

UPDATE TO FAMILIES FIRST CORONAVIRUS RESPONSE ACT – TAX CREDITS

Notice 2020-21, recently released by the IRS, provides that tax credits for qualified sick leave wages and extended family leave wages required to be paid by the Families First Coronavirus Response Act (“Act”) will apply to wages paid for the period beginning on April 1, 2020, and ending on December 31, 2020.

There has been some confusion regarding the procedural means by which employers can obtain the benefit of the tax credits provided by the Act. The tax credits offered under the Act are equal to one hundred percent of an employer’s payments of qualified sick leave and expanded family leave (with increases for applicable health insurance premiums and the employer’s share of Medicare tax (1.45%) on qualified payments). The Act (H.R. 6201), provides that the tax credits are to be applied against the employer’s share of Social Security tax (6.2%).

However, in an attempt to make the tax credits available to employers on a more immediate basis, IRS guidance (IR-2020-57) indicates that employers may retain from all employment taxes that would otherwise be submitted to the IRS, amounts equal to qualifying leave payments paid under the Act. Based on this guidance, employers may retain from both the employer’s share and the withheld employee’s share of Social Security and Medicare tax and from withheld federal income tax in amounts sufficient to cover the costs of qualifying leave under the Act.

This type of accelerated access to the tax credits makes sense, since under the Act, any amounts not recoverable against the employer’s 6.2% Social Security tax was to be refunded by the IRS. Allowing an offset of the tax credits against all employment taxes provides immediate access to the cash employers need during this crisis, while eliminating numerous refund claims for the IRS to process.

In more recent legislation, known as the CARES Act (Coronavirus Aid, Relief, and Economic Security Act, H.R. 748), clarification was provided that the limits specified in the Act for qualifying leave payments (\$511 per day and \$5,110 in the aggregate for qualifying sick leave; \$200 per day and \$10,000 in the aggregate for extended family leave) applies to each employee, and not to the employer’s workforce in the aggregate.

Also under the CARES Act (Section 2302), employers and self-employed individuals are permitted to delay 100% of the employer’s share of social security taxes due after March 27, 2020 through the end of 2020, with 50% of the deferred amount to be paid by December 31, 2021 and the remaining 50% to be paid by December 31, 2022.