

AN EMPLOYER'S STEP-BY-STEP GUIDE TO COVID-19-RELATED TAX CREDITS FOR PAID LEAVE

Insights
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The Internal Revenue Service just provided [an initial guidance document](#) to assist small- and medium-sized companies with the process of defraying the costs of paid sick leave required under the [Families First Coronavirus Response Act \(FFCRA\)](#). Of immediate importance to employers, the IRS provided some guidance regarding what information you should receive from an employee in order to substantiate eligibility for the FFCRA tax credits.

There is good news and bad news for employers struggling to keep up with the rapidly developing and somewhat-complex procedures. The good news is that you now have much-needed clarity on the “IRS forms and information” that the Department of Labor referenced when it indicated that [certification questions would soon be answered](#). We have summarized the required documentation required in each situation and the recommended written support you should request from your employees.

The bad news is that the IRS guidance raises several additional questions that will need to be further clarified. For example, the IRS guidance provides that employers should receive a written request from the employee that contains, among other things, a “statement of the COVID-19 related reason the

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Employee Leaves and Accommodations

Workplace Safety

employee is requesting leave and written support for such reason." But the IRS guidance does not specify what "written support" the employer may ask for. And because the FFCRA does not expressly provide that you may request certification (including doctor's notes), it is still unclear whether and in what circumstances you may permissibly ask for doctor's notes or similar information for some of the qualifying types of leave. For this reason, we recommend that you indicate on any certification forms you distribute that **"additional documentation may be required"** in the event further clarity is achieved and it becomes apparent that more "written support" is needed.

DOCUMENTATION FOR VARIOUS LEAVE SITUATIONS

Our COVID-19 Task Force has pieced together the best information we currently have available to develop the following employer's guide for navigating the tax credit process.

In order to qualify for the federal tax credit for providing the emergency paid leave, you will need to obtain a written request for the Emergency Paid Sick Leave or Emergency FMLA leave. In all leave situations, you should ensure you retain the following pieces of documentation:

- Documentation to show how you determine the amount of qualified sick and family leave wages you paid to each employee, including records of work, telework, and qualified family leave;
- Documentation to show how you determine the amount of qualified health plan expenses that the employer allocated to wages (see [FAQ 31 through 36](#) on the IRS Guidance entitled "Determining the Amount of Allocable Qualified Health Plan Expenses" for methods to compute this allocation);
- Copies of any completed Forms 7200 Advance of Employer Credits Due to COVID-19 that you submit to the IRS; and

- Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that you submit to the IRS. If you use third-party payers to meet your employment tax obligations, you should retain the records of information you provide them regarding your entitlement to the credit claimed on Form 941.

With respect to individual leave situations, you should ensure you retain the following pieces of documentation:

REASON FOR LEAVE

Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.

REQUIRED DOCUMENTATION

- Employee's name;
- Date(s) the leave is requested;
- A statement of the COVID-19 related reason the employee is requesting leave and "written support" for such reason;
- A statement that the employee is unable to work or telework due to a COVID-19 related reason; and
- The name of the government entity ordering the quarantine.

"WRITTEN SUPPORT" THAT CAN BE REQUESTED

It appears that the required "written support" could be met simply by obtaining the required documentation per the IRS guidelines. You could ask an employee for or otherwise locate a copy of the quarantine or isolation order. This may ultimately depend on [the U.S. Department of Labor's final interpretation regarding whether a state or local shutdown order satisfies this qualifying reason](#). If so, then you should likely be able to locate the documentation. If not, and USDOL

interprets this only to cover an individual quarantine or isolation order, then the employee would have to provide it to you as you would not have access to it.

REASON FOR LEAVE

Employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns.

REQUIRED DOCUMENTATION

- Employee's name;
- Date(s) the leave is requested;
- A statement of the COVID-19 related reason the employee is requesting leave and "written support" for such reason;
- A statement that the employee is unable to work or telework due to a COVID-19 related reason; and
- The name of the health care professional advising self-quarantine.

"WRITTEN SUPPORT" THAT CAN BE REQUESTED

It appears that the required "written support" could be met simply by obtaining the required documentation per the IRS guidelines. Note that it may be impractical or even contrary to local or state order to request a doctor's note in such situations. Check with your Fisher Phillips attorney for more information.

REASON FOR LEAVE

Employee is experiencing COVID-19 symptoms and seeking medical diagnosis.

REQUIRED DOCUMENTATION

- Employee's name;

- Date(s) the leave is requested;
- A statement of the COVID-19 related reason the employee is requesting leave and “written support” for such reason; and
- A statement that the employee is unable to work or telework due to a COVID-19 related reason.

“WRITTEN SUPPORT” THAT CAN BE REQUESTED

You should be able to ask the employee for the name of the health care professional or health care provider that they are seeking a medical diagnosis from as this is required by the IRS guidelines for other emergency leave reasons. Note that it may be impractical or even contrary to local or state order to request a doctor’s note in such situations. Check with your Fisher Phillips attorney for more information.

REASON FOR LEAVE

Employee is caring for an individual subject to a federal, state, or local quarantine or isolation order, or advised by a health care provider to self-quarantine due to COVID-19 concerns.

REQUIRED DOCUMENTATION

- Employee’s name;
- Name of the person subject to quarantine or advised to self-quarantine;
- Relation of the person subject to quarantine or advised to self-quarantine;
- Date(s) the leave is requested;
- A statement of the COVID-19 related reason the employee is requesting leave and “written support” for such reason;

- A statement that the employee is unable to work or telework due to a COVID-19 related reason; and
- The name of the government entity ordering the quarantine or the name of the health care professional advising self-quarantine.

“WRITTEN SUPPORT” THAT CAN BE REQUESTED

It appears that the required “written support” could be met simply by obtaining the required documentation per the IRS guidelines. You could ask an employee for or otherwise locate a copy of the quarantine or isolation order. This may ultimately depend on [the U.S. Department of Labor’s final interpretation regarding whether a state or local shutdown order satisfies this qualifying reason](#). If so, then you should likely be able to locate the documentation. If not, and USDOL interprets this only to cover an individual quarantine or isolation order, then the employee would have to provide it to you as you would not have access to it.

REASON FOR LEAVE

Employee is caring for their child if the child’s school or place of care is closed or the child’s care provider is unavailable due to public health emergency.

REQUIRE DOCUMENTATION

- Employee’s name;
- Name and age of the child/children;
- Name of the school that has closed or place of care that is unavailable;
- Date(s) the leave is requested;
- A statement of the COVID-19 related reason the employee is requesting leave and “written support” for such reason. The “written support” should include:

- A statement that the employee is unable to work or telework due to a COVID-19 related reason;
- 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
- If the child is older than 14 and needs care during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

“WRITTEN SUPPORT” THAT CAN BE REQUESTED

The USDOL has stated that you can require workers to provide additional documentation in support of EFMLA taken to care for a child or children whose school or place of care is closed, or child care is unavailable, due to COVID-19 related reasons. This could include:

- Notice of closures or unavailability from a school, place of care, or child care provider;
- A notice of closure or unavailability posted on a government, school, or day care website;
- A notice of closure or unavailability published in a newspaper; and
- A notice of closure or unavailability emailed from an employee or official of the school, place of care, or child care provider.

REASON FOR LEAVE

Employee 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.

REQUIRED DOCUMENTATION

- Employee's name;
- Date(s) the leave is requested;
- A statement of the COVID-19 related reason the employee is requesting leave and "written support" for such reason; and
- A statement that the employee is unable to work or telework due to a COVID-19 related reason.

"WRITTEN SUPPORT" THAT CAN BE REQUESTED

To be determined on a case-by-case basis. Check with your Fisher Phillips attorney for more information.

MAINTENANCE OF RECORDS

You should maintain all records noted above for at least four years after the date the tax becomes due or is paid, whichever is later.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, or [any member of our COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.