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IRS Issues Guidance on Emergency Paid Sick Leave and Family Medical Leave

By: Rich May, David Glod

On March 18, 2020, the Families First Coronavirus Response Act (the ?Act?) was signed into law, providing for emergency paid sick leave and an expansion of leave under the Family and Medical Leave Act of 1993 (?FMLA?) for individuals affected by COVID-19. We have written about the specific provisions of the Act in a previous post. Employers covered by the Act will need to begin paying benefits to covered employees on April 2, 2020.

The IRS has now issued a Newswire, IR 2020-57, clarifying what benefits are provided and how they will be fully subsidized through a refundable payroll tax credit under the Act (and a similar credit for self-employed individuals). Because payroll taxes are paid quarterly, the intent is that this credit will reimburse employers quickly and easily for these payments. Employers will receive an immediate dollar-for-dollar offset against payroll taxes to the extent they have made payments to employees for emergency sick leave or emergency FMLA leave. To the extent the employer?s payroll tax liability exceeds the amounts it has paid out to employees, the IRS has committed to send a refund for the difference as quickly as possible. Self-employed individuals are entitled to a similar credit against self-employment taxes (paid quarterly) and income taxes.

The payroll taxes that an employer may retain to offset its payments to employees include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees. The IRS stated that it intends to release further guidance this week regarding the mechanics of such tax withholding.

The Act provides an exemption for small businesses with fewer than 50 employees where paying emergency sick or FMLA leave would jeopardize the viability of the business. The IRS stated that ?[t]he exemption will be available on the basis of simple and clear criteria,? and that the Department of Labor would issue emergency guidance and rulemaking to articulate the applicable standard.

The IRS also stated that the Department of Labor would be issuing a policy providing that

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enforcement actions would not be brought against employers for the first 30 days of the Act?s effectiveness, so long as the employer acted reasonably and in good faith to come into compliance with the Act.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney David Glod.