

FAMILIES FIRST CORONAVIRUS RESPONSE ACT FAQs

***Disclaimer: The Q&A below is based on our knowledge at this point in time. The information is continuously changing.*

What tax credits does the FFCRA provide?

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

When can employers start claiming the FFCRA credits?

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 for leave taken beginning on April 1, 2020 and ending on December 31, 2020.

Eligible Employers will claim the credits on their federal employment tax returns (e.g., Form 941, Employer's Quarterly Federal Tax Return), 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. The IRS expects to begin processing these requests during April 2020.

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."

When will employers start to receive the FFCRA credits?

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

What documentation must an Eligible Employer retain to substantiate eligibility to claim the FFCRA tax credits?

Eligible Employers claiming the credits for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare taxes), 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, and 7200, Advance of Employer Credits Due To COVID-19, and any other applicable filings made to the IRS requesting the credit.

What employers may claim the FFCRA tax credits?

Eligible Employers that are entitled to claim the refundable tax credits are businesses and tax-exempt organizations that: (i) have fewer than 500 employees, and (ii) are required under the FFCRA to pay "qualified sick leave wages" and/or "qualified family leave wages."

What is the amount of the refundable FFCRA tax credits available to Eligible Employers?

The credits covers 100 percent of up to ten days 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 taxes imposed on those wages.



Qualified sick leave and qualified family leave under the FFCRA 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 required 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.

What are "qualified sick leave wages"?

Qualified sick leave wages are wages that the FFCRA requires an employer to pay 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).

What are "qualified family leave wages"?

Qualified family leave wages are wages that the FFCRA requires an employer to pay 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 due to COVID-19-related reasons.

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.

What is the Eligible Employer's share of Medicare tax on qualified leave wages?

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. (Eligible employers subject to Railroad Retirement Tax Act do not get this credit.)

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.

Are any small businesses exempt from the requirements to provide qualified sick or family leave wages?

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 due to COVID-19-related reasons 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.

Also note that the FFCRA 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.

How do Eligible Employers claim the FFCRA credits?

Eligible Employers will 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. Form 941 is used to report income tax and social security and Medicare taxes withheld by most Eligible Employers 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 fund 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 December 31, 2020, 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 will provide instructions about how to reflect the reduced liabilities for the quarter related to the deposit schedule.

What if an Eligible Employer does not have enough federal employment taxes set aside for deposit to cover its obligation to provide qualified leave wages?

If an Eligible Employer does not have enough federal employment taxes set aside for deposit to cover its obligation to provide qualified leave wages (and allocable qualified health plan expenses and the Employer's share of Medicare tax on the qualified leave wages), the 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.

What makes the FFCRA credits "fully refundable"?

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 sections 6402(a) or 6413(a) of the Internal Revenue Code.

Are similar tax credits available to self-employed individuals?

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 entitled to receive paid leave under the EPSLA or Expanded FMLA if the individual were an employee of an employer (other than him or herself).

Only businesses that employ fewer than 500 employees are eligible for the credits, because only those businesses are required to provide qualified leave wages. How is the "fewer than 500 employees" threshold determined?

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 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.

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?

Yes. An Eligible Employer will not be subject to a penalty under section 6656 of the Internal Revenue Code for failing to deposit federal employment taxes relating to qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) in a calendar quarter if:

- the Eligible Employer paid qualified leave wages to its employees in the calendar quarter before the required deposit,

- the amount of federal employment taxes that the Eligible Employer does not timely deposit is less than or equal to the amount of the Eligible Employer’s anticipated tax credits for these qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer’s share of Medicare tax on the qualified leave wages) for the calendar quarter as of the time of the required deposit, and
- 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.

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)?

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. This employee retention credit is equal to 50% of qualified wages (including allocable qualified health plan expenses) paid to employees after March 12, 2020, and before January 1, 2021, up to \$10,000 in qualified wages for each employee for all calendar quarters. However, 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.

May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and a Small Business Interruption Loan under the CARES Act?

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.

What is included in “qualified sick leave wages” for determining the amount of the tax credit?

Qualified sick leave wages are wages (as defined in section 3121(a) of the Internal Revenue Code for social security and Medicare tax purposes) that Eligible Employers must pay eligible employees for periods of leave during which they are unable to work or telework because the employee:

- is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- 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;
- is caring for a child of such employee if the school or place of care of the child has been closed, or the childcare provider of such child is unavailable due to COVID-19 precautions; or
- 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.

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.

How are employees’ hours determined for purposes of the qualified paid sick leave requirements?

Full-time employees are entitled to up to 80 hours of paid sick leave between April 1, 2020, and December 31, 2020. Part-time employees are entitled to 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 DOL guidance.

Are amounts other than qualified sick leave wages included in the tax credit for required sick leave?

Yes. The credit also includes the amount of the Eligible Employer's share of Medicare tax imposed on the qualified sick leave wages and any qualified health plan expenses allocable to those wages. Qualified health plan expenses are amounts paid or incurred by the Eligible Employer to provide and maintain a group health plan to the extent that the amounts are excluded from the employees' gross income under section 106(a) of the Internal Revenue Code. The qualified sick leave wages are not subject to the employer portion of social security tax.

Note: The credit for the employer's share of Medicare tax does not apply to Eligible Employers that are subject to Railroad Retirement Tax Act (RRTA) because qualified sick leave wages are not subject to Medicare tax under RRTA.

What is included in "qualified family leave wages"?

Qualified family leave wages are wages (as defined in section 3121(a) of the Internal Revenue Code for social security and Medicare tax purposes) that Eligible Employers must 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, or because the child care provider of the child is unavailable, due to COVID-19 related reasons. 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 be entitled to receive qualified sick leave wages as provided under the ESPLA 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 must provide the employee with qualified family leave wages for up to ten weeks.

How does an Eligible Employer determine the amounts of the qualified family leave wages it is required to pay?

The Eligible Employer is required to pay 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.

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.

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?

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.

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?

The qualified health plan expenses are determined separately for each plan. Then, 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.



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?

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 expenses in the same manner as an insured group health plan, or a self-insured plan, as applicable.

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?

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 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 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)?

Eligible Employers will report their total qualified leave wages and the related credits for each quarter on their federal employment tax returns, usually Form 941, Employer's Quarterly Federal Tax Return. Form 941 is used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer's portion of social security and Medicare tax.

In anticipation of receiving the credits, Eligible Employers can fund 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 withheld taxes, that are required to be deposited with the IRS or by requesting an advance from the IRS.

What if an Eligible Employer does not initially pay an employee qualified leave wages when the employee is entitled to those wages, but pays those wages at a later date?

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 December 31, 2020.

How long should an Eligible Employer maintain records to substantiate eligibility for the sick leave or family leave credit?

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.

How long are the refundable tax credits for qualified leave wages available?

The credits for Eligible Employers for qualified leave wages apply to wages paid with respect to the period of April 1, 2020, through December 31, 2020.

Are wage payments for qualified leave wages made after December 31, 2020, but for periods of leave taken before December 31, 2020, eligible for the credits?

Notice 2020-21 provides that the payroll credits for paid qualified sick leave wages and paid qualified family leave wages

apply to those wages paid for periods beginning on April 1, 2020 and ending on December 31, 2020. While the wages can only be for periods of leave between April 1, 2020, and December 31, 2020, a payment of qualified leave wages that is made after the end of this period may nonetheless be eligible for the credits if the wages are for leave that an employee took between April 1, 2020, and December 31, 2020.

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?

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.

May a tax-exempt employer receive the FFCRA credits?

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 FFCRA. Tax-exempt organizations that are required to provide such paid sick leave or expanded paid family and medical leave may claim the tax credits.

Should Eligible Employers withhold federal employment taxes on qualified leave wages paid to employees?

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.

Are qualified sick leave wages and qualified family leave wages taxable to employees?

Yes. 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") and compensation as defined in section 3231(e) of the Code, so the employee must pay social security and Medicare taxes (and for railroad employees, Tier II of the Railroad Retirement Tax Act tax). 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.

Can an employee receive both "qualified sick leave wages" and "qualified family leave wages"?

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, due to COVID-19 related reasons. 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, due to COVID-19 related reasons, 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 entitled to qualified sick leave wages, up to \$200 per day and \$2,000 in the aggregate. After that, you are entitled to 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.



Who is an eligible self-employed individual for purposes of the qualified sick leave credit and the qualified family leave credit?

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 Code, and would be entitled to receive qualified sick leave wages or qualified family leave wages under the FFCRA if the individual were an employee of an Eligible Employer (other than himself or herself) that is subject to the requirements of the FFCRA.

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.”

How is the “average daily self-employment income” for an eligible self-employed individual calculated?

Average daily self-employment income is an amount equal to the net earnings from self-employment for the 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.

How is the “qualified family leave equivalent amount” for an eligible self-employed individual calculated?

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.

How does a self-employed individual claim the credits for qualified sick leave equivalent amounts or qualified family leave equivalent amounts?

The refundable credits are claimed on the self-employed individual’s Form 1040, U.S. Individual Income Tax Return, tax return for the 2020 tax year.

How can a self-employed individual fund his or her qualified sick leave equivalent and qualified paid family leave equivalent amounts before filing his or her Form 1040?

The self-employed individual may fund 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, 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.

