

What's in the New Coronavirus Stimulus Bill

The interim emergency bill passed by the Senate includes expanded funding for small businesses and hospitals, and money for coronavirus testing

By

[Andrew Duehren](#) and

[Amara Omeokwe](#)

April 21, 2020 7:29 pm ET

The \$484 billion interim emergency bill passed by the U.S. Senate on Tuesday includes expanded funding for small businesses and hospitals, and money for coronavirus testing. The House is expected to pass the bill this week, and President Trump has said he would sign it into law. Here's a look at what is in the legislation, and what was left out.

What is in the bill for small businesses? How did it change from last time?

The bill refills two exhausted funds for small business aid: the Paycheck Protection Program and the Economic Injury Disaster Loan program.

The bill puts about \$310 billion more toward the PPP, which Congress initially gave \$350 billion when it was created in March. Funding for the PPP loans, which can be forgiven if the companies keep employees on payroll, quickly ran out, and refilling the fund was seen as a priority by both parties. The new bill also tweaks the fund, amid complaints that some mom-and-pop businesses were crowded out of the fund in favor of larger businesses with existing relationships with banks. Of the new funds, \$60 billion will be set aside for lenders with less than \$50 billion in assets, with \$30 billion of that reserved for lenders with less than \$10 billion in assets.

The separate EIDL program also ran out of money, and Congress is set to approve an additional \$60 billion to restart that program.

The small-business loan program designed to keep workers employed is out of money, and some main street business owners hit by the coronavirus pandemic say that it simply is not enough to keep their business alive in the first place.

Photo: B.A. Van Sise/NurPhoto

How will the PPP funds set aside for certain lenders work?

Democrats successfully pushed for the \$60 billion in earmarked funds for small, midsize and [community lenders](#) amid concerns that certain groups, including women, minorities and people in rural areas, might have particular difficulty accessing PPP loans. The set-asides could cause delays in the Small Business Administration's application processing portal, known as E-Tran, because it isn't set up to demarcate lenders by size, according to a banking industry representative. However, the Treasury Department is working with the Small Business Administration to code which banks fall under the set-asides to minimize any delay in restarting the program. Sen. Marco Rubio (R., Fla.) said Monday that the Treasury Department had expressed optimism that the set-asides wouldn't cause a delay.

Will PPP money run out again?

There is no way to know for sure. The original appropriation for PPP was exhausted in less than two weeks, and independent contractors, sole proprietors and self-employed workers were just beginning to apply when that happened. "I think the demand is extraordinary," said Mr. Rubio, who chairs the Senate's Small Business Committee. "It's my view that it's possible that we could hit the cap on these funds at some point down the road," he said.

Second Stimulus

The \$450 billion agreement will replenish the Paycheck Protection Program, a program for small businesses battered by the coronavirus and related shutdowns.

What is in the bill for health-care providers and hospitals?

The legislation provides an additional **\$75 billion to hospitals** and health-care providers, whose budgets have been squeezed by the costs of responding to the pandemic and the collapse of other revenue. That funding builds on the \$100 billion in [the \\$2.2 trillion relief bill](#) passed in March for health-care providers more broadly. Providers have yet to receive \$70 billion of that aid, and the Department of Health and Human Services has faced criticism for the delay and for not providing more information about how the money will be divided.

How does the bill address coronavirus testing?

The bill provides new funds to ramp up testing across the country and calls for the Trump administration to create a national plan on testing. In the bill, **\$25 billion will fund manufacturing and purchasing of tests**. Of those funds, \$11 billion is allocated to states and localities to administer tests and conduct contact tracing, and the Centers for Disease Control and Prevention will receive **\$1 billion for surveillance measures, including contact tracing**.

Does the bill aid state and local governments?

No. The agreement doesn't include Democrats' demand for new funding for state and local governments. City and state leaders have said that they urgently need federal relief to manage the demands of dealing with the pandemic and fill budget holes caused by falling tax revenue. President Trump said he would like to see aid for state and local governments in the next round of stimulus funding, along with possible infrastructure spending, aid for entertainment companies and other items.

Corona Small Business Opportunities

Discuss programs

- You will have questions that I can't answer
- Provide cheat sheet summarizing programs
- Detailed documents
- Share what we each have learned thus far
- Get in touch with Questions; and I'll do my best to find out answers
- Check out the AHAA Website

<http://autohauledersamerica.com/payroll-protection-program/>

HOT OFF THE PRESSES

What's in the **New** Coronavirus Stimulus Bill?



BILL FRALIC
 INSURANCE SERVICES, INC.
 770-640-1800
 customerservice@bfralic.com

*Economic
 Injury
 Disaster Loan*



Contents

What You Need To Know About Applying For A COVID-19 Economic Injury Disaster Loan (EIDL) 2

Can I apply for more than one kind of loan? If you have already received an EIDL loan (between January 31, 2020, and April 3, 2020), you can still apply for a PPP loan so long as you use them for different expenses. **You can also refinance an EIDL loan into a PPP loan but note that if you do get a PPP loan, the \$10,000 grant will be subtracted from the PPP forgiveness amount..... 5**

Other than the forgiveness amounts, what’s the real difference between the PPP and the EIDL? Size and use. **The EIDL is a loan intended to cover six months of operational expenses. In comparison, the PPP is a loan to primarily help you cover payroll for eight weeks.** Also, the EIDL loan application is - allegedly - much more straightforward..... 5



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Economic
Injury
Disaster Loan*



What You Need To Know About Applying For A COVID-19 Economic Injury Disaster Loan (EIDL)

As COVID-19 continues to impact the United States, the federal government is taking action to ease the burden on taxpayers. There are programs in place to help businesses through the pandemic. One of those programs is the Economic Injury Disaster Loan program (EIDL).

The EIDL isn't new. It's an existing program administered through the Small Business Administration (SBA). However, the stimulus bill (also called the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act) has expanded the program. To be eligible for the program, a business must have no more than 500 employees.

Here's what else you need to know:

How do I count employees? The Small Business Administration (SBA) calculates all individuals employed on a full-time, part-time, or other basis. You can find out more in the Regulations [here](#).

Today In: [Taxes](#)

Are there any exceptions to the 500 employee rule? There are some exceptions. Some notable exceptions include restaurants and hospitality businesses that may qualify if they have 500 or fewer employees per *location*. And, additionally, under the CARES ACT, some industries, including religious organizations, may have a cap based on receipts rather than employee size. You can find out more on [the SBA website](#).



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Economic
Injury
Disaster Loan*



Okay, does it matter what I do for a living? Yes. You can't apply for a business that is engaged in illegal activities, lobbying, significant gambling (more than 1/3 of your revenue), or if you engage in "live performances of a prurient sexual nature or derive directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature." Also, the owners can't be more than 60 days delinquent on child support obligations.

What about nonprofits? Yes. Nonprofits are eligible. This also includes faith-based organizations regardless of whether they provide secular social services. This includes churches who qualify for 501(c)(3) status - even if they have not applied to the IRS to receive tax-exempt status.

I work for myself. Am I eligible? Yes. Sole proprietorships, independent contractors, gig-economy workers, and self-employed individuals are also eligible for the EIDL program.

I feel like you've written about this before. Am I wrong? There's a similar loan program that's available for payroll expenses, the Paycheck Protection Program (you can read about [those PPP loans here](#)). But this one is a little different. Keep reading.

You said that this program existed before now. So what's the catch? The catch is that **to qualify, you have must have suffered a substantial economic injury and be located in a presidentially-declared disaster area.** However, on March 13, 2020, the President of the United States issued an emergency declaration under the [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#). In other words, the entire country has now been declared a disaster area. That means that virtually any small business in the United States can consider a loan.

How much can I get? The maximum loan amount is \$2 million. Loans are based on your "actual economic injury" as determined by the SBA, less any recoveries such as insurance proceeds. If you decide that you need more money, you can, under some



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Economic
Injury
Disaster Loan*



circumstances, ask for an increase in the loan amount within the two years following your initial loan approval.

That sounds like it will take some time. I need money now. Any help? If you need it, you can ask for an emergency grant advance of up to \$10,000 - the SBA says that you can get these in as little as three days. The loan advance will be forgiven if it is spent on paid leave, maintaining payroll, mortgage, or lease payments.

So what can I use the money for? It's pretty broad. You can use the money for payroll, rents or mortgages, or other operational costs. As with the PPP, you can't double-dip: no using funds for qualified sick and family leave wages if you're taking a tax credit for those costs under the Families First Coronavirus Response Act.

Are there any restrictions on the money? A few. Notably, you can't use an EIDL to refinance pre-existing debt or pay dividends.

Do I have to prove that my credit is already maxed, or that I couldn't get a loan anywhere else? No.

What does it cost? There are no upfront fees or early payment penalties charged by the SBA - but your accountant or other tax professional may charge fees to help you prepare the application.

What about collateral? Loans of \$25,000 or less require no collateral.

Personal guaranty? Waived for loans up to \$200,000 through December 31, 2020.

What kind of records do I have to provide? It's a loan, so you have to provide some financials. Fortunately, here's no first year tax return required (whew) since loans can be based on your credit score. But you do have to agree to let the SBA to review your tax records.



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Economic
Injury
Disaster Loan*



So, long story short, I have struggled with getting a loan before because I got into a little legal trouble years ago. Does that disqualify me? Not necessarily. But the business would be excluded from the program if one of the owners who holds at least 20% of the equity of the company is currently incarcerated, on probation, on parole; subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or, has within the last FIVE years, been convicted or pleaded guilty or *nolo contendere* (no contest) to a felony, or been placed on pretrial diversion, parole or probation (including probation before judgment) for a felony.

What is the interest rate? The interest rate for EIDLs due to COVID-19 is 3.75% for small businesses and 2.75% for nonprofits.

How long is the program available? You must apply no later than December 16, 2020, in most states.

Can I apply for more than one kind of loan? If you have already received an EIDL loan (between January 31, 2020, and April 3, 2020), you can still apply for a PPP loan so long as you use them for different expenses. You can also refinance an EIDL loan into a PPP loan but note that if you do get a PPP loan, the \$10,000 grant will be subtracted from the PPP forgiveness amount

I know that PPP loans can be forgiven. What about EIDL (other than the advance you've already mentioned)? The short answer is no, outside of that advance. But an EIDL loan may be forgiven if it is refinanced under a PPP loan depending on the date the EIDL loan was taken out.

Other than the forgiveness amounts, what's the real difference between the PPP and the EIDL? Size and use. The EIDL is a loan intended to cover six months of operational expenses. In comparison, the PPP is a loan to



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Economic
Injury
Disaster Loan*



primarily help you cover payroll for eight weeks. Also, the EIDL loan application is - allegedly - much more straightforward.

Okay, I'm in. Where can I sign up? You can [start on the SBA website](#).

What if I can't do this on my own? I highly recommend that you consult with your tax, banking, or legal professional.

I'm not sure about a loan. What else can I do to keep my employees on the payroll? If a loan doesn't appeal to you, other options are available. One of those provisions is the [Employee Retention Credit](#) or ERC, which is designed to help businesses keep employees on the payroll. You can read [more here](#).

[Full coverage and live updates on the Coronavirus](#)



Employee Retention Credit



Contents

Employee Retention Credit (ERC).....	3
Qualifying employers must fall into one of two categories:.....	3
How is the credit calculated?.....	3
I am an eligible employer. How do I receive my credit?.....	4
FAQs: Employee Retention Credit under the CARES Act.....	5
What is the Employee Retention Credit?	5
Who is an Eligible Employer?	5
When is the operation of a trade or business partially suspended for the purposes of the Employee Retention Credit?	6
What is a “significant decline in gross receipts”?	7
How is the maximum amount of the Employee Retention Credit available to Eligible Employers determined?	7
What are “qualified wages”?	8
Is an Employer required to pay qualified wages to its employees under the CARES Act?	9
Can Eligible Employers claim the Employee Retention Credit for qualified wages paid in March 2020?	9
May an Eligible Employer receive the Employee Retention Credit for periods after December 31, 2020?	9
Against what employment taxes does the Employee Retention Credit apply?	9
What makes the credit “fully refundable”?	10
How does an Eligible Employer claim the refundable tax credit for qualified wages?	10
Can an Eligible Employer paying qualified wages fund its payments of qualified wages before receiving the credits by reducing its federal employment tax deposits?	11
May an Eligible Employer reduce its federal employment tax deposit by the qualified wages that it has paid without incurring a failure to deposit penalty?	12
How can an Eligible Employer that is paying qualified wages fund 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 of the credits?	12



BILL FRALIC
 INSURANCE SERVICES, INC.
 770-640-1800
 customerservice@bfralic.com

Employee Retention Credit



May an Eligible Employer receive both the tax credits for the qualified leave wages under the FFCRA and the Employee Retention Credit under the CARES Act? 14

May an Eligible Employer receive both the Employee Retention Credit and a Small Business Interruption Loan under the Paycheck Protection Program that is authorized under the CARES Act? 14



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



Employee Retention Credit (ERC)

IRS: Employee Retention Credit available for many businesses financially impacted by COVID-19

IR-2020-62, March 31, 2020

WASHINGTON — The Treasury Department and the Internal Revenue Service today launched the Employee Retention Credit, designed to encourage businesses to keep employees on their payroll. The refundable tax credit is 50% of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19.

Does my business qualify to receive the Employee Retention Credit?

The credit is available to all employers regardless of size, including tax-exempt organizations. There are only two exceptions: State and local governments and their instrumentalities and small businesses who take small business loans.

Qualifying employers must fall into one of two categories:

1. The employer's business is fully or partially suspended by government order due to COVID-19 during the calendar quarter.
2. The employer's gross receipts are below 50% of the comparable quarter in 2019. Once the employer's gross receipts go above 80% of a comparable quarter in 2019, they no longer qualify after the end of that quarter.

These measures are calculated each calendar quarter.

How is the credit calculated?



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



The amount of the credit is 50% of qualifying wages paid up to \$10,000 in total. Wages paid after March 12, 2020, and before Jan. 1, 2021, are eligible for the credit. Wages taken into account are not limited to cash payments, but also include a portion of the cost of employer provided health care.

How do I know which wages qualify?

Qualifying wages are based on the average number of a business's employees in 2019.

Employers with less than 100 employees: If the employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless if they worked or not. If the employees worked full time and were paid for full time work, the employer still receives the credit.

Employers with more than 100 employees: If the employer had more than 100 employees on average in 2019, then the credit is allowed only for wages paid to employees who did not work during the calendar quarter.

I am an eligible employer. How do I receive my credit?

Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit.

Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns or Form 941 beginning with the second quarter. If the employer's employment tax deposits are not sufficient to cover the credit, the employer may receive an advance payment from the IRS by submitting [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#).

Eligible employers can also request an advance of the Employee Retention Credit by submitting [Form 7200](#).



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



FAQs: Employee Retention Credit under the CARES Act

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), enacted on March 27, 2020, is designed to encourage Eligible Employers to keep employees on their payroll, despite experiencing economic hardship related to COVID-19, with an employee retention tax credit (Employee Retention Credit).

The Families First Coronavirus Relief Act (FFCRA) requires certain employers to pay sick or family leave wages to employees who are unable to work or telework due to certain circumstances related to COVID-19. Employers are entitled to a refundable tax credit for the required leave paid, up to specified limits. [See FAQs]. The same wages cannot be counted for both credits.

Basic FAQs

Use tab to go to the next focusable element

[What is the Employee Retention Credit?](#)

The Employee Retention Credit is a fully refundable tax credit for employers equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that Eligible Employers pay their employees. This Employee Retention Credit applies to qualified wages paid after March 12, 2020, and before January 1, 2021. The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is \$10,000, so that the maximum credit for an Eligible Employer for qualified wages paid to any employee is \$5,000.

[Who is an Eligible Employer?](#)



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



Eligible Employers for the purposes of the Employee Retention Credit are those that carry on a trade or business during calendar year 2020, including a tax-exempt organization, that either:

- Fully or partially suspends operation during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or
- Experiences a significant decline in gross receipts during the calendar quarter.

Note: Governmental employers are not Eligible Employers for the Employee Retention Credit. Also, Self-employed individuals are not eligible for this credit for their self-employment services or earnings.

[When is the operation of a trade or business partially suspended for the purposes of the Employee Retention Credit?](#)

The operation of a trade or business may be partially suspended if an appropriate governmental authority imposes restrictions upon the business operations by limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19 such that the operation can still continue to operate but not at its normal capacity.

Example: A state governor issues an executive order closing all restaurants, bars, and similar establishments in the state in order to reduce the spread of COVID-19. However, the executive order allows those establishments to continue food or beverage sales to the public on a carry-out, drive-through, or delivery basis. This results in a partial suspension of the operations of the trade or business due to an order of an appropriate governmental authority with respect to any restaurants, bars, and similar establishments in the state that provided full sit-down service, a dining room, or other on-site eating facilities for customers prior to the executive order.



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



What is a “significant decline in gross receipts”?

A significant decline in gross receipts begins with the first quarter in which an employer’s gross receipts for a calendar quarter in 2020 are less than 50 percent of its gross receipts for the same calendar quarter in 2019. The significant decline in gross receipts ends with the first calendar quarter that follows the first calendar quarter for which the employer’s 2020 gross receipts for the quarter are greater than 80 percent of its gross receipts for the same calendar quarter during 2019.

Example: An employer’s gross receipts were \$100,000, \$190,000, and \$230,000 in the first, second, and third calendar quarters of 2020, respectively. Its gross receipts were \$210,000, \$230,000, and \$250,000 in the first, second, and third calendar quarters of 2019, respectively. Thus, the employer’s 2020 first, second, and third quarter gross receipts were approximately 48%, 83%, and 92% of its 2019 first, second, and third quarter gross receipts, respectively. Accordingly, the employer had a significant decline in gross receipts commencing on the first day of the first calendar quarter of 2020 (the calendar quarter in which gross receipts were less than 50% of the same quarter in 2019) and ending on the first day of the third calendar quarter of 2020 (the quarter following the quarter for which the gross receipts were more than 80% of the same quarter in 2019). Thus the employer is entitled to a retention credit with respect to the first and second calendar quarters.

How is the maximum amount of the Employee Retention Credit available to Eligible Employers determined?

The credit equals 50 percent of the qualified wages (including qualified health plan expenses) that an Eligible Employer pays in a calendar quarter. The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is \$10,000, so that the maximum credit for qualified wages paid to any employee is \$5,000.



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



Example 1: Eligible Employer pays \$10,000 in qualified wages to Employee A in Q2 2020. The Employee Retention Credit available to the Eligible Employer for the qualified wages paid to Employee A is \$5,000.

Example 2: Eligible Employer pays Employee B \$8,000 in qualified wages in Q2 2020 and \$8,000 in qualified wages in Q3 2020. The credit available to the Eligible Employer for the qualified wages paid to Employee B is equal to \$4,000 in Q2 and \$1,000 in Q3 due to the overall limit of \$10,000 on qualified wages per employee for all calendar quarters.

What are “qualified wages”?

Qualified 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) paid by an Eligible Employer to employees after March 12, 2020, and before January 1, 2021. Qualified wages include the Eligible Employer’s qualified health plan expenses that are properly allocable to the wages.

The definition of qualified wages depends, in part, on the average number of full-time employees (as defined in section 4980H of the Code) employed by the Eligible Employer during 2019.

If the Eligible Employer averaged more than 100 full-time employees in 2019, qualified wages are the wages paid to an employee for time that the employee is **not providing services** due to either (1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or (2) a **significant decline in gross receipts**. For these employers, qualified wages taken into account for an employee may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

If the Eligible Employer averaged 100 or fewer full-time employees in 2019, qualified wages are the wages paid to **any employee** during any period of economic hardship described in (1) and (2) above.



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



Is an Employer required to pay qualified wages to its employees under the CARES Act?

No. The CARES Act does not require employers to pay qualified wages. In addition, Eligible Employers may elect to not claim the credit for the Employee Retention Credit. (The FFCRA does require certain employers to pay sick or family leave wages to employees who are unable to work or telework due to a COVID-19 circumstance. These employers may be entitled to a refundable tax credit for those wages paid, although the employers may elect not to claim the credit.)

Can Eligible Employers claim the Employee Retention Credit for qualified wages paid in March 2020?

Eligible Employers may claim the Employee Retention Credit for qualified wages that they pay after March 12, 2020, and before January 1, 2021. Therefore, an Eligible Employer may be able to claim the credit for qualified wages paid as early as March 13, 2020.

May an Eligible Employer receive the Employee Retention Credit for periods after December 31, 2020?

No. The Employee Retention Credit is only available with respect to wages paid after March 12, 2020, and before January 1, 2021.

Against what employment taxes does the Employee Retention Credit apply?

The credit is allowed against the employer portion of social security taxes under section 3111(a) of the Internal Revenue Code (the "Code"), and the portion of taxes imposed on railroad employers under section 3221(a) of the Railroad Retirement Tax Act (RRTA) that corresponds to the social security taxes under section 3111(a) of the Code.



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



What makes the credit “fully refundable”?

The credits are fully refundable because the Eligible Employer may get a refund if the amount of the credit is more than certain federal employment taxes the Eligible Employer owes. That is, if for any calendar quarter the amount of the credit the Eligible Employer is entitled to exceeds the employer portion of the social security tax on all wages (or on all compensation for employers subject to RRTA) paid to all employees, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) and 6413(a) of the Code. Consistent with its treatment as an overpayment, the excess will be applied to offset any remaining tax liability on the employment tax return and the amount of any remaining excess will be reflected as an overpayment on the return. 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.

Example: Eligible Employer pays \$10,000 in qualified wages to Employee A in Q2 2020. The Employee Retention Credit available to the Eligible Employer for the qualified wages paid to Employee A is \$5,000. This amount may be applied against the employer share of social security taxes that the Eligible Employer is liable for with respect to all employee wages paid in Q2 2020. Any excess over the employer’s share of social security taxes is treated as an overpayment and refunded to the Eligible Employer after offsetting other tax liabilities on the employment tax return and subject to any other offsets under section 6402(a) of the Code.

How does an Eligible Employer claim the refundable tax credit for qualified wages?

Eligible Employers will report their total qualified wages and the related credits for each calendar 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



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



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 wages by accessing federal employment taxes, including withheld taxes, that are required to be deposited with the IRS or by requesting an advance of the credit from the IRS.

[Can an Eligible Employer paying qualified wages fund its payments of qualified wages before receiving the credits by reducing its federal employment tax deposits?](#)

Yes. An Eligible Employer may fund the qualified wages by accessing federal employment taxes, including those that the Eligible Employer already withheld, that are set aside for deposit with the IRS, for other wage payments made during the same quarter as the qualified wages.

That is, an Eligible Employer that pays qualified wages to its employees in a calendar quarter before it is required to deposit federal employment taxes with the IRS for that quarter may reduce the amount of federal employment taxes it deposits for that quarter by half of the amount of the qualified 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, for the quarter.

Example: An Eligible Employer paid \$10,000 in qualified wages (including qualified health plan expenses) and is therefore entitled to a \$5,000 credit, and is otherwise required to deposit \$8,000 in federal employment taxes, including taxes withheld from all of its employees, for wage payments made during the same quarter as the \$10,000 in qualified wages. The Eligible Employer has no paid sick or family leave credits under the FFCRA. The Eligible Employer may keep up to \$5,000 of the \$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 required to deposit only the remaining \$3,000 on its required



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



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, for the quarter.

May an Eligible Employer reduce its federal employment tax deposit by the qualified 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 Code for failing to deposit federal employment taxes relating to qualified wages in a calendar quarter if:

1. the Eligible Employer paid qualified wages to its employees in the calendar quarter before the required deposit,
2. the amount of federal employment taxes that the Eligible Employer does not timely deposit, reduced by any amount of federal employment taxes not deposited in anticipation of the paid sick or family leave credits claimed under the FFCRA, is less than or equal to the amount of the Eligible Employer's anticipated Employee Retention Credit for the qualified 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 \(PDF\)](#).

How can an Eligible Employer that is paying qualified wages fund 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 of the credits?

Yes. Because quarterly 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 fund



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



their qualified wages. Accordingly, the IRS has established a procedure for obtaining an advance of the refundable credits.

The Eligible Employer should first reduce its remaining federal employment tax deposits for wages paid in the same calendar quarter by the maximum allowable amount. If the anticipated credit for the qualified wages exceeds the remaining federal employment tax deposits for that quarter, the Eligible Employer can file a [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), to claim an advance refund for the full amount of the anticipated credit 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 wages in excess of this amount, it should not file the Form 7200. If it files the Form 7200, it will need to reconcile this advance credit and its deposits with the qualified wages on Form 941 (or other applicable federal employment tax return such as Form 944 or Form CT-1), and it may have an underpayment of federal employment taxes for the quarter.

Example: An Eligible Employer paid \$20,000 in qualified wages, and is therefore entitled to a credit of \$10,000, and is otherwise required to deposit \$8,000 in federal employment taxes, including taxes withheld from all of its employees, on wage payments made during the same calendar quarter. The Eligible Employer has no paid sick or family leave credits under the FFCRA. The Eligible Employer can keep the entire \$8,000 of taxes that the Eligible Employer was otherwise required to deposit without penalties as a portion of the credits it is otherwise entitled to claim on the Form 941. The Eligible Employer may file a request for an advance credit for the remaining \$2,000 by completing [Form 7200](#).



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Employee Retention Credit



May an Eligible Employer receive both the tax credits for the qualified leave wages under the FFCRA and the Employee Retention Credit under the CARES Act?

Yes, but not for the same wages. The amount of qualified wages for which an Eligible Employer may claim the Employee Retention Credit does not include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA.

May an Eligible Employer receive both the Employee Retention Credit and a Small Business Interruption Loan under the Paycheck Protection Program that is authorized under the CARES Act?

No. An Eligible Employer may not receive the Employee Retention Credit if the Eligible Employer receives a Small Business Interruption Loan under the Paycheck Protection Program that is authorized under the CARES Act (“Paycheck Protection Loan”). An Eligible Employer that receives a paycheck protection loan should not claim Employee Retention Credits.



BILL FRALIC
 INSURANCE SERVICES, INC.
 770-640-1800
 customerservice@bfralic.com

Paid Leave



Contents

Overview of COVID-19-Related Tax Credits for Small and Midsize Businesses	2
Overview of Paid Sick Leave Refundable Credit	3
Overview of Paid Family Leave Refundable Credit	4
Payment of the Sick and Family Leave Credit.....	4
Basic FAQs.....	6
Determining the Amount of the Tax Credit for Qualified Sick Leave Wages.....	11
Determining the Amount of the Tax Credit for Qualified Family Leave Wages.....	14
Determining the Amount of Allocable Qualified Health Plan Expenses.....	16
How to Claim the Credits	19
How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?.....	22
Periods of Time for Which Credits are Available.....	23
Special Issues for Employers: Taxation and Deductibility of Tax Credits	24
Special Issues for Employers: Interaction of FFCRA Tax Credits with Other Tax Credits.....	25
Special Issues for Employers: Use of Third-Party Payers	25
Special Issues for Employers: Other Issues.....	26
Special Issues for Employees	26
Specific Provisions Related to Self-Employed Individuals.....	28
Where can I get more information?.....	31



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs

IRS Statements and Announcements

The Families First Coronavirus Response Act (the "FFCRA"), signed by President Trump on March 18, 2020, provides **small and midsize employers refundable tax credits that reimburse them, dollar-for-dollar, for the cost of providing paid sick and family leave wages to their employees for leave related to COVID-19.**

The FFCRA gives businesses with fewer than 500 employees (referred to throughout these FAQs as "Eligible Employers") funds to provide employees with paid sick and family and medical leave for reasons related to COVID-19, either for the employee's own health needs or to care for family members. Workers may receive up to 80 hours of paid sick leave for their own health needs or to care for others and up to an additional ten weeks of paid family leave to care for a child whose school or place of care is closed or child care provider is closed or unavailable due to COVID-19 precautions. The FFCRA covers the costs of this paid leave by providing small businesses with refundable tax credits. Certain self-employed individuals in similar circumstances are entitled to similar credits.

For a more detailed overview of the law, see "Overview of COVID-19-Related Tax Credits for Small and Midsize Businesses," below.

For FAQs, see "[Basic FAQs](#)," and the sections that follow. The FAQs will be updated to address changes in the law or additional questions as they are raised.

Overview of COVID-19-Related Tax Credits for Small and Midsize Businesses

The FFCRA requires employers to provide paid leave through two separate provisions: (i) the Emergency Paid Sick Leave Act (EPSLA), which entitles workers to up to 80 hours of paid sick time when they are unable to work for certain reasons related to COVID-19, and (ii) the Emergency Family and Medical Leave Expansion Act (Expanded FMLA), which entitles workers to certain paid family and medical leave. The FFCRA provides that employers subject to the EPSLA and the Expanded FMLA paid leave requirements are entitled to fully refundable tax credits to cover the cost of the leave required to be paid for these periods of time during which employees are unable to work (which for purposes of these rules, includes telework). Certain self-employed persons in similar circumstances are entitled to similar credits.

The following section provides an overview of FFCRA's refundable tax credit provisions, and the FAQs that follow provide more detailed information regarding the requirements, limitations, and application of



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



the paid leave credits. The Wage and Hour Division of the Department of Labor (DOL) administers the EPSLA and the Expanded FMLA and has posted FAQs and relevant information about the paid leave requirements at the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

Eligible Employers are entitled to refundable tax credits for qualified sick leave wages and qualified family leave wages (collectively “qualified leave wages”), under sections 7001 and 7003 of the FFCRA respectively. These tax credits are increased by the qualified health plan expenses allocable to, and the Eligible Employer’s share of Medicare tax on, the qualified leave wages. Eligible Employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide paid sick leave under the EPSLA and to provide paid family leave under the Expanded FMLA (note that although the FFCRA requires most government employers to provide paid leave, it does not entitle those governmental employers to tax credits for this leave). For more information about Eligible Employers, see [“What employers may claim the tax credits?”](#) Under sections 7002 and 7004 of the FFCRA, self-employed individuals are entitled to equivalent credits based on similar circumstances in which the individual is unable to work. For more information about how self-employed individuals can claim the credits see [“Specific Provisions Related to Self-Employed Individuals”](#). The refundable tax credits apply to qualified sick leave wages and qualified family leave wages paid for certain periods when an employee is unable to work, as described below, during the period beginning April 1, 2020, and ending December 31, 2020. The same period is used to determine credits for qualified sick leave equivalent amounts and qualified family leave equivalent amounts for certain self-employed individuals.

Overview of Paid Sick Leave Refundable Credit

The EPSLA requires Eligible Employers to provide employees with paid sick leave if the employee is unable to work (including telework) due to any of the following:

1. the employee is under a Federal, State, or local quarantine or isolation order related to COVID-19;
2. the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. the employee 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. the employee is caring for the 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;
6. the employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

An employee who is unable to work for reasons due to a COVID-19 circumstance described in (1), (2) or (3) above is entitled to paid sick leave for up to two weeks (up to 80 hours) at the employee’s regular



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



rate of pay, or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$511 per day and \$5,110 in the aggregate. For more information, see [“What is the rate of pay for qualified sick leave wages if an employee is unable to work due to their own health needs?”](#)

An employee who is unable to work due to a COVID-19 circumstance described in (4), (5) or (6) above is entitled to paid sick leave for up to two weeks (up to 80 hours) at 2/3 the employee’s regular rate of pay or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$200 per day and \$2,000 in the aggregate. For more information, see [“What is the rate of pay for qualified sick leave wages if an employee is unable to work because he or she needs to care for others?”](#)

The Eligible Employer is entitled to a fully refundable tax credit equal to the required paid sick leave. This tax credit also includes the Eligible Employer’s share of Medicare tax imposed on those wages and its allocable cost of maintaining health insurance coverage for the employee during the sick leave period (qualified health plan expenses). The Eligible Employer is not subject to the employer portion of social security tax imposed on those wages. (Eligible Employers subject to the Railroad Retirement Tax Act are not subject to either social security tax or Medicare tax on the qualified sick leave wages; accordingly, they do not get a credit for Medicare tax.)

Overview of Paid Family Leave Refundable Credit

In addition to the paid sick leave credit, under the expanded FMLA, an employee who is unable to work (including telework) because of a need to care for a child whose school or place of care is closed or whose child care provider is unavailable due to COVID-19, as described in (5) above, is entitled to paid family and medical leave equal to two-thirds of the employee’s regular pay, up to \$200 per day and \$10,000 in the aggregate. **Up to ten weeks of qualifying leave can be counted towards the family leave credit.** For more information, see [“What is included in “qualified family leave wages?”](#)

The Eligible Employer is entitled to a fully refundable tax credit equal to the required paid family and medical leave (qualified family leave wages). This tax credit also includes the Eligible Employer’s share of Medicare tax imposed on those wages and its cost of maintaining health insurance coverage for the employee during the family leave period (qualified health plan expenses). The Eligible Employer is not subject to the employer portion of social security tax imposed on those wages. (Eligible Employers subject to the Railroad Retirement Tax Act are not subject to either social security tax or Medicare tax on the qualified family leave wages; accordingly, they do not get a credit for Medicare tax.) For more information, see [“How does an Eligible Employer determine the amounts of the qualified family leave wages it is required to pay?”](#)

Payment of the Sick and Family Leave Credit

Eligible Employers are entitled to receive a credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and the employer’s share of



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



Medicare tax, paid for leave during the period beginning April 1, 2020, and ending December 31, 2020. The credit is allowed against the taxes imposed on employers by section 3111(a) of the Internal Revenue Code (the “Code”) (the Old-Age, Survivors, and Disability Insurance tax (social security tax)) and section 3221(a) of the Code (the Railroad Retirement Tax Act Tier 1 rate) on all wages and compensation paid to all employees. If the amount of the credit exceeds the employer portion of these federal employment taxes, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) or 6413(a) of the Code. The qualified sick leave wages and qualified family leave wages are not subject to the taxes imposed on employers by sections 3111(a) and 3221(a) of the Code and employers (other than those that are subject to the Railroad Retirement Tax Act) are entitled to an additional credit for the taxes on employers imposed by section 3111(b) of the Code (Hospital Insurance (Medicare tax)) on such wages.

Eligible Employers that pay qualified leave wages will be able to retain an amount of all federal employment taxes equal to the amount of the qualified leave wages paid, plus the allocable qualified health plan expenses and the amount of the employer’s share of Medicare tax imposed on those wages, rather than depositing them with the IRS. The federal employment taxes that are available for retention by Eligible Employers include federal income taxes withheld from employees, the employees’ share of social security and Medicare taxes, and the employer’s share of social security and Medicare taxes with respect to all employees.

If the federal employment taxes yet to be deposited are not sufficient to cover the Eligible Employer’s cost of qualified leave wages, plus the allocable qualified health plan expenses and the amount of the employer’s share of Medicare tax imposed on those wages, the employer will be able file a request for an advance payment from the IRS. The IRS expects to begin processing these requests in April 2020.

Eligible Employers claiming the credits for qualified leave wages , plus 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, as well retaining 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.

For more detail on the refundable tax credits and the procedures to receive payment of the advance credit, see [“How to Claim the Credits.”](#)

Eligible Employers claiming the credits for qualified leave wages , plus 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, as well retaining 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.

For more detail on the refundable tax credits and the procedures to receive payment of the advance credit, see [“How to Claim the Credits.”](#)



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



Basic FAQs

Use tab to go to the next focusable element

1. 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.

2. When can employers start claiming the 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](#)."

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?

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.

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



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



5. What employers may claim the 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.”

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?”](#)

6. What is the amount of the refundable 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.

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 accord with normal procedures. Eligible Employer must still withhold the employee’s share of social security and Medicare taxes on the qualified leave wages paid.

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”?

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).

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



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



8. 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.

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

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?

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.

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

12. How do Eligible Employers claim the credits?



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



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.

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 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.

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"?

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.

15. Are similar tax credits available to self-employed individuals?



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



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).

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 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.

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?

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:

1. the Eligible Employer paid qualified leave wages to its employees in the calendar quarter before the required deposit,
2. 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
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.



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



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 \(PDF\)](#).

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)?

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. 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.

Note: The IRS expects to issue Frequently Asked Questions on the employee retention credit under the CARES Act during April 2020.

19. 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.

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

20. What is included in “qualified sick leave wages”?

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:

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;



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



5. 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
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.

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 is required to pay?"

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

The amounts that an Eligible Employer must pay 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).

a. 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?

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

the Eligible Employer must pay 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.



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



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](#).

b. 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?

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 must pay 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](#).

c. 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.

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 are entitled to paid sick leave, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



23. 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.

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?

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 entitled 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

The Family and Medical Leave Act (FMLA) generally entitles eligible employees of covered employers to unpaid, job-protected leave for specified family and medical reasons. The FFCRA amended the FMLA (these FAQs refer this portion of the FFCRA as "the Expanded FMLA") to require an Eligible Employer to provide qualified family leave wages when an employee is unable to work or telework due to a need for leave to care for a child of the employee if the child's school or place of care has been closed, or because the child care provider of the child is unavailable, for reasons related to COVID-19.

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

25. What is included in "qualified family leave wages"?



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



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.

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

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 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.

28. What is the rate of pay for qualified family leave wages?

An Eligible Employer must pay qualified family leave wages for up to ten weeks at a rate that is 2/3 of the employee's regular rate of pay (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?

Yes. The credit also includes the amount of the Eligible Employer's share of Medicare tax imposed on the qualified family leave wages and any qualified health plan expenses allocable to those wages. Qualified



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



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 employee's gross income under section 106(a) of the Internal Revenue Code. The qualified family 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 family leave wages are not subject to Medicare tax under RRTA.

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?

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 entitled 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

"Qualified health plan expenses" are amounts paid or incurred by the Eligible Employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code (the "Code")), but only to the extent that those amounts are excluded from the gross income of employees by reason of section 106(a) of the Code.

Generally, the tax credits for qualified sick leave wages and qualified family leave wages are increased by the qualified health plan expenses allocable to each type of qualified leave wages. Qualified health plan expenses are properly allocated to the qualified sick or family leave wages if the allocation is made on a pro rata basis among covered employees (for example, the average premium for all employees covered by a policy) and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

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?



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



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?

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.

33. For an Eligible Employer who 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?

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 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



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



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?

An Eligible Employer who sponsors a self-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 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?

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.

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?

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.



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



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)?

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.

For more information on ways Eligible Employers can access funds for the credit before filing the Form 941, see "[How can an Eligible Employer that is required to pay qualified leave wages fund 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 of the credits?](#)"

38. Can an Eligible Employer required to pay qualified leave wages fund these payments before receiving the credits by reducing its federal employment tax deposits?

An Eligible Employer may fund 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, for other 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 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, for the quarter.

Example: An Eligible Employer 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 \$8,000 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. The Eligible Employer may keep up to \$5,000 of the \$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



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



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, 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. Is an Eligible Employer that reduces its federal employment tax deposits to fund qualified leave wages that it has paid subject to penalty for failing to deposit federal employment taxes?

No, provided the Eligible Employer does not claim an advance for the same portion of the anticipated credits it relied upon to reduce its deposits. That is, without being subject to a penalty for failing to deposit federal employment taxes under section 6656 of the Internal Revenue Code, an Eligible Employer that has paid qualified leave wages to its employees in a calendar quarter before it is required to deposit federal employment taxes with the IRS may reduce the amount of the federal employment tax deposit by the amount of the qualified leave wages (and allocable qualified health plan expenses plus the Eligible Employer's share of Medicare tax on the qualified leave wages) paid by the employer in that calendar quarter, as long as the employer does not also seek an advance credit for the same amount. The total amount of any reduction in any required deposit may not exceed the total amount of qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) in the calendar quarter, minus any amount of qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) that had been previously used (1) to reduce a prior required deposit in the calendar quarter and obtain the relief provided by this notice or (2) to seek payment of an advance credit.

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?](#)"

40. How can an Eligible Employer that is required to pay qualified leave wages fund 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 of the credits?

Yes. Because quarterly returns are not filed until after qualified leave wages are required to be paid, some Eligible Employers may not have sufficient federal employment taxes set aside for deposit to the IRS to fund their required qualified leave wages. Accordingly, the IRS has a procedure for obtaining an advance of the refundable credits.



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



The Eligible Employer should first reduce its remaining federal employment tax deposits for wages paid in the same quarter to zero. If the permitted reduction in deposits does not equal the 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 can file a [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), to claim an advance credit for the remaining qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) it has paid for the quarter 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 (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) in excess of this amount, it should not file the Form 7200. If it files the Form 7200, it will need to reconcile this advance credit and its deposits with the qualified leave wages on Form 941 (or other applicable federal employment tax return such as Form 944 or Form CT-1), and it may have an underpayment of federal employment taxes for the quarter.

Example: An Eligible Employer paid \$10,000 in qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) and is otherwise required to deposit \$8,000 in federal employment taxes, including taxes withheld from all of its employees, on wage payments made during the same quarter. The Eligible Employer can keep the entire \$8,000 of taxes that the Eligible Employer was otherwise required to deposit without penalties as a portion of the credits it is otherwise entitled to claim on the Form 941. The Eligible Employer may file a request for an advance credit for the remaining \$2,000 by completing [Form 7200](#).

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?

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 employer portion of social security tax, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) or 6413(a) 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, 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?



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



An Eligible Employer may obtain the [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), and may fax its completed form to [855-248-0552](#).

43. 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 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?

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 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.

45. What additional records should an Eligible Employer maintain to substantiate eligibility for the sick leave or family leave credit?



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



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, that the employer submitted to the IRS.
4. Copies of the completed Forms 941, Employer’s Quarterly Federal Tax Return, 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?

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.

Periods of Time for Which Credits are Available

47. 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.

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 December 31, 2020, but for periods of leave taken before December 31, 2020, eligible for the credits?

Yes. 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



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



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.

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

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?

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?

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.

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?

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



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



tax on all wages, the proper amount deductible by the employer is the amount of federal employment taxes before reduction by the tax credits.

Special Issues for Employers: Interaction of 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?

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 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.

Special Issues for Employers: Use of Third-Party Payers

53. Can an Eligible Employer that uses a third party to report and pay federal employment taxes to the IRS get the credits?

Yes, if an Eligible Employer is otherwise eligible to receive the credits, it (the common law employer) is entitled to the credits, regardless of whether it uses a third party payer (such as a professional employer organization (PEO), certified professional employer organization (CPEO), or agent) to report and pay its federal employment taxes. The third party payer is not entitled to the credits with respect to the wages it remits on the Eligible Employer's behalf (regardless of whether the third party is considered an "employer" for other purposes of the Internal Revenue Code (the "Code")). If an Eligible Employer uses a third party to file, report, and pay federal employment taxes, certain rules for claiming/reporting the credits will apply depending on the type of third party payer the Eligible Employer uses.

If an Eligible Employer uses a CPEO or a 3504 agent to report its federal employment taxes on an aggregate Form 941, Employer's Quarterly Federal Tax Return, the CPEO or 3504 agent will report the credits on its aggregate Form 941 and Schedule R, Allocation Schedule for Aggregate Form 941 Filers, that it already files. An Eligible Employer can submit its own Form 7200, Advance of Employer Credits Due To COVID-19, to claim the advance credit. The Eligible Employer will need to provide a copy of the Form 7200 to the CPEO or 3504 agent so the CPEO or 3504 agent can properly report the credit on the Form 941.



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



If an Eligible Employer uses a non-certified PEO to report and pay its federal employment taxes, the PEO will need to report the credits on an aggregate Form 941 and separately report the credits allocable to the employers for which it is filing Form 941 on an accompanying schedule R. The PEO does not have to complete Schedule R with regard to employers for which it is not claiming a credit. The Eligible Employer will need to provide a copy of any Form 7200 that it submitted for an advance to the PEO so it can properly report the credit on the Form 941. These rules are similar to the rules that apply with regard to the payroll tax election available under section 41(h) of the Code for the credit for certain research and development expenses.

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.

55. 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.

56. May a tax-exempt employer receive the 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.

Special Issues for Employees

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



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



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.

58. Are qualified sick leave wages and qualified family leave wages excluded from gross income as “qualified disaster relief payments”?

No. Section 139 of the Internal Revenue Code (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”?

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.



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



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.

Specific Provisions Related to Self-Employed Individuals

60. 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.”

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

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 the applicable 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.

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



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

*Paid
Leave*



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 the applicable 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.

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 determining the qualified sick leave equivalent amount are days occurring during the period beginning on April 1, 2020, and ending on December 31, 2020.

62. 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.

63. 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.

64. Can a self-employed individual receive both qualified sick or family leave wages and qualified sick or family leave equivalent amounts?

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

That is, if an eligible self-employed individual receives qualified sick leave wages as an employee of an Eligible Employer (other than himself or herself), that individual’s qualified sick leave equivalent amount must be reduced (but not below zero) to the extent that the sum of the qualified sick leave equivalent amount and the qualified sick leave wages received exceeds:



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



- \$5,110 in the case of any day any portion of which is paid sick time for when 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.

- \$2,000 in the case of any day any portion of which is paid sick time for when 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.

Example: Assume that an eligible self-employed individual's qualified sick leave equivalent amount is \$1,500, but the individual also works for an Eligible Employer and received qualified sick leave wages of \$1,000 to care for the individual's child while school was closed due to COVID-19. The individual's qualified sick leave equivalent amount would be reduced by \$500 [i.e., $(\$1,500 + \$1,000) - \$2,000$], resulting in a credit for the qualified sick leave equivalent of \$1,000 [i.e., $\$1,500 - \500].

If an eligible self-employed individual receives qualified family leave wages, the individual's qualified family leave equivalent amount must be reduced (but not below zero) to the extent that the sum of the qualified family leave equivalent amount and the qualified family leave wages received exceeds \$10,000.

Example: Assume that an eligible self-employed individual's qualified family leave equivalent amount is \$5,000, but the individual also works for an Eligible Employer and received qualified family leave wages of \$9,000 to care for the individual's child while school was closed due to COVID-19. The individual's qualified family leave equivalent amount would be reduced by \$4,000 [i.e., $(\$5,000 + \$9,000) - \$10,000$], resulting in a credit for the qualified family leave equivalent of \$1,000 [i.e., $\$5,000 - \$4,000$].

65. 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.

66. 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?



BILL FRALIC
INSURANCE SERVICES, INC.
770-640-1800
customerservice@bfralic.com

Paid Leave



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.

Where can I get more information?

- [Coronavirus Tax Relief](#)
- Department of Labor's [COVID-19 and the American Workplace](#)

Copied from JDSUPRA site. <https://www.jdsupra.com/legalnews/ppp-loan-forgiveness-further-guidance-10550/>

PPP Loan Forgiveness: Further Guidance on the Math

NOTE: You may have seen Verrill's earlier introduction to the complexities of [Paycheck Protection Program math](#). The article below provides an even deeper look into the loan forgiveness portion of that math.

Thousands of companies have submitted applications for loans under the Paycheck Protection Program (PPP), and those funds are beginning to hit bank accounts across the country.

Now that the money is here, or on its way, it is time to think about doing everything you can to ensure the highest possible forgiveness amount. As of this writing, we still do not have the final Small Business Administration (SBA) rules on how the forgiveness provisions will work, but we do have the statute to give us some level of guidance. Here is a detailed look at the math, as best we know it. (The key terms are defined at the bottom of the article; pay close attention to these definitions.)

THE EIGHT-WEEK PERIOD. **Once the PPP funds hit your account, that starts an eight-week race.** To be assured of maximum forgiveness, plan to spend 100% of those funds before the end of the eight-week period. The CARES Act computes forgiveness based, in part, on “[approved] costs incurred and payments made during [the eight-week period],” and there is no guidance yet on whether there is any leeway on timing of these expenditures. Also, **you are going to need to prove all of this later, so you must keep meticulous records of what you spent PPP funds on and when.**

Take some time to plan out how you will budget and allocate these funds once they arrive. *First*, we suggest you open a separate deposit account solely for the PPP funds and then write checks from that account. *Second*, spend as much as you can on designated **payroll costs** incurred during the eight-week period – **under the SBA's interim rule if you do not spend at least 75% of the loan proceeds on payroll costs, the dollar amount of the shortfall from 75% reduces the amount of forgiveness.** *Third*, all remaining proceeds not spent on **payroll costs** should be spent on the three other approved costs: **covered rent, covered utilities, and covered mortgage interest.**

The **payroll costs** math is interesting. As noted in the Interim Final Regulations, the PPP “provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks / 2.5 months = 56 days / 76 days = 74 percent rounded up to 75 percent).” So if your average monthly payroll has declined at all since the 12-month period used to compute the loan amount, you will struggle to reach 75% for the eight weeks. **If your payroll costs don't quite reach 75%, then consider whether to declare a special “thank you” bonus to rank-and-file employees during the eight weeks. Remember though, even if you don't achieve total forgiveness, what you are left with is a very nice two-year loan at 1% interest.**

THE HEADCOUNT REDUCTION. The amount you manage to pay out in approved costs for the eight-week period determines your maximum forgiveness. But, **this can be further reduced due to declines in headcount.**

You begin by measuring the number of full-time equivalents (FTEs) during the eight-week period. The FTEs equal the average number of employees you have over a given period who work at least 40 hours

per week. Say that for a given week you had three employees who worked 40 hours that week, two who worked 20, and four who worked 10. For that week, you would have five FTEs. For longer periods, you would take the numbers of regular hours (not to exceed 40 per week per employee) divide that by the number of weeks in the period, and divide that by 40. So, if during the eight-week period you had 1,472 regular hours, divided by eight weeks, that means 184 hours per week, then divide by 40 and you get an average of 4.6 FTEs.

After calculating your FTEs for the eight-week period, you will then compare this to the FTEs you had in either of two baseline periods. The baseline period can be either 2/15/19 to 6/30/19 or 1/1/20 to 2/29/20, whichever has fewer FTEs. If you had 10% fewer FTEs in the eight-week period than in your baseline period, then your loan forgiveness is proportionately reduced, by that same 10%.

THE SALARY/WAGE REDUCTION. Whatever forgiveness is left after the headcount reduction math can be further reduced, dollar-for-dollar, for major reductions in wages. To calculate this you first need to identify all employees during the eight-week period whom you employed at any point during 2019 and “who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000.” Call these the below-100 people. For each such employee, determine her average salary/wage rate for the first quarter of 2020. If 1/8th of the total amount of salary/wages paid to her for the eight-week period is at least 75% of her average weekly rate during Q1 of 2020, then there is no further reduction in loan forgiveness. But if she suffered such a major reduction in salary/wages that her pay for the eight-week period went down by more than 25%, then the dollar amount of the portion beyond 25% reduces, dollar-for-dollar, the amount of loan forgiveness.

A COUPLE OF HAIL MARYS. But wait, there’s more.

The statute includes a “fix” for the headcount-related reduction in forgiveness. If by June 30, 2020 you bring your FTE levels back up to where they were at February 15, 2020, then that excuses whatever reduction in forgiveness was attributable to a drop in headcount between February 15, 2020 and April 26, 2020. (The CARES Act wording is that the employer by June 30 “has eliminated” that reduction in the number of FTEs. We await guidance from the SBA on precisely what this means.)

The statute also includes a separate “fix” for the salary/wage-related reduction in forgiveness. If by June 30, 2020 you have restored the salary/wage levels of the below-100 people to at least the level existing on February 15, 2020, then that excuses any salary/wage level reductions which occurred between February 15, 2020 and April 26, 2020. (Again, the statutory wording is that the employer “has eliminated” the reduction in salary/wage.)

DEFINITIONS. They say the devil is in the definitions. Here are somewhat simplified versions of key statutory terms:

- **Payroll costs** are wages, salaries, commissions, tips, severance pay, and so forth – but subtract out the portion of any employee’s pay exceeding \$100,000 per year (annualized)
- **Covered rent** is rent obligated under a leasing agreement in force before February 15, 2020, and presumably includes bona fide equipment leases in addition to office leases
- **Covered utilities** means payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020

- **Covered mortgage** interest means interest on any pre-February 15, 2020 indebtedness or debt instrument incurred by the borrower in the ordinary course of business, if secured by a mortgage on real or personal property

BUSINESS REALITIES. Many people these days are fixated on the forgiveness feature of the PPP loans. Forgiveness is certainly an important part of the CARES Act incentives for small businesses to retain as many employees as possible and to keep up their wage levels. However, the ultimate objective for those who own and operate such a company will be to protect the long-term health of the business. **If business realities are such that you are unable to achieve 100% forgiveness, do remind yourself that, at worst, this is a 1% loan with a two-year payback period with no collateral and no personal guarantee.** These are artificially favorable terms, and offer a significant injection of cash to help support your company's operations.

The loan forgiveness features of the Paycheck Protection Program are complex and will require detailed planning, precise execution, and meticulous documentation.