governments are not Eligible Employers and are not entitled to receive tax credits for providing paid leave wages under the FFCRA. Tribal governments that provide paid sick and paid family and medical leave pursuant to the FFCRA are eligible to claim the tax credits for qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see "[Only businesses that employ fewer than 500 employees are eligible for the credit, because only those businesses are required to provide qualified leave wages. How is the "fewer than 500 employees" threshold determined?](#)", and "[What is an Eligible Employer?](#)"

6. What is the amount of the refundable tax credits available to Eligible Employers? (Updated January 28, 2021)

The credits cover 100 percent of up to two weeks (up to 80 hours) of the qualified sick leave wages and up to ten weeks of the qualified family leave wages (and any qualified health plan expenses allocable to those wages) that an Eligible Employer paid during a calendar quarter, plus the amount of the Eligible Employer's share of Medicare tax imposed on those wages. Qualified sick leave and qualified family leave under the EPSLA and the Expanded FMLA, respectively, are in addition to employees' preexisting leave entitlements. See the Department of Labor's [Families First Coronavirus](#)



[Response Act: Questions and Answers](#) for rules regarding the FFCRA paid sick leave and expanded family and medical leave and other leave entitlements. Eligible Employers may only claim a credit for qualified leave wages.

Example: An Eligible Employer pays \$10,000 in qualified sick leave wages and qualified family leave wages in Q2 2020. It does not owe the employer's share of social security tax on the \$10,000, but it will owe \$145 for the employer's share of Medicare tax. Its credits equal \$10,145, which include the \$10,000 in qualified leave wages plus \$145 for the Eligible Employer's share of Medicare tax (this example does not include any qualified health plan expenses allocable to the qualified leave wages). This amount may be applied against any federal employment taxes that Eligible Employer is liable for on any wages paid in Q2 2020. Any excess over the federal employment tax liabilities is refunded in accordance with normal procedures. Eligible Employer must still withhold the employee's share of social security and Medicare taxes on the qualified leave wages paid, except to the extent the employer opts to defer the withholding and payment of the employee's share of social security tax in accordance with [Notice 2020-65](#) PDF, as modified by [Notice 2021-11](#) PDF.

For more information, see "[What is included in "qualified sick leave wages"?](#)" and "[What is included in "qualified family leave wages"?](#)"

7. What are "qualified sick leave wages"? (Updated January 28, 2021)

Qualified sick leave wages are wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code"), determined without regard to section 3121(b)(1)-(22) of the Code and section 7005(a) of the FFCRA) and compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the Code and without regard to section 7005(a) of the FFCRA) that an employer pays under the EPSLA to an employee who is unable to work or telework because of either the employee's personal health status (that is, the employee is under COVID-19 quarantine or self-quarantine or has COVID-19 symptoms and is seeking a medical diagnosis) or the employee's need to care for others (that is, the employee is caring for someone with COVID-19 or for a child whose school or place of care is closed or child care provider is unavailable).

For more information, see "[What is included in "qualified sick leave wages"?](#)"

8. What are "qualified family leave wages"? (Updated January 28, 2021)

Qualified family leave wages are wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code"), determined without regard to section 3121(b)(1)-(22) of the Code and section 7005(a) of the FFCRA) and compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the Code and without regard to section 7005(a) of the FFCRA) that an employer pays under the Expanded FMLA to an employee who is unable to work or telework because the employee is caring for a child whose school or place of care is closed or child care provider is unavailable for reasons related to COVID-19.

For more information, see "[What is included in "qualified family leave wages"?](#)"

8a. Do qualified leave wages include wages paid to an employee who must care for a child because the child's summer camp is closed? (Updated January 28, 2021)

Yes. Wages or compensation paid to an employee are qualified leave wages if the employee is unable to work or telework due to a need to care for his or her child whose place of care is closed for reasons related to COVID-19. An employee would satisfy these criteria if he or she cannot work or telework in order to care for a child due to the closure of a summer camp, summer enrichment program, or other summer program for reasons related to COVID-19.



For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

9. What are "qualified health plan expenses"?

Qualified health plan expenses are amounts paid or incurred by an Eligible Employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code) that are allocable to the employee's qualified leave wages.

For more information, see "[Determining the Amount of Allocable Qualified Health Plan Expenses](#)."

10. What is the Eligible Employer's share of Medicare tax on qualified leave wages? (Updated January 28, 2021)

The FFCRA adds to the tax credits the amount of the Hospital Insurance tax, also known as Medicare tax, that Eligible Employers are required to pay on qualified leave wages. The rate for this tax is 1.45 percent of wages.

Note: There is no credit for the employer portion of OASDI tax, also known as social security tax, that Eligible Employers are required to pay on the qualified leave wages because the qualified leave wages are not subject to this tax.

11. Are any small businesses exempt from the requirements to provide qualified sick or family leave wages? (Updated January 28, 2021)

The FFCRA permits the Department of Labor to provide rules that a business with fewer than 50 employees may use to claim an exemption from providing paid sick leave and expanded family and medical leave for the purpose of caring for a child whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19 if providing these qualified leave wages would jeopardize the viability of their businesses as a going concern. Any business that claims the exemption is not entitled to tax credits for any qualified leave wages that they are exempt from providing.

The FFCRA also permits employers whose employees are health care providers or emergency responders not to provide qualified sick leave or qualified family leave wages to those employees.

For more information about exemptions from the requirement to provide paid sick leave and expanded family and medical leave under the EPSLA and Expanded FMLA, respectively, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

Note: The EPSLA and Expanded FMLA only require employers to provide paid sick and family leave, respectively, to employees unable to work or telework for periods after March 31, 2020, and before January 1, 2021. Under the COVID-related Tax Relief Act of 2020, employers are not required to provide paid sick and family leave to employees after December 31, 2020; however, Eligible Employers that voluntarily provide paid sick or family leave that would have met the requirements of the EPSLA or Expanded FMLA to employees may claim the tax credits for providing the qualified leave wages through March 31, 2021.

12. How do Eligible Employers claim the credits? (Updated January 28, 2021)

Eligible Employers report their total qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) for each quarter on their federal employment tax return,



usually [Form 941, Employer's Quarterly Federal Tax Return](#) PDF. Form 941 is used by most Eligible Employers to report income tax and social security and Medicare taxes withheld from employee wages, as well as the Eligible Employer's own share of social security and Medicare taxes.

In anticipation of receiving the credits, Eligible Employers can recover qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) by accessing federal employment taxes related to wages paid between April 1, 2020, and March 31, 2021, including withheld taxes, that would otherwise be required to be deposited with the IRS. This means that in anticipation of claiming the credits on the Form 941, Eligible Employers can retain the federal employment taxes that they otherwise would have deposited, including federal income tax withheld from employees, the employees' share of social security and Medicare taxes, and the Eligible Employer's share of social security and Medicare taxes with respect to all employees. The Form 941 instructions explain how to reflect the reduced liabilities for the quarter related to the deposit schedule.

Prior to retaining deposits in anticipation of the credit, Eligible Employers are permitted to defer the deposit and payment of the employer's share of social security tax under section 2302 of the CARES Act. For more information, see [Deferral of employment tax deposits and payments through December 31, 2020](#). In addition, employers may opt to defer withholding and payment of the employee's share of Social Security tax under [Notice 2020-65](#) PDF, as modified by [Notice 2021-11](#) PDF, on certain wages paid between September 1, 2020 through December 31, 2020.

For more information, see "[How to Claim the Credits](#)."

13. What if an Eligible Employer does not have enough federal employment taxes set aside for deposit to cover amounts provided as qualified leave wages? (Updated January 28, 2021)

If an Eligible Employer does not have enough federal employment taxes set aside for deposit to cover amounts provided as qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages), the Eligible Employer may request an advance of the credits by completing [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#). The Eligible Employer will account for the amounts received as an advance when it files its Form 941, Employer's Quarterly Federal Tax Return, for the relevant quarter.

For more information about claiming the tax credits for providing qualified leave wages, see "[How to Claim the Credits](#)."

14. What makes the credits "fully refundable"? (Updated November 25, 2020)

The credits are fully refundable because the Eligible Employer may get a refund if the amount of the credits is more than certain federal employment taxes the Eligible Employer owes. That is, if for any calendar quarter the amount of the credits the Eligible Employer is entitled to exceeds the employer portion of the social security tax on all wages (or the employer portion of the social security tax and Medicare tax on all compensation for employers subject to RRTA) paid to all employees, then the excess is treated as an overpayment and refunded to the Eligible Employer under section 6402(a) or 6413(b) of the Internal Revenue Code.

15. Are similar tax credits available to self-employed individuals? (Updated January 28, 2021)

Yes. The FFCRA also provides comparable credits for self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Internal Revenue Code if the self-employed individual would be eligible to receive paid leave under the EPSLA or Expanded FMLA if the individual were an employee of an employer (other than him or herself).



For more information about how the credits apply to self-employed individuals, see "[Specific Provisions Related to Self-Employed Individuals](#)."

16. Only businesses that employ fewer than 500 employees are eligible for the credits, because only those businesses provide qualified leave wages. How is the "fewer than 500 employees" threshold determined? (Updated January 28, 2021)

A business is considered to have fewer than 500 employees if, at the time an employee's leave is to be taken, the business employs fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. The Department of Labor (DOL) guidance provides a more detailed summary of which workers must be taken into account for purposes of the fewer than 500 employee threshold. DOL guidance also explains when business entities should be treated as separate employers and when they should be aggregated as a single employer for purposes of determining their total number of employees.

For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

17. May an Eligible Employer reduce its federal employment tax deposit by the qualified leave wages that it has paid without incurring a failure to deposit penalty? (Updated January 28, 2021)

Yes. An Eligible Employer that pays qualified leave wages in a calendar quarter will not be subject to a penalty under section 6656 of the Internal Revenue Code (the "Code") for failing to deposit federal employment taxes if:

1. the Eligible Employer paid qualified leave wages to its employees in the calendar quarter before the required deposit;
2. the total amount of federal employment taxes that the Eligible Employer does not timely deposit (reduced by any amount of the employer's share of social security tax deferred under section 2302 of the CARES Act) is less than or equal to the amount of the Eligible Employer's anticipated tax credit for the qualified leave wages for the calendar quarter as of the time of the required deposit; and
3. the Eligible Employer did not seek payment of an advance credit by filing [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, with respect to any portion of the anticipated credits it relied upon to reduce its deposits.

For more information about the relief from the penalty for failure to deposit federal employment taxes on account of qualified leave wages, see [Notice 2020-22](#) PDF and FAQs addressing the deferral of the deposit of all of the employer's share of social security tax under section 2302 of the CARES Act and the reduction in deposits for credits, "Deferral of employment tax deposits and payments through December 31, 2020." In addition, employers may opt to defer withholding and payment of the employee's share of social security tax under [Notice 2020-65](#) PDF, as modified by [Notice 2021-11](#) PDF, on certain wages paid between September 1, 2020 through December 31, 2020.

18. May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and the Employee Retention Credit under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)? (Updated January 28, 2021)

Yes, if an Eligible Employer also meets the requirements for the employee retention credit, it may receive both credits, but not for the same wage payments.



Section 2301 of the CARES Act allows certain employers subject to a full or partial closure order due to COVID-19 or experiencing a significant decline in gross receipts a tax credit for retaining their employees. The qualified wages for the employee retention credit do not include the amount of qualified leave wages for which the employer received tax credits under the FFCRA.

For more information on the Employee Retention Credit, see [FAQs: Employee Retention Credit under the CARES Act](#).

Note that the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted December 27, 2020, amended and extended the employee retention credit (and the availability of certain advance payments of the tax credits) under section 2301 of the CARES Act. The FAQs on the Employee Retention Credits under the CARES Act do not currently reflect the changes made by the Taxpayer Certainty and Disaster Tax Relief Act of 2020; however, please continue to check back to the applicable page for any updates related to the change in law.

19. May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and a Small Business Interruption Loan (Paycheck Protection Program) under the CARES Act? (Updated November 25, 2020)

Yes. However, if an Eligible Employer receives tax credits for qualified leave wages, those wages are not eligible as "payroll costs" for purposes of receiving loan forgiveness under section 1106 of the CARES Act. Throughout these FAQs, the use of the word "work," unless otherwise noted, is inclusive of telework.

COVID-19 Related Tax Credits: What is an Eligible Employer FAQs

What is an Eligible Employer?

19a. If an Eligible Employer that employs a health care provider or an emergency responder excludes the employee from eligibility for paid sick leave or family leave for one or more reasons but not for other reasons, may the Eligible Employer claim the credit for paid leave it provides to the employee for any "non-excluded" reason? (Updated January 28, 2021)

Yes. For periods of leave between April 1, 2020 and December 31, 2020, the FFCRA provides that Eligible Employers may exclude employees who are health care providers or emergency responders from the paid sick leave and expanded family and medical leave requirements. (For periods of leave between January 1, 2021 and March 31, 2021, although credit may be claimed for paid leave that would have met the requirements of the EPSLA or Expanded FMLA, there is no requirement to provide paid leave.) Regulations issued by the Department of Labor Wage and Hour Division define which employees are considered health care providers and emergency responders for this purpose. The preamble to the Department of Labor regulations explains that, because an employer is not required to exclude these employees from eligibility, if an employer does not elect to exclude a health care provider or emergency responder from taking paid leave under the EPSLA or Expanded FMLA for a reason related to COVID-19, it is subject to all other requirements of the FFCRA. For example, if an Eligible Employer excludes an employee who is a health care provider from taking paid sick leave to care for an individual family member, but does not exclude the employee from taking paid sick leave for reasons relating to the employee's own health status, the Eligible Employer is required to provide the employee with paid sick leave if the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. In this case, the Eligible Employer may claim the credit for any such qualified sick leave wages it pays to the employee, as well as the credit for allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on those qualified sick leave wages.



For information on who is a health care provider and emergency responder, see [“Who is a ‘health care provider’ who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?”](#), at the Department of Labor’s website.

19b. Can government employers receive tax credits for providing paid leave wages under the FFCRA? (Updated January 28, 2021)

No. The Federal government, the governments of any State or political subdivision thereof, and any agencies or instrumentalities of those governments are not Eligible Employers and are not entitled to receive tax credits for providing paid leave wages under the EPSLA or Expanded FMLA.

However, for periods of leave between April 1, 2020 and December 31, 2020, under the Department of Labor (DOL) rules, non-federal public sector employers generally must provide paid sick and family leave wages under the EPSLA and Expanded FMLA, respectively, while federal public sector employers generally must provide paid sick leave wages under the EPSLA. (The requirement to provide paid leave under the EPSLA or Expanded FMLA for periods after December 31, 2020, was not extended by the COVID-related Tax Relief Act of 2020.) For more information on whether and to what extent public sector employers must provide paid leave wages under the EPSLA or Expanded FMLA, [Families First Coronavirus Response Act: Questions and Answers](#), available at the DOL’s website.

Note: To the extent that public sector employers provide paid leave wages under the EPSLA or Expanded FMLA, under section 7005(a) of the FFCRA, the paid leave wages are not subject to the employer’s share of social security tax.

19c. What organizations are considered an “instrumentality” of the Federal government, or of a State or local government, for purposes of determining if an employer is not eligible for the FFCRA leave credits? (Added November 25, 2020)

In general, for employment tax purposes, the IRS considers six factors in determining whether an organization is an instrumentality. The six factors that are used to determine whether an organization is an instrumentality are:

1. whether the organization is used for a governmental purpose and performs a governmental function;
2. whether performance of the organization’s function is on behalf of one or more states or political subdivisions;
3. whether there are any private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner;
4. whether control and supervision of the organization is vested in public authority or authorities;
5. if express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality, and whether such authority exists; and
6. the degree of financial autonomy and the source of its operating expenses.

See Rev. Rul. 57-128, 1957-1 C.B. 311. No one factor is determinative; instrumentality status is based on all the facts and circumstances. For purposes of determining whether an employer is eligible for the FFCRA leave credits, these same factors apply to identify an instrumentality of the Federal government, or of a State or local government.

19d. Are employers in U.S. Territories eligible for the tax credits? (Added November 25, 2020)

Yes. Employers in U.S. Territories are eligible to claim the tax credits for qualified leave wages, assuming they are otherwise Eligible Employers. Sections 7001(c) and 7003(c) of the FFCRA provide that qualified sick leave wages and qualified family leave wages, respectively, are wages as defined in section 3121(a) of the Internal Revenue Code (the



Internal Revenue Code (the “Code”) for purposes of the Federal Insurance Contributions Act (“FICA”) tax. Under section 3121(b), payments of wages by employers in U.S. territories are subject to FICA.

For more information on defining an Eligible Employer, see [“What employers may claim the tax credits?”](#)

19e. Are household employers eligible for the tax credits? (Updated January 28, 2021)

Yes. Assuming a household employer is otherwise an Eligible Employer, the employer may claim tax credits for providing paid leave under the FFCRA if the leave is both (1) paid under the EPSLA or Expanded FMLA, and (2) wages (as defined in section 3121(a) of the Internal Revenue Code (the “Code”)) or compensation (as defined in section 3231(e) of the Code).

Whether a household employer provides paid leave to a household worker under the EPSLA or Expanded FMLA depends on whether the household employer is an employer under the Fair Labor Standards Act (FLSA). In general, a household employer is considered to be the employer of the household worker under the FLSA if the household worker is “economically dependent” on the household employer for the opportunity to work. For more information on how the DOL classifies household workers, see FAQ 89 (“I hire workers to perform certain domestic tasks, such as landscaping, cleaning, and child care, at my home. Do I have to provide my domestic service workers paid sick leave or expanded family and medical leave?”) of the DOL’s [Families First Coronavirus Response Act: Questions and Answers](#).

Note: The EPSLA and Expanded FMLA only require employers to provide paid sick and family leave, respectively, to employees unable to work or telework for periods after March 31, 2020, and before January 1, 2021. Under the COVID-related Tax Relief Act of 2020, employers are not required to provide paid sick and family leave to employees after December 31, 2020; however, Eligible Employers that voluntarily provide paid sick or family leave that would have met the requirements of the EPSLA or Expanded FMLA to employees may claim the tax credits for providing the qualified leave wages through March 31, 2021.

19f. Can employers claim the tax credit for amounts paid to H-2A visa holders? (Updated January 28, 2021)

Yes. The FFCRA sections 7001(c) and 7003(c) define “qualified leave wages” for purposes of the EPSLA and the Expanded FMLA, respectively, as wages as defined in section 3121(a) of the Internal Revenue Code (the “Code”), determined without regard to section 3121(b)(1)-(22) of the Code (and section 7005(a) of the FFCRA). Therefore, although section 3121(b)(1) of the Code excludes from “employment” services performed by H-2A workers, employers are entitled to tax credits under the FFCRA for qualified leave wages paid to H-2A workers.

19g. Are tribal governments eligible for the tax credits? (Added November 25, 2020)

Yes. Tribal governments that provide paid sick and paid family and medical leave pursuant to the FFCRA are eligible to claim the tax credits for qualified leave wages, assuming they are otherwise Eligible Employers.

Determining the Amount of the Tax Credit for Qualified Sick Leave Wages

20. What is included in “qualified sick leave wages”? (Updated January 28, 2021)

Qualified sick leave wages are wages (as defined in section 3121(a) of the Internal Revenue Code (the “Code”), determined without regard to section 3121(b)(1)-(22) of the Code and section 7005(a) of the FFCRA) and compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the



Code, and without regard to section 7005(a) of the FFCRA) that Eligible Employers pay eligible employees for periods of leave during which they are 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 child of such employee if the school or place of care of the child has been closed (including the closure of a summer camp, summer enrichment program, or other summer program), or the child care provider of such child 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 Secretary of the Treasury and the Secretary of Labor.

20a. Do “qualified sick leave wages” include taxes imposed on or withheld from the wages? (Updated January 28, 2021)

Qualified sick leave wages for purposes of the credit are calculated without regard to federal taxes imposed on or withheld from the wages, including the employee's share of social security taxes, the employee's and employer's shares of Medicare tax, and federal income taxes required to be withheld.

Note: The FFCRA exempts qualified sick leave wages from the Eligible Employer's share of Social Security tax.

21. How much credit may an Eligible Employer receive for qualified sick leave wages that it pays?

An Eligible Employer may claim a fully refundable tax credit equal to 100 percent of the qualified sick leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified sick leave wages) it pays.

For more information about how to determine the amount of sick leave wages for which an Eligible Employer may receive credit, see "How does an Eligible Employer determine the amounts of the qualified sick leave wages it pays under the EPSLA?"

22. How does an Eligible Employer determine the amounts of the qualified sick leave wages it pays under the EPSLA? (Updated January 28, 2021)

The amounts that an Eligible Employer pays for qualified sick leave wages vary depending on the reason for which the employee is unable to work or telework, the duration of the employee's absence, the employee's hours, and the employee's regular rate of pay (or, if higher, the federal minimum wage or any applicable State or local minimum wage).

22a. What is the rate of pay for qualified sick leave wages if an employee is unable to work or telework due to his or her own health needs? (Updated January 28, 2021)

If an employee is unable to work or telework because he or she:

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; or
3. is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

the Eligible Employer pays qualified sick leave wages for up to two weeks (up to 80 hours) at a rate for each hour of **the greatest of** the following:

1. the employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938);
2. the minimum wage rate in effect under section 6(a)(1) of the Fair Labor Standards Act of 1938; or
3. the minimum wage rate in effect for the employee in the applicable State or locality, whichever is greater, in which the employee is employed.

The maximum amount of qualified sick leave wages paid for these reasons is up to \$511 per day and \$5,110 in the aggregate.

For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

22b. What is the rate of pay for qualified sick leave wages if an employee is unable to work or telework because he or she needs to care for others? (Updated January 28, 2021)

If an employee is unable to work or telework because he or she:

1. 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;
2. is caring for a child of such employee if the school or place of care of the child has been closed, or the child care provider of such child is unavailable due to COVID-19 precautions; or
3. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor;

the Eligible Employer pays qualified sick leave wages for up to two weeks (up to 80 hours) at a rate for each hour of **2/3 of the greatest of** the following:

1. the employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938);
2. the minimum wage rate in effect under section 6(a)(1) of the Fair Labor Standards Act of 1938; or
3. the minimum wage rate in effect for the employee in the applicable State or locality, whichever is greater, in which the employee is employed.

The maximum amount of qualified sick leave wages paid due to the need to care for others as described above is up to \$200 per day and \$2,000 in the aggregate.

For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

22c. How are employees' hours determined for purposes of the qualified paid sick leave requirements? (Updated January 28, 2021)

Full-time employees can receive up to 80 hours of paid sick leave between April 1, 2020, and March 31, 2021. Part-time employees can receive the number of hours of paid sick leave that the employee works, on average, in a two-week



period, or if the employee's normal scheduled hours are unknown or variable, under other alternative determinations, as provided by Department of Labor guidance.

For more information, including how to determine whether an employee is full-time or part-time and how to determine the number of hours to be paid to employees who can receive paid sick leave, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

23. Are amounts other than qualified sick leave wages included in the tax credit for required sick leave? (Updated January 28, 2021)

Yes. The credit also includes the amount of allocable qualified health expenses and the amount of the Eligible Employer's share of Medicare tax imposed on the qualified sick leave wages.

Note: The amount of the Eligible Employer's share of Medicare tax is based only on the qualified sick leave wages, not on the any qualified health plan expenses allocable to those wages. Qualified sick leave wages are not subject to the employer's share of social security tax. For more information about the additions to the tax credit for allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax, see "[Determining the Amount of Allocable Qualified Health Plan Expenses](#)," and "[Determining the Amount of the Increase to the Credits for the Eligible Employer's Share of Medicare Tax](#)."

24. Is a similar tax credit available to self-employed individuals? (Updated January 28, 2021)

Yes. The FFCRA also provides a comparable credit for self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Internal Revenue Code if the self-employed individual would be eligible to receive paid sick leave under the EPSLA if the individual were an employee of an employer (other than him or herself).

For more information, see "[Specific Provisions Related to Self-Employed Individuals](#)."

Determining the Amount of the Tax Credit for Qualified Family Leave Wages

25. What is included in "qualified family leave wages"? (Updated January 28, 2021)

Qualified family leave wages are wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code"), determined without regard to section 3121(b)(1)-(22) of the Code and section 7005(a) of the FFCRA) and compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the Code, and without regard to section 7005(a) of the FFCRA) that Eligible Employers pay eligible employees for periods of leave during which they are unable to work or telework due to a need for leave to care for a child of such employee if the child's school or place of care has been closed (including the closure of a summer camp, summer enrichment program, or other summer program), or because the child care provider of the child is unavailable, for reasons related to COVID-19. The first ten days for which an employee takes leave for this reason may be unpaid. However, during that 10-day period, an employee may receive qualified sick leave wages as provided under the EPSLA or may receive other forms of paid leave, such as accrued sick leave, annual leave, or other paid time off under the Eligible Employer's policy. After an employee takes leave for ten days, the Eligible Employer provides the employee with qualified family leave wages for up to ten weeks.

For more information, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).



25a. Do “qualified family leave wages” include taxes imposed or withheld from the wages? (Updated January 28, 2021)

Qualified family leave wages for purposes of the credit are calculated without regard to federal taxes imposed on or withheld from the wages, including the employee’s share of social security taxes, the employee’s and Eligible Employer’s shares of Medicare tax, and federal income taxes required to be withheld.

Note: The FFCRA exempts qualified family leave wages from the Eligible Employer’s share of social security tax.

26. How much credit may an Eligible Employer receive for qualified family leave wages?

An Eligible Employer may claim a fully refundable tax credit equal to 100 percent of the qualified family leave wages (and allocable qualified health plan expenses and the Eligible Employer’s share of Medicare tax on the qualified family leave wages) it pays.

For more information about how to determine the amount of family leave wages for which an Eligible Employer may receive credit, see "[How does an Eligible Employer determine the amounts of the qualified family leave wages it is required to pay?](#)"

27. How does an Eligible Employer determine the amounts of the qualified family leave wages to pay? (Updated January 28, 2021)

Under the Expanded FMLA, the Eligible Employer pays the employee qualified family leave wages in an amount equal to at least two-thirds of the employee’s regular rate of pay, multiplied by the number of hours the employee otherwise would have been scheduled to work, not to exceed \$200 per day and \$10,000 in the aggregate for the calendar year.

28. What is the rate of pay for qualified family leave wages? (Updated January 28, 2021)

An Eligible Employer pays qualified family leave wages for up to ten weeks at a rate that is 2/3 of the employee’s regular rate of pay (not to exceed \$200 per day) (as determined under section 7(e) of the Fair Labor Standards Act of 1938).

29. Are amounts other than qualified family leave wages included in the tax credit for required paid family leave? (Updated January 28, 2021)

Yes. The credit also includes the allocable qualified health expenses and the amount of the Eligible Employer’s share of Medicare tax imposed on the qualified family leave wages.

Note: The amount of the Eligible Employer’s share of Medicare tax is based only on the qualified family leave wages, not on the any qualified health plan expenses allocable to those wages. The qualified sick leave wages are not subject to the employer’s share of social security tax.

For more information about the additions to the tax credit for allocable qualified health plan expenses, see "[Determining the Amount of Allocable Qualified Health Plan Expenses.](#)" For more information about determining the Eligible Employer’s share of Medicare tax, see "[What is the Eligible Employer’s share of Medicare tax on qualified leave wages?](#)"

30. Is a similar tax credit available to self-employed individuals? (Updated January 28, 2021)



Yes. The FFCRA also provides a comparable credit for self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Internal Revenue Code if the self-employed individual would be eligible to receive paid leave under the Expanded FMLA if the individual were an employee of an employer (other than him or herself).

For more information, "[Specific Provisions Related to Self-Employed Individuals.](#)"

Determining the Amount of Allocable Qualified Health Plan Expenses

31. Does the amount of qualified health plan expenses include both the portion of the cost paid by the Eligible Employer and the portion of the cost paid by the employee? (updated November 25, 2020)

The amount of qualified health plan expenses taken into account in determining the credits generally includes both the portion of the cost paid by the Eligible Employer and the portion of the cost paid by the employee with pre-tax salary reduction contributions. However, the qualified health plan expenses should not include amounts that the employee paid for with after-tax contributions.

32. For an Eligible Employer that sponsors more than one plan for its employees (for example, both a group health plan and a health flexible spending arrangement (health FSA)), or more than one plan covering different employees, how are the qualified health plan expenses for each employee determined? (updated November 25, 2020)

The qualified health plan expenses are determined separately for each plan. Therefore, for each plan, those expenses are allocated to the employees who participate in that plan. In the case of an employee who participates in more than one plan, the allocated expenses of each plan in which the employee participates are aggregated for that employee.

33. For an Eligible Employer that sponsors a fully-insured group health plan, how are the qualified health plan expenses of that plan allocated to the qualified sick or family leave wages on a pro rata basis? (updated November 25, 2020)

An Eligible Employer who sponsors a fully-insured group health plan may use any reasonable method to determine and allocate the plan expenses, including (1) the COBRA applicable premium for the employee typically available from the insurer, (2) one average premium rate for all employees, or (3) a substantially similar method that takes into account the average premium rate determined separately for employees with self-only and other than self-only coverage.

If an Eligible Employer chooses to use one average premium rate for all employees, the allocable amount for each day an employee covered by the insured group health plan is entitled to qualified leave wages could be determined using the following steps:

1. The Eligible Employer's overall annual premium for the employees covered by the policy is divided by the number of employees covered by the policy to determine the average annual premium per employee .
2. The average annual premium per employee is divided by the average number of work days during the year by all covered employees (treating days of paid leave as a work day and a work day as including any day on which work is performed) to determine the average daily premium per employee. For example, a full-year employee working five days per week may be treated as working 52 weeks x 5 days or 260 days. Calculations for part-time and seasonal employees who participate in the plan should be adjusted as appropriate. Eligible Employers may use any reasonable method for calculating part-time employee work days.
3. The resulting premium should be adjusted to reflect any portion that employees contribute after-tax.



4. The resulting amount is the amount allocated to each day of qualified sick or family leave wages.

Example: An Eligible Employer sponsors an insured group health plan that covers 400 employees, some with self-only coverage and some with family coverage. Each employee is expected to have 260 work days a year. (Five days a week for 52 weeks.) The employees contribute a portion of their premium by pre-tax salary reduction, with different amounts for self-only and family. The total annual premium for the 400 employees is \$5.2 million. (This includes both the amount paid by the Eligible Employer and the amounts paid by employees through salary reduction.)

For an Eligible Employer using one average premium rate for all employees, the average annual premium rate is \$5.2 million divided by 400, or \$13,000. For each employee expected to have 260 work days a year, this results in a daily average premium rate equal to \$13,000 divided by 260, or \$50. That \$50 is the amount of qualified health expenses allocated to each day of paid sick or family leave per employee.

34. For an Eligible Employer who sponsors a self-insured group health plan, how are the qualified health plan expenses of that plan allocated to the qualified leave wages on a pro rata basis? (updated November 25, 2020)

An Eligible Employer who sponsors a self-insured group health plan may use any reasonable method to determine and allocate the qualified health plan expenses, including (1) the COBRA applicable premium for the employee typically available from the administrator, or (2) any reasonable actuarial method to determine the estimated annual expenses of the plan.

If the Eligible Employer uses a reasonable actuarial method to determine the estimated annual expenses of the plan, then rules similar to the rules for insured plans are used to determine the amount of expenses allocated to an employee. That is, the estimated annual expense is divided by the number of employees covered by the plan, and that amount is divided by the average number of work days during the year by the employees (treating days of paid leave as work days and any day on which an employee performs any work as work days). The resulting amount is the amount allocated to each day of qualified sick or family leave wages.

35. For an Eligible Employer who sponsors a health savings account (HSA), or Archer Medical Saving Account (Archer MSA) and a high deductible health plan (HDHP), are contributions to the HSA or Archer MSA included in the qualified health plan expenses? (updated November 25, 2020)

The amount of qualified health plan expenses does not include Eligible Employer contributions to HSAs or Archer MSAs. Eligible Employers who sponsor an HDHP should calculate the amount of qualified health plan expenses in the same manner as an insured group health plan, or a self-insured plan, as applicable.

36. For an Eligible Employer who sponsors a health reimbursement arrangement (HRA), a health flexible spending arrangement (health FSA), or a qualified small employer health reimbursement arrangement (QSEHRA), are contributions to the HRA, health FSA, or QSEHRA included in the qualified health plan expenses? (updated November 25, 2020)

The amount of qualified health plan expenses may include contributions to an HRA (including an individual coverage HRA), or a health FSA, but does not include contributions to a QSEHRA. To allocate contributions to an HRA or a health FSA, Eligible Employers should use the amount of contributions made on behalf of the particular employee.

How to Claim the Credits



37. How does an Eligible Employer claim the refundable tax credits for qualified leave wages (plus any allocable qualified health plan expenses and the amount of the Eligible Employer's share of Medicare tax)? (Updated January 28, 2021)

Eligible Employers report their total qualified leave wages for each calendar quarter on their federal employment tax returns, usually [Form 941, Employer's Quarterly Federal Tax Return](#) PDF. Employers also report any qualified wages for which they are entitled to an Employee Retention Credit under the CARES Act on Form 941. The Form 941 is used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the Eligible Employer's share of Social Security and Medicare taxes.

In anticipation of receiving the credit, Eligible Employers can cover the amount of qualified leave wages by (1) accessing federal employment taxes, including withheld taxes that would otherwise be required to be deposited with the IRS, and (2) requesting an advance of the credit from the IRS for the amount of the credit that is not covered by accessing the federal employment tax deposits, by filing [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF.

Prior to retaining deposits in anticipation of the credit, Eligible Employers are permitted to defer the deposit and payment of the employer's share of social security tax under section 2302 of the CARES Act. For more information, see [Deferral of employment tax deposits and payments through December 31, 2020](#). In addition, employers may opt to defer withholding and payment of the employee's share of social security tax under [Notice 2020-65](#) PDF, as modified by [Notice 2021-11](#) PDF, on certain wages paid between September 1, 2020 through December 31, 2020.

38. Can an Eligible Employer that pays qualified leave wages cover these payments before receiving the credits by reducing its federal employment tax deposits? (Updated January 28, 2021)

An Eligible Employer may cover the qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) by accessing federal employment taxes, including those that the Eligible Employer already withheld, that are set aside for deposit with the IRS (reduced by any amount of the employer's share of social security tax deferred under section 2302 of the CARES Act or any amount of the employee's share of social security tax that the employer opted to defer under [Notice 2020-65](#) PDF, as modified by [Notice 2021-11](#) PDF), for all wage payments made during the same quarter as the qualified leave wages.

That is, an Eligible Employer that pays qualified leave wages to its employees in a calendar quarter before it is required to deposit federal employment taxes with the IRS for that quarter may, after deferring the employer's and employee's share of social security tax under section 2302 of the CARES Act and Notice 2020-65, as modified by [Notice 2021-11](#) PDF, respectively, reduce the amount of federal employment taxes it deposits for that quarter by the amount of the qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) paid in that calendar quarter. The Eligible Employer must account for the reduction in deposits on the [Form 941, Employer's Quarterly Federal Tax Return](#) PDF, for the quarter.

Example: In the second quarter of 2020, an Eligible Employer that did not claim the Employee Retention Credit paid \$5,000 in qualified sick leave wages and qualified family leave wages (and allocable health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) and is otherwise required to deposit \$10,000 in federal employment taxes, including taxes withheld from all of its employees, for wage payments made during the same quarter as the \$5,000 in qualified leave wages was paid. The Eligible Employer defers \$2,000 for its share of social security tax under section 2302 of the CARES Act. The Eligible Employer may keep up to \$5,000 of the remaining \$8,000 of taxes the Eligible Employer was going to deposit, and it will not owe a penalty for keeping the \$5,000. The Eligible Employer is



then only required to deposit the remaining \$3,000 on its required deposit date. The Eligible Employer will later account for the \$5,000 it retained when it files [Form 941, Employer's Quarterly Federal Tax Return](#) PDF, for the quarter.

For more information about relief under the FFCRA from failure to deposit penalties for failure to timely deposit certain federal employment taxes, see [Notice 2020-22](#) PDF and "[May an Eligible Employer reduce its federal employment tax deposit by the qualified leave wages that it has paid without incurring a failure to deposit penalty?](#)"

39. May an Eligible Employer reduce its federal employment tax deposits to cover qualified leave wages that it has paid without incurring a penalty for failing to deposit federal employment taxes? (Updated January 28, 2021)

Yes. An Eligible Employer that pays qualified leave wages in a calendar quarter will not be subject to a penalty under section 6656 of the Internal Revenue Code (the "Code") for failing to deposit federal employment taxes if:

1. the Eligible Employer paid qualified leave wages to its employees in the calendar quarter before the required deposit,
2. the total amount of federal employment taxes that the Eligible Employer does not timely deposit (reduced by any amount of the employer's and employee's share of social security tax deferred under section 2302 of the CARES Act and Notice 2020-65, as modified by Notice 2021-11, respectively) is less than or equal to the amount of the Eligible Employer's anticipated credit for the qualified leave wages for the calendar quarter as of the time of the required deposit, and
3. the Eligible Employer did not seek payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to any portion of the anticipated credits it relied upon to reduce its deposits.

For more information, about the relief from the penalty for failure to deposit federal employment taxes on account of qualified wages, see [Notice 2020-22](#) PDF, FAQs addressing the deferral of the deposit of all of the employer's share of social security tax under section 2302 of the CARES Act and the reduction in deposits for credits, "[Deferral of employment tax deposits and payments through December 31, 2020.](#)" In addition, employers may opt to defer withholding and payment of the employee's share of social security tax under [Notice 2020-65](#) PDF, as modified by [Notice 2021-11](#) PDF, on certain wages paid between September 1, 2020 through December 31, 2020.

Example: In its first payroll period of the second quarter of 2020, Employer F pays \$10,000 in qualified wages for purposes of the Employee Retention Credit and \$3,500 in qualified sick and family leave wages under the FFCRA, among other wages for the payroll period. Employer F has a federal employment tax deposit obligation of \$9,000 for the first payroll period of the second quarter of 2020 (of which \$1,500 relates to the employer's share of social security tax) prior to (1) any deferral of the deposit of the employer's share of social security tax under section 2302 of the CARES Act and (2) any amount of federal employment taxes not deposited in anticipation of credits for qualified sick and family leave wages under the FFCRA. Employer F reasonably anticipates a \$5,000 Employee Retention Credit (50 percent of qualified wages) and a \$3,500 credit for paid sick and family leave (100 percent of qualified sick and family leave wages) thus far for the second quarter.

Employer F first defers deposit of the \$1,500 employer's share of social security tax under section 2302 of the CARES Act. This preliminarily results in a remaining federal employment tax deposit obligation of \$7,500. Employer F then reduces this federal employment tax deposit obligation by the \$3,500 anticipated credit for qualified sick and family leave wages, leaving a federal employment tax deposit obligation of \$4,000. Finally, Employer F further reduces the deposit of all remaining federal employment taxes by \$4,000 for the \$5,000 anticipated Employee Retention Credit for qualified wages.



Employer F will not incur a failure to deposit penalty under section 6656 of the Code for reducing its federal employment tax deposit for the first payroll period of the second quarter to \$0.

The amount of the excess \$1,000 in Employee Retention Credit available is refundable as an overpayment. Employer F may file a [Form 7200](#) PDF to request an advance payment of the remaining Employee Retention Credit (but not for any amount of the Employee Retention Credit that was already used to reduce the deposit obligation). If Employer F does not request an advance payment of the credit, it may request that the \$1,000 overpayment be credited or refunded when it files its second quarter Form 941, Employer's Quarterly Federal Tax Return. Regardless of whether Employer F requests an advance payment of the credit, Employer F must report all qualified wages, the credit for qualified sick and family leave wages, the Employee Retention Credit, and any advance credit received from Forms 7200 filed for the quarter on the Form 941 for the quarter.

Employer F may defer payment of the \$1,500 employer's share of social security tax (along with any other employer social security tax imposed under section 3111(a) for the quarter) on its Form 941 for the second quarter of 2020. Employer F will not be required to pay any portion of the deferred amount until December 31, 2021, at which time 50 percent is due (\$750), with the remaining amount (\$750) due December 31, 2022.

40. How can an Eligible Employer that pays qualified leave wages cover the payment of these wages if the Eligible Employer does not have sufficient federal employment taxes set aside for deposit to cover those payments? Can the employer get an advance payment of the credits? (Updated February 4, 2021)

Because quarterly employment tax returns are not filed until after qualified wages are paid, some Eligible Employers may not have sufficient federal employment taxes set aside for deposit to the IRS to cover their qualified leave wages through reduction of the amount to be deposited, particularly after taking into account the permitted deferral of the employer's share of social security tax under section 2302 of the CARES Act and the permitted deferral of the employee's share of social security tax under [Notice 2020-65](#) PDF, as modified by [Notice 2021-11](#) PDF. Accordingly, the IRS has a procedure for obtaining an advance payment of the refundable credits.

The Eligible Employer is permitted to defer the deposit and payment of the employer's share of social security tax under section 2302 of the CARES Act and may do so prior to reducing any deposits in anticipation of the credit. See "Deferral of employment tax deposits and payments through December 31, 2020." The Eligible Employer may also opt to defer the withholding and payment of the employee's share of social security tax in accordance with [Notice 2020-65](#), PDF as modified by [Notice 2021-11](#) PDF. If the remaining employment tax deposits set aside, after taking into account any deferral of the employer's share of social security tax or any amount of the employee's share of social security tax that the employer opted to defer under Notice 2020-65, as modified by Notice 2021-11, are less than the qualified leave wages, the Eligible Employer can file a [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, to request an advance payment of the credit for the remaining qualified leave wages it has paid for which it did not have sufficient federal employment tax deposits.

If an Eligible Employer fully reduces its required deposits of federal employment taxes otherwise due on wages paid in the same calendar quarter to its employees in anticipation of receiving the credits, and it has not paid qualified leave wages in excess of this amount, it should not file a Form 7200. If it files a Form 7200, it will need to reconcile this advance payment of the credit and its deposits with the qualified wages on Form 941, Employer's Quarterly Federal Tax Return (or other applicable federal employment tax return such as [Form 944](#) PDF or [Form CT-1](#) PDF), beginning with the Form 941 for the second quarter of 2020, and it may have an underpayment of federal employment taxes for the quarter.



Example: During the second quarter of 2020, Employer G paid \$10,000 in qualified leave wages and is otherwise required to deposit \$8,000 in federal employment taxes on all wages paid, after deferring its employer's share of social security tax under section 2302 of the CARES Act. Employer G has not claimed the Employee Retention Credit for any wages under the CARES Act. Employer G can keep the entire \$8,000 of taxes that Employer G was otherwise required to deposit without penalty as a portion of the credits it is otherwise entitled to claim on the [Form 941](#) PDF. Employer G may file a request for an advance payment for the remaining \$2,000 by completing [Form 7200](#) PDF.

41. If the qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) exceed the Eligible Employer's share of social security tax owed for a quarter, how does the Eligible Employer get a refund of the excess credits? Does this affect what the Eligible Employer puts on its Form 941? (Updated January 28, 2021)

The amount of qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of the Medicare tax on the qualified leave wages) in excess of the Social Security tax the Eligible Employer owes for the quarter is refundable. If the amount of the credits exceeds the Eligible Employer's share of social security tax, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) or 6413(b) of the Internal Revenue Code. Consistent with its treatment as an overpayment, the excess will be applied to offset any remaining tax liability on the [Form 941, Employer's Quarterly Federal Tax Return](#) PDF, and the amount of any remaining excess will be reflected as an overpayment on the Form 941. Like other overpayments of federal taxes, the overpayment will be subject to offset under section 6402(a) of the Code prior to being refunded to the employer.

42. How does an Eligible Employer obtain Form 7200 and where should it send its completed form to receive the advance credit? Is there a minimum advance amount that can be claimed on a Form 7200? (updated July 2, 2020)?

An Eligible Employer may obtain the [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF online and may fax its completed form to 855-248-0552. After July 2, 2020, the minimum advance amount that can be claimed on a Form 7200 is \$25. A Form 7200 requesting an advance payment of less than \$25 will not be processed. Taxpayers can claim credits of less than \$25 on the [Form 941](#) PDF.

42a. Who can sign a Form 7200? Should a taxpayer submit additional documents to confirm that a person is authorized to sign a Form 7200? (Updated January 28, 2021)

The instructions for [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, provide information on who may properly sign a [Form 7200](#) PDF for each type of entity. For corporations, the instructions provide that the president, vice president, or other principal officer who is duly authorized may sign a Form 7200. For partnerships (including an LLC treated as a partnership) or unincorporated organizations, a responsible and duly authorized partner, member, or officer having knowledge of the entity's affairs may sign a Form 7200. For a single-member LLC treated as a disregarded entity for federal income tax purposes, the instructions provide that the owner or a principal officer who is duly authorized may sign the Form. For trusts or estates, the instructions provide that the fiduciary may sign the Form 7200. Additionally, the instructions provide that a Form 7200 may be signed by a duly authorized agent of the taxpayer if a valid power of attorney has been filed.

In many circumstances, whether the person signing the Form 7200 is duly authorized or has knowledge of the partnership's or unincorporated organization's affairs is not apparent on the Form 7200. To help expedite and ensure proper processing of Forms 7200, if a taxpayer has duly authorized an officer, partner, or member to sign Form 7200 (and that person is not otherwise explicitly permitted to sign the Form 7200 by nature of their job title), the taxpayer should submit a copy of the [Form 2848, Power of Attorney and Declaration of Representative](#) PDF, authorizing the person to sign the Form 7200 with the Form 7200.



42b. When should the name and EIN of a third-party payer be included on Form 7200? (Updated November 25 2020)

Employers who file [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF to claim an advance payment of credits are required to include on the form the name and EIN of the third-party payer they use to file their federal employment tax returns (such as the Form 941) if the third-party payer uses its own EIN on the federal employment tax returns. This will ensure advance payment of the credits received by the common law employer is properly reconciled to the federal employment tax return filed by the third-party payer for the calendar quarter for which the advance payment of the credits is received.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the federal employment tax return for the calendar quarter, only those third-party payers who will file a federal employment tax return on behalf of an employer using the third-party payer's name and EIN should be listed on the Form 7200. Typically, CPEOs, PEOs, and other section 3504 agents fall into this category of third-party payers.

If a third-party payer will file the federal employment tax return on an employer's behalf using the employer's name and EIN and not the name and EIN of the third-party payer, the employer should not include the name and EIN of the third-party payer on the Form 7200. Typically, reporting agents and payroll service providers fall into this category of third-party payers.

42c. If a common law employer uses a third-party payer for only a portion of its workforce, should the employer list the third-party payer on the Form 7200? (Updated November 25, 2020)

In some cases, a common law employer may use the services of a third-party payer (such as a CPEO, PEO, or other section 3504 agent) to pay wages for only a portion of its workforce. In those circumstances, the third-party payer files an employment tax return (such as the [Form 941](#) PDF) for wages it paid to employees under its name and EIN, and the common law employer files an employment tax return for wages it paid directly to employees under its own name and EIN.

If the common law employer is claiming advance payments of credits for both wages paid directly to employees that will be reported on its own employment tax return and wages paid to other employees by a third-party payer that will be reported on the third-party payer's employment tax return, two separate [Forms 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, should be filed: one for the wages paid by the common law employer with the name and EIN of the employer, and one for the wages paid by the third-party payer with the name and EIN of both the common law employer and the third-party payer.

To help expedite and ensure proper processing of [Form 7200](#) PDF and reconciliation of advance payment of the credits to the employment tax return when an employer uses a third-party payer such as a CPEO, PEO, or other section 3504 agent for only a portion of its workforce, a common law employer should include the name and EIN of the third-party payer only on the Form 7200 for advance payment of the credits for wages paid by the third-party payer and reported on the third-party payer's employment tax return. The common law employer should not include the name and EIN of the third-party payer on the Form 7200 for advance payments of the credits claimed for wages paid by the common law employer and reported on the common law employer's employment tax return.

42d. What is the last day taxpayers may submit a Form 7200, Advance Payment of Employer Credits Due to Covid-19, requesting an advance payment of credits? (Updated February 4, 2021)



Taxpayers filing a [Form 941, Employer's QUARTERLY Federal Tax Return](#) PDF, may submit a 2021 [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, up to the earlier of April 30, 2021 or the date they file the Form 941 for the first quarter of 2021. Taxpayers filing a [Form 943, Employer's Annual Federal Tax Return for Agricultural Employees](#) PDF, [Form 944, Employer's ANNUAL Federal Tax Return](#) PDF, or [Form CT-1, Employer's Annual Railroad Retirement Tax Return](#) PDF, may submit a 2021 Form 7200 up to April 30, 2021. Note that you may not file Form 7200 for any quarter after the earlier of the date you file Form 941 for the quarter, or the due date for the return for that quarter.

43. What if an Eligible Employer does not initially pay an employee qualified leave wages when the employee is eligible for those wages, but pays those wages at a later date? (Updated January 28, 2021)

An Eligible Employer can claim the credits once it has paid the employee for the period of paid sick leave or expanded family and medical leave, as long as the qualified leave wages relate to leave taken during the period beginning on April 1, 2020, and ending on March 31, 2021.

How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?

44. What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits? (Updated January 28, 2021)

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

1. The employee's name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school (or summer camp, summer enrichment program, or other summer program) that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

Example: A state government directive specifies that employees quarantining either because they have COVID-19 symptoms or have been directly exposed to COVID-19 are not required to provide their employer with a COVID-19 test result or a healthcare provider's note to validate their illness or exposure and need for leave. A written request from an employee providing the name of the government entity and briefly describing the directive would satisfy the applicable substantiation requirements.



45. What additional records should an Eligible Employer maintain to substantiate eligibility for the sick leave or family leave credit? (Updated November 25, 2020)

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if, in addition to the information set forth in FAQ 44 ("**What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?**"), the employer creates and maintains records that include the following information:

1. Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.
2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. See FAQ 31 ("[Determining the Amount of Allocable Qualified Health Plan Expenses](#)") for methods to compute this allocation.
3. Copies of any completed [Forms 7200, Advance of Employer Credits Due To COVID-19](#) PDF, that the employer submitted to the IRS.
4. Copies of the completed [Forms 941, Employer's Quarterly Federal Tax Return](#) PDF, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer's entitlement to the credit claimed on Form 941).

46. How long should an Eligible Employer maintain records to substantiate eligibility for the sick leave or family leave credit? (Added November 25, 2020)

An Eligible Employer should keep all records of employment taxes for at least 4 years after the date the tax becomes due or is paid, whichever comes later. These should be available for IRS review.

46a. May an employer choose to require information from employees in addition to that described in these FAQs? (Added November 25, 2020)

Yes. An employer may choose to require additional information from the employee.

Periods of Time for Which Credits are Available

47. How long are the refundable tax credits for qualified leave wages available? (Updated January 28, 2021) **The credits for Eligible Employers for qualified leave wages apply to wages paid with respect to the period of April 1, 2020, through March 31, 2021.**

For more information on requirements and eligibility related to paid sick leave and expanded family and medical leave, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

48. Are wage payments for qualified leave wages made after March 31, 2021 but for periods of leave taken before March 31, 2021, eligible for the credits? (Updated January 28, 2021)



Yes. While only wages for periods of leave between April 1, 2020, and March 31, 2021, can be qualified wages, the payment of the qualified leave wages can be made after the end of this period and be eligible for the credits as long as the wages are for leave that an employee took between April 1, 2020, and March 31, 2021.

For more information, see [Notice 2020-21](#) PDF.

Note: The COVID-related Tax Relief Act of 2020 extends the tax credits available to Eligible Employers for paid sick and family leave provided under the EPSLA and Expanded FMLA through March 31, 2021. Therefore, any references to these credits expiring on December 31, 2020 have been updated to March 31, 2021.

Special Issues for Employers: Taxation and Deductibility of Tax Credits

49. What amount does an Eligible Employer receiving tax credits for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) need to include in income? (Updated January 28, 2021)

An Eligible Employer must include the full amount of the credits for qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of the Medicare tax on the qualified leave wages) in gross income.

50. May an Eligible Employer deduct as a business expense an amount paid to an employee for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) for which it expects to claim the tax credits? (Updated January 28, 2021)

Generally, an Eligible Employer's payments of qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of the Medicare tax on the qualified wages) are deductible by the Eligible Employer as ordinary and necessary business expenses in the taxable year that these wages are paid or incurred. An Eligible Employer may deduct as a business expense the amounts paid to an employee for qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) for which the Eligible Employer expects to claim the tax credits under sections 7001 or 7003 of the FFCRA, if the Eligible Employer is otherwise eligible to take the deduction.

50a. What are the tax consequences of claiming the tax credits for a tax-exempt Eligible Employer?(Updated January 28, 2021)

An Eligible Employer that is exempt from federal income taxation under section 501(a) of the Internal Revenue Code (the "Code") must allocate the credits for qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) ("tax credits") between activities substantially related to its exempt purposes and any unrelated trade or business activities, using the same allocation it uses in allocating the qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) for purposes of calculating its unrelated business taxable income for the year.

The portion (if any) of the tax credits that is allocable to an unrelated trade or business must be included in gross income from that unrelated trade or business for purposes of the tax imposed by section 511 of the Code. The portion (if any) of the tax credits that is allocable to the tax-exempt Eligible Employer's exempt activities is exempt from federal income taxation under section 501(a) of the Code.



A tax-exempt Eligible Employer may deduct from gross income from an unrelated trade or business the amounts paid to an employee for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) that are directly connected with carrying on that unrelated trade or business.

Note: The Federal government, the governments of any State or political subdivision thereof, and any agencies or instrumentalities of those governments are not Eligible Employers and are not entitled to receive tax credits for providing paid leave wages under the EPSLA or Expanded FMLA. Tribal governments that provide paid sick and paid family and medical leave pursuant to the EPSLA or Expanded FMLA are eligible to claim the tax credits for qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see "[What is an Eligible Employer?](#)"

Example. X, a tax-exempt Eligible Employer, derives gross income from the conduct of an unrelated trade or business. X employs Y who devotes 90% of her time to X's exempt activities and 10% of her time to X's unrelated business activity. X receives \$2,000 in tax credits for qualified leave wages paid to Y.

X allocates \$200 (10% of \$2,000) of the tax credits to gross income from its unrelated trade or business. X may deduct \$200 (10% of \$2,000), the portion of Y's qualified leave wages that is allocable to X's unrelated business activity, from its gross income from the unrelated trade or business.

51. Do the tax credits under sections 7001 and 7003 of the FFCRA reduce the amount deductible as federal employment taxes on an Eligible Employer's income tax return? (Updated January 28, 2021)

Generally, an employer's payment of certain federal employment taxes is deductible by the employer as an ordinary and necessary business expense in the taxable year that these taxes are paid or incurred, and the amount deductible is generally reduced by credits allowed. Although the tax credits under sections 7001 and 7003 of the FFCRA are allowed against the Eligible Employer's portion of the social security tax, the credits are treated as government payments to the employer that must be included in the Eligible Employer's gross income. If the employer is otherwise eligible to deduct its portion of the social security tax on all wages, the proper amount deductible by the employer is the amount of federal employment taxes before reduction by the tax credits.

51a. Does a government employer that provides paid leave wages under the EPSLA or Expanded FMLA have to pay the employer's share of social security tax on the paid leave wages? (Updated January 28, 2021)

No. Section 7005(a) of the FFCRA states that paid leave wages are not considered wages under section 3111(a) of the Internal Revenue Code (the "Code"), which covers the employer portion of the Old-Age, Survivors, and Disability Insurance tax (social security tax), or compensation under so much of section 3221(a) of the Code as is attributable to the rate in effect under section 3111(b) of the Code, which covers the Railroad Retirement Tax Act Tier 1 rate.

51b. Does a government employer receive a credit for the employer's share of Medicare tax on paid leave wages it provides under the FFCRA? (Updated January 28, 2021)

No. Governmental employers are not Eligible Employers and are not entitled to receive tax credits for providing paid leave wages under the EPSLA or Expanded FMLA.



Note that Tribal governments that provide paid sick and paid family and medical leave pursuant to the FFCRA are eligible to claim the tax credits for qualified leave wages, including for the Eligible Employer’s share of Medicare tax on the qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see [“What is an Eligible Employer?”](#)

51c. Does a governmental employer receive a credit for the health care expenses allocable to the qualified leave wages? (Updated January 28, 2021)

No. Governmental employers are not Eligible Employers and are not entitled to receive tax credits for any health care expenses allocable to paid leave they provide under the EPSLA or Expanded FMLA.

Note that Tribal governments that provide paid sick and paid family and medical leave pursuant to the FFCRA are eligible to claim the tax credits for qualified leave wages, including for any qualified health care expenses allocable to the qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see [“What is an Eligible Employer?”](#)

Special Issues for Employers: Interaction of the FFCRA Tax Credits with Other Tax Credits

52. May Eligible Employers receive credits under both section 45S of the Internal Revenue Code and tax credits for qualified leave wages under the FFCRA? (Updated January 28, 2021)

No. There is no double benefit allowed. Under sections 7001(e)(1) and 7003(e)(1) of the FFCRA, any qualified leave wages taken into account for the tax credits may not be taken into account for purposes of determining a credit under section 45S of the Internal Revenue Code. Thus, an Eligible Employer may not claim a credit under section 45S with respect to the qualified sick leave wages or qualified family leave wages for which it receives a tax credit under the FFCRA, but may be able to take a credit under section 45S with respect to any additional wages paid, provided the requirements of section 45S are met with respect to the additional wages.

52a. Can an employer receive both the Paycheck Protection Program Loan (“PPP loan”) and the leave credit during the same period? (Updated January 28, 2021)

Yes. Receiving credits for qualified leave wages does not disqualify an eligible recipient from receiving the PPP loan to which it is otherwise entitled under section 1102 of the CARES Act. However, the amount of the PPP loan is reduced by the amount of the qualified leave wages for which an employer is allowed tax credits, and those wages are not eligible as “payroll costs” for purposes of receiving loan forgiveness under section 1106 of the CARES Act.

For more information on the PPP loan, see [Paycheck Protection Program](#).

Special Issues for Employers: Use of Third-Party Payers

53. Can an eligible common law employer that uses a third-party to report and pay employment taxes to the IRS get the sick and family leave credits? (updated November 25, 2020)

Yes. If a common law employer is otherwise eligible to claim the sick and family leave credits, it is entitled to the credit, regardless of whether it uses a third-party payer (such as a reporting agent, payroll service provider, professional



employer organization (PEO), certified professional employer organization (CPEO), or section 3504 agent) to report and pay its federal employment taxes. The third-party payer is not entitled to the tax credits with respect to the wages it remits on the common law employer's behalf (regardless of whether the third-party is considered an "employer" for other purposes of the Internal Revenue Code). If a common law employer uses a third-party to file, report, and pay employment taxes, different rules will apply depending on the type of third-party payer the common law employer uses for claiming/reporting the sick and family leave credits.

If an eligible common law employer uses a reporting agent to file its federal employment tax returns the reporting agent will need to reflect the tax credits for qualified leave wages on the federal employment tax returns it files on the common law employer's behalf.

If an eligible common law employer uses a CPEO or a section 3504 agent that received its designation as an agent by submitting [Form 2678, Employer/Payer Appointment of Agent](#) PDF, to report its federal employment taxes on an aggregate [Form 941](#) PDF, the CPEO or section 3504 agent will report the tax credits for qualified leave wages on its aggregate [Form 941](#) PDF and [Schedule R, Allocation Schedule for Aggregate Form 941 Filers](#) PDF, that it already files. An eligible common law employer can submit its own [Form 7200](#) PDF to claim the advance credit. The eligible common law employer will need to provide a copy of the [Form 7200](#) PDF to the CPEO or section 3504 agent so the CPEO or section 3504 agent can properly report the sick and family leave credits on the [Form 941](#) PDF.

If an eligible common law employer uses a non-certified PEO or other third-party payer (other than a CPEO or section 3504 agent that submitted [Form 2678](#) PDF) that reports and pays the common law employer's federal employment taxes under the third-party's Employer Identification Number (EIN), the PEO or other third-party payer will need to report the tax credits for qualified leave wages on an aggregate [Form 941](#) PDF and separately report the tax credits for qualified leave wages allocable to the common law employers for which it is filing the aggregate [Form 941](#) PDF on an accompanying Schedule R PDF. The PEO or other third-party payer does not have to complete [Schedule R](#) with respect to any common law employer for which it is not claiming tax credits for qualified leave wages. The eligible common law employer will need to provide a copy of any [Form 7200](#) PDF that it submitted for an advance payment of the credit to the PEO or other third-party payer so the PEO or other third-party payer can properly report the tax credits for qualified leave wages on the [Form 941](#) PDF. These rules are similar to the rules that apply with respect to the payroll tax election available under section 41(h) of the Code for the credit for certain research and development expenses.

53a. May a payroll reporting agent sign and submit Form 7200 on behalf of a client employer? (added November 25, 2020)

A payroll reporting agent may sign [Form 7200](#) PDF for a client employer for which it has the authority, via [Form 8655, Reporting Agent Authorization](#) PDF, to sign and file the federal employment tax return. The signatory must be the Principal or Responsible Official listed on the RA's e-file application. The signatory may sign with ink on paper or may use the alternative signature method (rubber stamp, mechanical device, or computer software program; for details and required documentation, see [Rev. Proc. 2005-39](#) PDF, 2005-28 I.R.B. 82). Consistent with [Rev. Proc. 2005-39](#) PDF, an alternative signature must be in the form of a facsimile signature.

The reporting agent must obtain written authorization from the client employer (paper, fax, or e-mail) to perform these actions regarding the Form 7200. The reporting agent need not submit that authorization to the IRS but should retain it in its files so that the reporting agent can furnish it to the IRS upon request. For a client employer for which a third-party does not have a Reporting Agent Authorization, it may complete and print the form, or it may provide the client employer a means to complete and print the form, but the client employer will have to sign it.



The signatory for the reporting agent must sign, date, and print his or her name in the relevant boxes on [Form 7200](#) PDF. In the box, “Printed Title,” the signatory must include the reporting agent company name or name of business as it appeared on line 9 of the [Form 8655](#) PDF. If the reporting agent company name or name of business from the [Form 8655 PDF](#) is missing, the [Form 7200](#) PDF cannot be processed.

53b. What information must third-party payers obtain from their client employers to claim the sick leave and family leave credits on their client employer’s behalf? (added November 25, 2020)

If a third-party payer (CPEO, PEO, or section 3504 agent) is claiming the sick leave and family leave credits on behalf of the client employer, it must collect from the client employer any information necessary to accurately claim the credit on its client employer’s behalf. This includes obtaining information with respect to the client employer’s claims for credits under section 45S of the Internal Revenue Code and the employee retention credit.

53c. When should the name and EIN of a third-party payer be included on Form 7200? (added November 25, 2020)

Common law employers who file [Form 7200](#) PDF to claim an advance payment of credits are required to include on the form the name and EIN of the third-party payer they use to file their federal employment tax returns (such as the [Form 941](#) PDF) if the third-party payer uses its own EIN on the federal employment tax returns. This will ensure advance payment of the credits received by the common law employer is properly reconciled to the federal employment tax return filed by the third-party payer for the calendar quarter for which the advance payment of the credits is received.

To help expedite and ensure proper processing of [Form 7200](#) PDF and reconciliation of advance payment of the credits to the federal employment tax return for the calendar quarter, only those third-party payers who will file a federal employment tax return on behalf of a common law employer using the third-party payer’s name and EIN should be listed on the [Form 7200](#) PDF. Typically, CPEOs, PEOs, and other section 3504 agents fall into this category of third-party payers.

If a third-party payer will file the federal employment tax return on a common law employer’s behalf using the common law employer’s name and EIN and not the name and EIN of the third-party payer, the common law employer should not include the name and EIN of the third-party payer on the Form 7200. Typically, reporting agents and payroll service providers fall into this category of third-party payers.

53d. If a common law employer uses a third-party payer for only a portion of their workforce, should they list the third-party payer on the Form 7200? (added November 25, 2020)

In some cases, a common law employer may use the services of a third-party payer (such as a CPEO, PEO, or other section 3504 agent) to pay wages for only a portion of its workforce. In those circumstances, the third-party payer files a federal employment tax return for the wages it paid to the common law employer’s employees under its name and EIN , and the common law employer files a federal employment tax return for wages it paid directly to employees under its own name and EIN.

If the common law employer is claiming advance payments of credits for both wages paid directly to employees that will be reported on its own federal employment tax return and wages paid to other employees by a third-party payer that will be reported on the third-party payer’s federal employment tax return, two separate [Forms 7200](#) PDF should be filed: one for the wages paid by the common law employer with the name and EIN of the common law employer, and one for the wages paid by the third-party payer with the name and EIN of both the common law employer and the third-party payer.



To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the federal employment tax return when a common law employer uses a third-party payer such as a CPEO, PEO, or other section 3504 agent for only a portion of their workforce, a common law employer should include the name and EIN of the third-party payer only on the [Form 7200](#) PDF for advance payment of the credits for wages paid by the third-party payer and reported on the third-party payer's federal employment tax return. The common law employer should not include the name and EIN of the third-party payer on the [Form 7200](#) PDF for advance payments of the credits claimed for wages paid by the common law employer and reported on the common law employer's federal employment tax return.

53e. What information must third-party payers obtain from their client employers to claim the sick and family leave credits on their client's behalf? (added November 25, 2020)

If a third-party payer (such as a CPEO, PEO, or other section 3504 agent) is claiming the sick and family leave credits on behalf of the client employer, it must collect from the client employer any information necessary to accurately claim the sick and family leave credits on its client employer's behalf.

53f. May third-party payers rely on client employer information regarding the sick and family leave credits? (added November 25, 2020)

Yes. If a third-party payer (such as a CPEO, PEO, or other section 3504 agent) is claiming the sick and family leave credits on behalf of the client employer, the third-party payer may rely on the client employer's information regarding the client employer's eligibility to claim the sick and family leave credits, and the client employer may maintain all records which substantiate the client employer's eligibility for the sick and family leave credits.

However, upon request by the IRS, the third-party payer must obtain from the client employer and provide to the IRS records that substantiate the client employer's eligibility for the sick and family leave credits. The client employer and the third-party payer will each be liable for employment taxes that are due as a result of any improper claim of the sick and family leave credits in accordance with their liability under the Internal Revenue Code and applicable regulations for the employment taxes reported on the federal employment tax return filed by the third-party payer on which the credits were claimed.

53g. Upon request by the IRS, what records must third-party payers obtain from their client employers to substantiate the client employer's eligibility for the sick and family leave credits? (added November 25, 2020)

If a third-party payer is claiming the sick and family leave credits on behalf of the client employer, it must, at the IRS's request, be able to obtain from the client employer and provide to the IRS records that substantiate client employer's eligibility for the sick and family leave credits.

53h. Are client employers responsible for avoiding a "double benefit" with respect to the sick and family leave credits and the credit under section 45S of the Code? (added November 25, 2020)

Yes. The client employer is responsible for avoiding a "double benefit" with respect to the sick and family leave credits and the credit under section 45S of the Internal Revenue Code. The client employer cannot use wages that were used to claim the sick and family leave credits, and reported by the third-party payer on the client employer's behalf, to claim the section 45S of the Code credit on its income tax return.



Special Issues for Employers: Other Issues

54. Can employees make salary reduction contributions from the amounts paid as qualified leave wages for their employer sponsored health plan, a 401(k) or other retirement plan, or any other benefits?

The FFCRA does not distinguish qualified leave wages from other wages an employee may receive from the employee's standpoint as a taxpayer; thus, the same rules that generally apply to an employee's regular wages (or compensation, for RRTA purposes) would apply from the employee's standpoint. To the extent that an employee has a salary reduction agreement in place with the Eligible Employer, the FFCRA does not include any provisions that explicitly prohibit taking salary reduction contributions for any plan from qualified sick leave wages or qualified family leave wages.

54a. If the amount of paid sick leave or paid family leave an Eligible Employer pays to an employee is exempt from social security and Medicare taxes, can the Eligible Employer still claim tax credit for paying that amount to the employee? (Updated January 28, 2021)

It depends. The tax credit for providing paid sick leave or paid family leave is only allowed for qualified leave wages paid to employees. An amount must constitute wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code") for social security and Medicare tax purposes, determined without regard to section 3121(b)(1)-(22) of the Code and section 7005(a) of the FFCRA) or compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the Code, and without regard to section 7005(a) of the FFCRA) in order to be qualified leave wages.

Example 1: A church in State X employs an ordained minister; the minister is a common law employee of the church. The church pays the ordained minister sick leave for periods during which he is unable to work because he is experiencing symptoms of COVID-19 and seeking a medical diagnosis. Although the minister's salary and parsonage allowance are not subject to social security and Medicare taxes because they are not considered as being provided for "employment" under section 3121(b)(8) of the Code, the payment is nonetheless a wage as defined in section 3121(a) of the Code when disregarding the exclusion in section 3121(b)(8) of the Code. Therefore, the paid sick leave is qualified leave wages for which the church may claim tax credits under the FFCRA.

Example 2: A licensed real estate agent at Brokerage Firm Y receives substantially all of her payments for services directly related to home sales and performs services under a written contract providing that she will not be treated as an employee for federal tax purposes. Therefore, the licensed real estate agent at Brokerage Firm Y is treated as a statutory nonemployee under the Code. Brokerage Firm Y pays the agent sick leave for periods during which she is unable to work because she has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. Amounts paid to the agent by Brokerage Firm Y do not constitute wages within the meaning of section 3121(a) of the Code. Therefore, the paid sick leave is not qualified leave wages for which Brokerage Firm Y may claim tax credits under the FFCRA.

Example 3: Employer Z provides its employees with, and the employees make, pre-tax salary reduction contributions to or for, a qualified 401(k) plan, a fully-insured group health plan, a dependent care assistance program satisfying the requirements of section 129 of the Code, and qualified transportation benefits satisfying the requirements of section 132(f) of the Code. Employer Z also makes matching and nonelective contributions to the qualified 401(k) plan and pays for the remaining portion of the cost of maintaining the fully-insured group health plan.

Employer Z may treat as qualified leave wages the amounts its employees contribute as pre-tax salary reduction contributions to the qualified 401(k) plan because those amounts are wages within the meaning of section 3121(a) of



the Code. Employer Z may also treat all amounts paid toward maintaining the fully-insured group health plan (including any employee pre-tax salary reduction contribution) as qualified health plan expenses that are allocable to qualified leave wages. See [“Does the amount of qualified health plan expenses include both the portion of the cost paid by the Eligible Employer and the portion of the cost paid by the employee?”](#)

Employer Z may not treat as qualified leave wages the amounts Employer Z contributes as matching or nonelective contributions to the qualified 401(k) plan, nor may it treat as qualified leave wages any employee pre-tax salary reduction contributions toward the dependent care assistance program or qualified transportation benefits. These amounts do not constitute wages within the meaning of section 3121(a) of the Code and are not qualified health plan expenses; therefore, these amounts are not qualified leave wages under the FFCRA.

54b. How do Eligible Employers report qualified leave wages? (Updated March 17, 2021)

Eligible Employers must report the amount of qualified sick and family leave wages paid to employees under the EPSLA and Expanded FMLA on [Form W-2, Wage and Tax Statement](#) PDF, either in Box 14, or in a statement provided with the Form W-2. Eligible Employers must report qualified sick and family leave wages paid in 2020 on the 2020 Form W-2. Eligible Employers must report qualified sick and family leave wages paid in 2021 on the 2021 Form W-2.

For more information, including optional language that Eligible Employers may use in the Form W-2 instructions for employees, see [Notice 2020-54](#) PDF.

54c. Does an Eligible Employer need to report qualified leave wages in Box 14 (or a separate statement) of the Form W-2 if those amounts are not “wages” due to an exclusion from “employment” under section 3121(b) of the Internal Revenue Code (the “Code”) or “compensation” under section 3231(e)(1) of the Code? (Added January 28, 2021)

Yes. Section 7002(d)(3) of the FFCRA reduces the qualified sick leave equivalent amount for which a 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 FFCRA and any amounts described in section 7001(b)(1) of the FFCRA exceeds the applicable thresholds under section 5102(a) of the ESPLA. Similarly, section 7004(d)(3) of the FFCRA reduces the qualified family leave equivalent amount for which a self-employed individual may claim a tax credit to the extent that the sum of the qualified family leave amount described in section 7004(c) of the FFCRA and any amounts described in section 7003(b)(1) of the FFCRA exceeds \$10,000.

Sections 7001(b)(1) and 7003(b)(1) of the FFCRA describe the amounts of qualified sick leave wages and qualified family wages taken into account for purposes of the employer payroll tax credits for paid sick leave and paid family leave, respectively. Sections 7001(c) and 7003(c) of the FFCRA define these qualified leave wages as wages (as defined in section 3121(a) of the Internal Revenue Code (the “Code”) determined without regard to section 3121(b)(1)-(22) of the Code and without regard to section 7005(a) of the FFCRA), and compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the Code and without regard to section 7005(a) of the FFCRA).

Therefore, Eligible Employers will determine the amount to report in Box 14 of the Form W-2 without regard to the exclusions from “employment” under section 3121(b)(1)-(22) of the Code and without regard to the exclusions from “compensation” under section 3231(e)(1) of the Code.



54d. Is an Eligible Employer that does not claim the tax credits for qualified leave wages required to report the sick leave wages and family leave wages paid to employees in Box 14 of Form W-2 or a separate statement? (Added March 15, 2021)

No. If an Eligible Employer does not claim the tax credits for qualified leave wages, it will be treated as having elected under sections 7001(e)(2) and 7003(e)(2) of the FFCRA not to apply the tax credits available under sections 7001 and 7003. Accordingly, the sick leave wages and family leave wages it paid to employees are not considered qualified sick leave wages or qualified family leave wages under the FFCRA and those wages do not have to be reported to employees in Box 14 of Form W-2, or in a statement provided with Form W-2.

54e. Are governmental employers that are not permitted under the FFCRA to claim the tax credits for qualified leave wages required to report sick leave wages and family leave wages paid to employees in Box 14 of Form W-2 or a separate statement? (Added March 15, 2021)

No. The government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of those governments (governmental employers) are not permitted to claim the tax credits under sections 7001 and 7003 of the FFCRA. Because governmental employers cannot claim the tax credits, the sick leave wages and family leave wages paid to employees are not considered qualified leave wages under the FFCRA. Therefore, those wages do not have to be reported to employees in Box 14 of Form W-2, or in a statement provided with Form W-2.

This rule does not apply to Tribal governments that are Eligible Employers permitted to claim the tax credits for sick leave wages and family leave wages paid to employees.

54f. Is an Eligible Employer that did not claim the tax credits for qualified leave wages, but reported the sick leave wages and family leave wages paid to employees in 2020 in Box 14 of Form W-2 or a separate statement required to issue a Form W-2c, Corrected Wage and Tax Statement, or provide a corrected statement? (Added March 15, 2021)

Yes. If an Eligible Employer that did not claim the tax credits for qualified leave wages reported the sick leave wages and family leave wages paid to employees in Box 14 of Form W-2 or in a statement provided with Form W-2, the Eligible Employer must either furnish a Form W-2c or provide a corrected statement to employees correcting the erroneous reporting. However, the Eligible Employer should not file Form W-2c with the SSA solely to correct the amount in Box 14.

54g. Is an Eligible Employer that claims the tax credits for qualified leave wages paid after December 31, 2021, for leave taken by an employee in 2020 or 2021 required to furnish to the employee a Form W-2c to correct the amount of sick leave and family leave wages reported in Box 14 of the employee's 2020 and/or 2021 Form W-2? (added March 3, 2022)

Yes. If an Eligible Employer reports sick leave or family leave wages paid after December 31, 2021, for leave taken by an employee after March 31, 2020, and before April 1, 2021, and claims a credit for those sick and family leave wages, the Eligible Employer must either (1) furnish to the employee a Form W-2c, Corrected Wage and Tax Statement, reporting the corrected amounts of sick leave and family leave wages (to include the qualified leave wages paid after December 31, 2021) in Box 14, or (2) provide a corrected statement to the employee correcting the prior reporting.

For qualified leave wages paid after December 31, 2021, for leave taken in 2020, the Eligible Employer must furnish a Form W-2c (or provide a corrected statement) to the employee that corrects the leave wage amounts reported in Box 14 (or in a separate statement) of the employee's 2020 Form W-2, Wage and Tax Statement. For qualified leave wages



paid after December 31, 2021, for leave taken in 2021, the Eligible Employer must furnish a Form W-2c (or provide a corrected statement) to the employee that corrects leave wage amounts reported in Box 14 (or in a separate statement) of the employee's 2021 Form W-2.

The Eligible Employer should not file a Form W-2c with the SSA solely to correct the amount in Box 14.

55. Should Eligible Employers withhold federal employment taxes on qualified leave wages paid to employees? (updated November 25, 2020)

Yes. Qualified leave wages are wages subject to withholding of federal income tax and the employee's share of social security and Medicare taxes. Qualified leave wages are also considered wages for purposes of other benefits that the Eligible Employer provides, such as contributions to 401(k) plans.

56. Is a tax-exempt employer eligible for the tax credit? (Updated January 28, 2021)

Yes. The FFCRA entitles Eligible Employers that pay qualified sick leave wages and qualified family leave wages to refundable tax credits. Qualified sick leave wages and qualified family leave wages are those wages for paid sick leave and paid family and medical leave that are required to be paid under the EPSLA or Expanded FMLA. Tax-exempt organizations that are required to provide such paid sick leave or expanded paid family and medical leave may claim the tax credits.

56a. Can an employer choose not to claim the tax credits? (Updated January 28, 2021)

Yes. An employer is not required to claim the tax credits even if it is an Eligible Employer entitled to the tax credits. However, even if the employer does not claim the tax credit, it must provide the paid sick leave and paid family to the extent it is required by the FFCRA.

For more information on the rules regarding paid sick leave and paid family leave, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

56b. Can an employer claim the tax credits for employees if it has closed its worksite after April 1, 2020 (the effective date of the FFCRA)? (Updated January 28, 2021)

Yes. Regardless of whether an employer has closed its worksite after the FFCRA took effect, the employer is entitled to claim the tax credits to the extent it provides an employee with qualified leave wages, for example, for periods before the worksite closure, and it is otherwise an Eligible Employer. Similarly, the tax credits for qualified health plan expenses and for Medicare tax may be claimed only for periods for which the employer is obligated to provide paid sick or family leave.

For more information on an employer providing paid sick or family leave under the EPSLA or Expanded FMLA, respectively, in the event of worksite closures and other suspensions of operations, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

56c. Can an employer claim the tax credit for employees it has rehired? (Updated January 28, 2021)

Yes. Eligible Employers that pay qualified leave wages to certain rehired employees who take sick or family leave for reasons related to COVID-19 can claim the tax credit. A rehired employee for this purpose is one that the Eligible



Employer laid off or otherwise terminated on or after March 1, 2020, rehired or otherwise reemployed on or before March 31, 2021, and had been on the Eligible Employer's payroll for 30 or more of the 60 calendar days prior to the date the employee was laid off or otherwise terminated. The Eligible Employer would be entitled a tax credit for these qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on qualified leave wages).

Example: An Eligible Employer originally hires an employee on January 15, 2020, lays the employee off on March 14, 2020, and rehires the employee on October 1, 2020. The Eligible Employer may receive a tax credit for any qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on qualified leave wages) that it subsequently provides.

56d. Can an employer receive tax credits for providing paid leave that an employee is entitled to under the employer's policy? (Updated January 28, 2021)

Generally, no. An employer is entitled to tax credits for paid leave only to the extent that it is paid under the EPSLA or Expanded FMLA. Accordingly, an employer may not require an employee to use provided or accrued paid vacation, personal, medical, or sick leave before the paid leave under the EPSLA or Expanded FMLA. An employer may not require an employee to use such existing leave concurrently with the paid leave under the EPSLA or Expanded FMLA, either.

For more information regarding circumstances in which, for example, paid sick leave under the EPSLA may be substituted for paid sick leave to which an employee is already entitled, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

56e. May an employer increase the tax credit for its share of Medicare tax by taking into account amounts contributed on a pretax basis to a cafeteria plan under section 125 of the Internal Revenue Code (the "Code")? (Updated January 28, 2021)

No. An employer may claim a tax credit under the FFCRA only for those payments that are qualified leave wages, which must be either wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code") determined without regard to section 3121(b)(1)-(22) of the Code and without regard to section 7005(a) of the FFCRA) or compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the Code, and without regard to section 7005(a) of the FFCRA). Section 7005(b)(1) of the FFCRA increases this tax credit by the Eligible Employer's share of Medicare tax imposed on these qualified leave wages. However, amounts contributed on a pretax basis to a plan that meets the requirements of section 125 of the Code do not constitute wages or compensation. See [Publication 15-B, Employers' Tax Guide to Fringe Benefits](#) PDF, for more information. Accordingly, those amounts are not qualified leave wages and are not factored into the calculation of the amount by which the FFCRA increases the employer's credit on account of the Eligible Employer's share of Medicare tax.

Special Issues for Employees

57. Are qualified sick leave wages and qualified family leave wages taxable to employees? (Updated January 28, 2021)

Yes, generally. Under sections 7001(c) and 7003(c) of the FFCRA, qualified leave wages are wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code") determined without regard to section 3121(b)(1)-(22) of the Code and without regard to section 7005(a) of the FFCRA), and compensation (as defined in section 3231(e) of the Code determined without regard to the exclusions under section 3231(e)(1) of the Code and without regard to section 7005(a) of the FFCRA), so the employee must pay social security and Medicare taxes (and for railroad employees, Tier II of the



Railroad Retirement Tax Act tax), unless the qualified leave wages are subject to an exclusion under section 3121(b)(1)-(22) of the Code or exclusions under section 3231(e)(1) of the Code. In addition, wages are generally compensation for services subject to income tax under section 61 of the Code and federal income tax withholding under section 3402 of the Code unless an exception applies. The FFCRA did not include an exception for qualified leave wages from income.

58. Are qualified sick leave wages and qualified family leave wages excluded from gross income as “qualified disaster relief payments”? (Updated January 28, 2021)

No. Section 139 of the Internal Revenue Code (the “Code”) excludes from a taxpayer’s gross income certain payments to individuals to reimburse or pay for expenses related to a qualified disaster (“qualified disaster relief payments”). Although the COVID-19 outbreak is a “qualified disaster” for purposes of section 139 the Code (see below), qualified leave wages are not excludible qualified disaster relief payments, because qualified leave wages are intended to replace wages or compensation that an individual would otherwise earn, rather than to serve as payments to offset any particular expenses that an individual would incur due to COVID-19.

Section 139(c)(2) of the Code provides that for purposes of section 139 of the Code, the term “qualified disaster” includes a federally declared disaster, as defined by 165(i)(5)(A) of the Code. The COVID-19 pandemic is a “federally declared disaster,” as defined by section 165(i)(5)(A) of the Code. On March 13, 2020, the President of the United States issued a Proclamation declaring a national emergency concerning the Novel Coronavirus Disease (COVID-19) outbreak, stating that the ongoing COVID-19 pandemic warrants an emergency determination under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 – 5207. A “qualified disaster relief payment” is defined by section 139(b) of the Code to include any amount paid to or for the benefit of an individual to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster. Qualified disaster relief payments do not include income replacements such as sick leave or other paid time off paid by an employer.

59. Can an employee receive both “qualified sick leave wages” and “qualified family leave wages”? (Updated January 28, 2021)

Yes, but at different times. Qualified sick leave wages are available for up to 80 hours during which an employee cannot work or telework for any of six reasons related to COVID-19, including because the employee must care for his or her child whose school or place of care is closed, or whose child care provider is unavailable, for reasons related to COVID-19. By contrast, qualified family leave wages are available only because the employee must care for his or her child whose school or place of care is closed, or whose child care provider is unavailable, for reasons related to COVID-19, and only after an employee has been unable to work or telework for this reason for 80 hours.

Example: Your child-care provider is unavailable indefinitely due to the COVID-19 outbreak, leaving you unable to work or telework to care for your child. For up to the first 80 hours of any period of leave to care for your child, you are eligible for qualified sick leave wages, up to \$200 per day and \$2,000 in the aggregate. After that, you are eligible for qualified family leave wages for up to ten weeks of additional leave you need, up to \$200 per day and \$10,000 in the aggregate.

Specific Provisions Related to Self-Employed Individuals

60. Who is an eligible self-employed individual for purposes of the qualified sick leave equivalent credit and the qualified family leave equivalent credit? (Updated January 28, 2021)



An eligible self-employed individual is defined as an individual who regularly carries on any trade or business within the meaning of section 1402 of the Internal Revenue Code, and would be eligible to receive qualified sick leave wages or qualified family leave wages under the EPSLA or Expanded FMLA if the individual were an employee of an Eligible Employer (other than himself or herself) that is subject to the requirements of the EPSLA or Expanded FMLA.

Eligible self-employed individuals are allowed an income tax credit to offset their federal self-employment tax for any taxable year equal to their “qualified sick leave equivalent amount” or “qualified family leave equivalent amount.”

60a. What individuals regularly carry on a trade or business for purposes of being an eligible self-employed individual for the qualified sick leave equivalent credit and the qualified family leave equivalent credit? (Added January 28, 2021)

An individual regularly carries on a trade or business for purposes of being an eligible self-employed individual for the qualified sick leave equivalent credit and/or the qualified family leave equivalent credit if he or she carries on a trade or business within the meaning of section 1402 of the Internal Revenue Code (the “Code”), or is a partner in a partnership carrying on a trade or business within the meaning of section 1402 of the Code. Section 1402(c) of the Code defines trade or business and includes exceptions to this standard for purposes of section 1402 of the Code.

61. How is the “qualified sick leave equivalent amount” for an eligible self-employed individual calculated? (Updated January 28, 2021)

For an eligible self-employed individual who is unable to work or telework because the individual:

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; or
3. Is experiencing symptoms of COVID-19 and seeking a medical diagnosis,

the qualified sick leave equivalent amount is equal to the number of days during the taxable year that the individual cannot perform services in any trade or business for one of the three above reasons, multiplied by the lesser of \$511 or 100 percent of the “average daily self-employment income” of the individual for the taxable year, or the prior taxable year.

For an eligible self-employed individual who is unable to work or telework because the individual:

1. 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;
2. Is caring for a child if the child’s school or place of care has been closed, or child care provider is unavailable due to COVID-19 precautions; or
3. Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor,

the qualified sick leave equivalent amount is equal to the number of days during the taxable year that the individual cannot perform services in any trade or business for one of the three above reasons, multiplied by the lesser of \$200 or 67 percent of the “average daily self-employment income” of the individual for the taxable year, or the prior taxable year.



In either case, the maximum number of days a self-employed individual may take into account in determining the qualified sick leave equivalent amount is ten.

Note: The only days that may be taken into account in a taxable year in determining the qualified sick leave equivalent amount for the year are days occurring during the year and during the period beginning on April 1, 2020, and ending on March 31, 2021.

62. How is the “average daily self-employment income” for an eligible self-employed individual calculated? (Updated January 28, 2021)

Average daily self-employment income is an amount equal to the net earnings from self-employment for the taxable year, or prior taxable year, divided by 260. A taxpayer’s net earnings from self-employment are based on the gross income that he or she derives from the taxpayer’s trade or business minus ordinary and necessary trade or business expenses.

63. How is the “qualified family leave equivalent amount” for an eligible self-employed individual calculated? (Updated January 28, 2021)

The qualified family leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days (up to 50) during the taxable year that the self-employed individual cannot perform services for which that individual would be entitled to paid family leave (if the individual were employed by an Eligible Employer (other than himself or herself)), multiplied by the lesser of two amounts: (1) \$200, or (2) 67 percent of the average daily self-employment income of the individual for the taxable year, or the prior taxable year.

64. Can a self-employed individual receive both qualified sick or family leave wages and qualified sick or family leave equivalent amounts? (Updated January 28, 2021).

Yes, but the qualified sick or family leave equivalent amounts are reduced by the qualified sick or family leave wages.

That is, if a self-employed individual is entitled to a refundable credit for a qualified sick leave equivalent amount under section 7002(a) of the FFCRA, and also receives qualified sick leave wages as an employee, section 7002(d)(3) of the FFCRA 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 FFCRA and any qualified sick leave wages under section 7001(b)(1) of the FFCRA, 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 FFCRA, and also receives qualified family leave wages as an employee under the Expanded FMLA, section 7004(d)(3) of the FFCRA 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 FFCRA and the qualified family leave wages under section 7003(b)(1) of the FFCRA, exceeds \$10,000.

Note: The COVID-related Tax Relief Act of 2020 extended the period during which Eligible Employers may provide paid leave for which they claim tax credits to include periods of leave taken between January 1, 2021, and March 31, 2021. Self-employed individuals entitled to refundable credits for a qualified sick or family leave equivalent amount for periods of leave taken between January 1, 2021 and March 31, 2021 will reduce the credit by any aggregate qualified sick or



family leave wages that they received from their employers in both 2020 and 2021. If consideration of the aggregate qualified leave wages results in a \$0 qualified sick or family leave equivalent amount, the taxpayer will not be entitled to claim the qualified sick or family leave equivalent credit in 2021.

Example: In her capacity as an employee, Taxpayer A receives \$4000 in qualified sick leave wages, comprised of:

- \$3000 in qualified sick leave wages for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA; and
- \$1000 in qualified sick leave wages for reasons described in paragraphs (4), (5), or (6) of the EPSLA.

In addition, in her capacity as a self-employed individual, Taxpayer A is eligible for a \$3300 qualified sick leave equivalent credit comprised of:

- \$2500 in qualified sick leave equivalent credits for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA; and
- \$800 in qualified sick leave equivalent credits for reasons described in paragraphs (4), (5), or (6) of section 5102(a) of the EPSLA.

Taxpayer A must reduce the \$3300 qualified sick leave equivalent credit for which she is eligible by \$2190, which is comprised of:

- The excess of the qualified sick leave wages and qualified sick leave equivalent amounts for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA over \$5110 (that is, \$390); plus
- The excess of the qualified sick leave wages and qualified sick leave equivalent amounts for reasons described in paragraphs (4), (5), or (6) of section 5102(a) of the EPSLA over \$2000 (that is, \$0); plus
- The remaining excess of the total leave credits to which Taxpayer A is entitled in her capacity as either an employee or a self-employed individual over \$5110 (that is, \$1800).

Accordingly, Taxpayer A may claim a qualified sick leave equivalent credit of \$1110.

Example: In his capacity as an employee, Taxpayer B receives \$6000 in qualified family leave wages. In addition, in his capacity as a self-employed individual, Taxpayer B is eligible for a \$4500 qualified family leave equivalent credit. Taxpayer B may claim a qualified family leave equivalent credit of \$4000, because he must reduce the qualified family leave equivalent amount to which he is entitled to the extent that the sum of the qualified family leave equivalent amount and his qualified family leave wages (that is, \$10,500) exceeds \$10,000 (that is, \$500).

Example: In his capacity as an employee, Taxpayer C receives \$4000 in qualified family leave wages in 2020. In addition, also in 2020, in his capacity as a self-employed individual, Taxpayer C is eligible for a \$4500 qualified family leave equivalent credit. In 2020, Taxpayer C may claim a qualified family leave equivalent credit of \$4500, because the total qualified family leave wages and qualified family leave equivalent credits to which he is entitled (that is, \$8,500) does not exceed \$10,000.

In the first quarter of 2021, Taxpayer C receives \$1000 in qualified family leave wages, and would be eligible for a \$1500 qualified family leave equivalent credit in his capacity as a self-employed individual, prior to applying any reduction. In 2021, Taxpayer C may claim a qualified family leave equivalent credit of \$500, because he must reduce the qualified family leave equivalent credit to which he is entitled for 2021 to the extent that the sum of the aggregate qualified



family leave equivalent amount and his qualified family wages for 2020 and 2021 (that is, \$11,000) exceeds \$10,000 (that is, \$1000).

64a. Do self-employed individuals need to account for wages excluded under section 3121(b)(1)-(22) of the Internal Revenue Code (the “Code”), or compensation excluded under section 3231(e)(1) of the Code, when determining the amount by which to reduce their self-employed equivalent leave credit? (Added January 28, 2021)

Yes. Section 7002(d)(3) of the FFCRA reduces the qualified sick leave equivalent amount for which a 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 FFCRA and any amounts described in section 7001(b)(1) of the FFCRA exceeds the applicable thresholds under section 5102(a) of the ESPLA. Similarly, section 7004(d)(3) of the FFCRA reduces the qualified family leave equivalent amount for which a self-employed individual may claim a tax credit to the extent that the sum of the qualified family leave amount described in section 7004(c) of the FFCRA and any amounts described in section 7003(b)(1) of the FFCRA exceeds \$10,000.

Sections 7001(b)(1) and 7003(b)(1) of the FFCRA describe the amounts of qualified sick leave wages and qualified family wages taken into account for purposes of the employer payroll tax credits for paid sick leave and paid family leave, respectively. Sections 7001(c) and 7003(c) of the FFCRA define these qualified leave wages as wages (as defined in section 3121(a) of the Internal Revenue Code (the “Code”) determined without regard to section 3121(b)(1)-(22) of the Code and without regard to section 7005(a) of the FFCRA), and compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the Code and without regard to section 7005(a) of the FFCRA).

Therefore, when determining the amount by which to reduce their self-employed equivalent credits under sections 7002(d)(3) and 7004(d)(3) of the FFCRA, self-employed individuals should account for wages excluded under section 3121(b)(1)-(22) of the Code or compensation excluded under section 3231(e)(1) of the Code.

64b. Do self-employed taxpayers need to account for sick leave wages and family leave wages paid by government employers in determining their self-employment equivalent credit? (Added March 15, 2021)

No. The government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of those governments (governmental employers) are not eligible to claim the tax credits under sections 7001 and 7003 of the FFCRA. Accordingly, any sick leave wages and family leave wages paid by the governmental employer are not taken into account to reduce the self-employed taxpayer’s self-employment equivalent credits on Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals. If the governmental employer reported the sick leave wages or family leave wages in Box 14 of Form W-2 or a separate statement with Form W-2, the self-employed person should not take these reported leave wages into account when determining the amount by which to reduce his or her self-employment equivalent credits.

This rule does not apply to Tribal governments that are Eligible Employers permitted to claim the tax credits for sick leave wages and family leave wages paid to employees.

65. How does a self-employed individual claim the credits for qualified sick leave equivalent amounts or qualified family leave equivalent amounts? (Updated January 28, 2021)

The refundable credits are claimed on the self-employed individual’s [Form 1040, U.S. Individual Income Tax Return](#) PDF.



Self-employed individuals will claim tax credits for periods of leave taken between April 1, 2020 and December 31, 2020 on their 2020 Forms 1040 and will claim tax credits for periods of leave taken between January 1, 2021 and March 31, 2021 on their 2021 Forms 1040.

65a. How does a self-employed individual determine the sick and family leave equivalent tax credit that he or she may claim? (Added November 25, 2020)

A self-employed individual will determine the sick and family leave equivalent tax credit to which he or she is entitled by completing Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals. This form will be available during the fourth quarter of 2020 at irs.gov. To complete the Form 7202, self-employed individuals who are also employees will need any amount of qualified sick and family leave wages that their employers reported on the Form [W-2, Wage and Tax Statement](#) PDF. For more information on the requirement for Eligible Employers to report the amount of qualified sick and family leave wages paid to employees on Form W-2, see [Notice 2020-54](#) PDF.

65b. How does a self-employed individual elect to use prior year net earnings from self-employment income to determine average daily self-employment income for purposes of the credits for qualified sick leave equivalent amounts or qualified family leave equivalent amounts? (Added January 28, 2021)

A self-employed individual may elect to use prior year (rather than current year) net earnings from self-employment to determine his or her average daily self-employment income by indicating this election when filing his or her 2020 or 2021 Form 1040. See applicable instructions for the form for more information.

65c. If a self-employed individual who claimed the self-employed equivalent leave credit receives a Form W-2c from an employer reporting corrected qualified sick and/or family leave wages received for the period beginning April 1, 2020, and ending March 31, 2021, should the individual file an amended tax return? (added March 3, 2022)

It depends. If a self-employed individual who claimed the qualified leave equivalent credits for sick and/or family qualified leave amounts for the period beginning April 1, 2020, and ending March 31, 2021, receives a Form W-2c, Corrected Wage and Tax Statement, reporting corrected amounts of sick and/or family leave wages in Box 14 for this period, the individual will need to recalculate those credits on the appropriate Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals, using the corrected sick and/or family leave wage amounts and must file a Form 1040-X, Amended U.S. Individual Income Tax Return if the amount of the qualified leave equivalent credits changes.

If the self-employed individual receives a Form W-2c reporting corrected wages paid during the 2020 tax year, and claimed the self-employed equivalent leave credit for 2020, the individual must recalculate the credit on the 2020 Form 7202. If the amount of the qualified leave equivalent credit changes, the individual must file a Form 1040-X for 2020 with the corrected amounts from the Form 7202.

If the self-employed individual receives a Form W-2c reporting corrected wages paid during the 2020 tax year and claimed the qualified leave equivalent credit for the period beginning January 1, 2021, and ending March 31, 2021, from parts I and/or II of a 2021 Form 7202, the individual must recalculate the credit on the Form 7202. If the amount of the qualified leave equivalent credit has changed from the amount claimed on the individual's 2021 Form 1040, U.S. Individual Income Tax Return, the individual must file a Form 1040-X for 2021 with the corrected amounts from the Form 7202.

If the self-employed individual receives a Form W-2c reporting corrected wages paid during the period beginning January 1, 2021, and ending March 31, 2021, and claimed the self-employed equivalent leave credit for this period, the



individual must recalculate the credit on the 2021 Form 7202. If the amount of the qualified leave equivalent credit changes, the individual must file a Form 1040-X for 2021 with the corrected amounts from the Form 7202.

66. How can a self-employed individual cover his or her qualified sick leave equivalent and qualified paid family leave equivalent amounts before filing his or her Form 1040? (updated November 25, 2020)

The self-employed individual may cover sick leave and family leave equivalents by taking into account the credit to which the individual is entitled and will claim on [Form 1040, U.S. Individual Income Tax Return](#) PDF, in determining required estimated tax payments. This means that a self-employed individual can effectively reduce payments of estimated income taxes that the individual would otherwise be required to make if the individual was not entitled to the credit on the [Form 1040](#) PDF.

Section 2302 of the CARES Act provides that self-employed individuals may defer the payment of 50 percent of the social security tax imposed under section 1401(a) of the Internal Revenue Code on net earnings from self-employment income for the period beginning on March 27, 2020 and ending December 31, 2020. Self-employed individuals may defer these taxes in addition to the credits for qualified sick leave equivalent amounts or qualified family leave equivalent amounts. Accordingly, if the self-employed individual is eligible for these credits, the individual should take into account these credits in addition to any amount of self-employment tax the individual plans to defer under section 2302 of the CARES Act in determining required estimated tax payments.

66a. Can an independent contractor who generally performs services for multiple clients as a nonemployee claim the tax credit with regard to the lost services due to COVID-19? (added November 25, 2020)

Yes. If an individual is an independent contractor who generally performs services for multiple clients as a nonemployee, he or she is self-employed and is eligible for the tax credits for days he or she is not able to work or telework for reasons related to COVID-19.

For more information on whether an individual is an independent contractor or an employee, and the tax consequences of either status, see [Self-Employed Individuals Tax Center](#).

66b. Can a partner in a partnership claim the tax credits? (added November 25, 2020)

Maybe. A partner in a partnership is a self-employed individual if the partner's distributive share constitutes net earnings from self-employment or if the partner receives guaranteed payments for his or her services. If the partner is a self-employed individual and is not able to work or telework for reasons related to COVID-19, the partner is eligible for the tax credits.

Generally, partners in a partnership (including members of a limited liability company (LLC) that is treated as a partnership for federal tax purposes) are considered to be self-employed, not employees, when performing services for the partnership.

66c. Can a self-employed individual use the Form 7200 to apply for an advance of the tax credits? (added November 25, 2020)

No. [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, is only available for employers that file [Form 941, Employer's Quarterly Federal Tax Return](#) PDF, or certain other employment tax returns. However, a self-



employed individual may reduce payments of estimated income taxes equal to the credit to which the individual is entitled.

For more information about how a self-employed individual can reduce his or her estimated income taxes to cover a credit for qualified sick leave equivalent amounts and qualified family leave equivalent amounts, see [“How can a self-employed individual cover his or her qualified sick leave equivalent and qualified paid family leave equivalent amounts before filing his or her Form 1040?”](#)

67. Does an eligible self-employed individual who is allowed a credit under section 7002 of the FFCRA for the qualified sick leave equivalent amount or a credit under section 7004 of the FFCRA for the qualified family leave equivalent amount include any amount of these credits in gross income? (added November 25, 2020)

No, the amount of the credits allowed under sections 7002 and 7004 of the FFCRA are not included in the gross income of the eligible self-employed individual.

68. How should a self-employed individual substantiate eligibility for tax credits for qualified leave wage equivalents? (Updated January 28, 2021)

Self-employed individuals should maintain documentation establishing their eligibility for the credits as a self-employed individual. That documentation should be similar to the documentation that employers claiming the credits for qualified leave wages under the FFCRA sections 7001 and 7003 should maintain under [“How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?”](#)

69. May a nonresident alien (NRA) claim the self-employed equivalent credits under sections 7002 and 7004 of the FFCRA? (Added January 28, 2021)

Yes. The qualified sick leave equivalent credits and qualified family leave equivalent credits under sections 7002 and 7004 of the FFCRA, respectively, are available to NRAs who otherwise meet the requirements to claim the tax credits. That is, an individual’s status as an NRA does not preclude him or her from claiming the tax credits if he or she both (1) regularly carries on a trade or business within the meaning of section 1402 of the Internal Revenue Code, and (2) would be eligible for paid leave under the EPSLA or Expanded FMLA if the individual was an employee of an employer (other than himself or herself).