

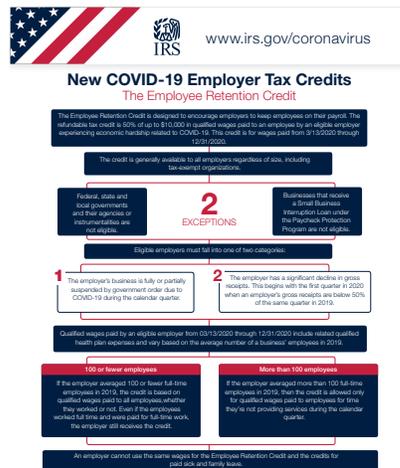


Reporter

Spring 2020

A Newsletter for Employers

Flowchart helps employers understand new tax credits



The IRS recently issued [Publication 5419, New Employer Tax Credits \(.pdf\)](#) to help employers understand the tax credits available to them due to the coronavirus pandemic. This handy document breaks down the details of the Employer Retention Credit and the credits for paid sick and family leave in easy-to-follow charts. Using the document, employers can quickly determine whether they're eligible for the credits, the amount of the credits and which wages apply to the credits. **IRS**

Remind your constituents to keep Notice 1444, Your Economic Impact Payment.

The IRS mails this notice to recipients' address of record within a few weeks after the Economic Impact Payment was issued. Individuals should keep the letter for their tax records. The payment is considered an advance credit against 2020 tax. Taxpayers will not include the payment in taxable income on their 2020 tax return or pay income tax on the payment. It will not reduce a taxpayer's refund or increase the amount of tax a taxpayer owes when the taxpayer files a 2020 federal income tax return next year. When a taxpayer files a 2020 tax return next year, the

taxpayer may claim any additional credit for which the taxpayer is eligible. The IRS is not able to correct or issue an additional payment at this time and will provide further details on IRS.gov on the action individuals may need to take in the future. See the [Economic Impact Payment Information Center](#) for questions and answers about eligibility, payment amounts, what to expect and when to expect it.



New Employer Tax Credits - The Employee Retention Credit for Sick and Family Leave

Credit for sick and family leave

An employee who is unable to work (including telework) because of coronavirus quarantine or self-quarantine or has coronavirus symptoms and is seeking a medical diagnosis, is entitled to paid sick leave for up to 10 days (up to 80 hours). The employee's pay is at the regular rate or, if higher, the federal minimum wage or any applicable state or local minimum wage, up to \$511 per day, but no more than \$5,110 in total.

Caring for someone with coronavirus

An employee who is unable to work due to:

- caring for someone with coronavirus
- a child's school/daycare is closed

If the paid childcare provider is unavailable due to the coronavirus, the provider is entitled to paid sick leave for up to two weeks (up to 80 hours). The allowed leave is at two-thirds 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, but no more than \$2,000 in total.

Care for children due to daycare or school closure

An employee unable to work due to their children's daycare or school closure or whose childcare provider is unavailable due to the coronavirus, is also entitled to paid family and medical leave. The leave is equal to two-thirds of the employee's regular pay (up to \$200 per day and \$10,000 in total). Up to 10 weeks of qualifying leave can be counted toward the family leave credit.

Credit for eligible employers

Eligible employers are entitled to a credit in the full amount of the required sick leave and family leave. In addition, they are entitled to related health plan expenses and the employer's share of Medicare tax on the leave, for the period of April 1, 2020, through December 31, 2020.

The refundable credit is applied against certain employment taxes on wages paid to all employees. Eligible employers can reduce federal employment tax deposits in anticipation of the credit. They can also request an advance of the paid sick and family leave credits for any amounts not

covered by the reduction in deposits. The advanced payments will be issued by paper check to employers.

Employee Retention Credit

Eligible employers can claim the [Employee Retention Credit](#), a refundable tax credit equal to 50% of up to \$10,000 in qualified wages (including health plan expenses), paid after March 12, 2020, and before January 1, 2021. Eligible employers are those businesses with operations that have been partially or fully suspended due to governmental orders due to COVID-19, or businesses that have a significant decline in gross receipts compared to 2019.

The refundable credit is capped at \$5,000 per employee and applies against certain employment taxes on wages paid to all employees. Eligible employers can reduce federal employment tax deposits in anticipation of the credit. They can also request an advance of the employee retention credit for any amounts not covered by the reduction in deposits. The advanced payments will be issued by paper check to employers.

Resources:

News Releases:

- [IR-2020-57, Treasury, IRS and Labor announce plan to implement coronavirus-related paid leave for workers and tax credits for small and midsize businesses to swiftly recover the cost of providing coronavirus-related leave](#)
- [IR-2020-62, IRS: Employee Retention Credit available for many businesses financially impacted by COVID-19](#)

Frequently Asked Questions:

- [Deferral of employment tax deposits and payments through December 31, 2020](#)
- [COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs](#)
- [DOL Families First Coronavirus Response Act: Questions and Answers](#)
- [FAQs: Employee Retention Credit under the CARES Act](#)



Tax credit sound too good to be true?

Abusive tax scams cause harm to both the federal government and the taxpayers who participate in these scams. Taxpayers should be cautioned not to be taken in by promoters of tax scams. Those who get involved in scams peddled by abusive tax preparers or

promoters could face a heavy tax burden that includes not only taxes owed, but the addition of large penalties and interest.

Use the [Report Suspected Abusive Tax Promotions or Preparers](#) form to make a referral to the IRS. 

Families First Coronavirus Response Act: Employer paid leave requirements

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19 [1]. The Department of Labor's Wage and Hour Division administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020. Generally, the Act provides that covered employers must provide to **all employees** [2]:

- *Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to federal, state or local government order or advice of a health care provider), or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay* because the employee is unable to work because of:
 - a bona fide need to care for an individual subject to quarantine (pursuant to federal, state or local government order or advice of a health care provider), or
 - care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, or
 - the employee is experiencing a substantially similar condition as specified by the secretary of Health and Human Services, in consultation with the secretaries of the Treasury and Labor.

A covered employer must provide to **employees that it has employed for at least 30 days** [3]:

- Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Covered employers: The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees [4]. Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Qualifying reasons for leave

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave 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 related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially similar condition specified by the secretary of Health and Human Services, in consultation with the secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

Duration of leave

For reasons (1)-(4) and (6): A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Calculation of pay

For leave reasons (1), (2) or (3): Employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a two-week period).

For leave reasons (4) or (6): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a two-week period).

For leave reason (5): employees taking leave shall be paid at two-thirds their regular rate or two-thirds the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave). [6]

Tax credits: Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the Department of the Treasury's website. (continued...)

Employer notice: Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements. [7]

Prohibitions: Employers may not discharge, discipline or otherwise discriminate against any employee who takes paid sick leave under

the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

Penalties and enforcement: Employers in violation of the first two weeks' paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act, 29 U.S.C. 216; 217. Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or childcare provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act.

The Department of Labor will observe a temporary period of nonenforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this nonenforcement position, "good faith" exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department of Labor receives a written commitment from the employer to comply with the Act in the future.

Resources

For additional information or to file a complaint:

1-866-487-9243 | TTY: 1-877-889-5627 [Department of Labor Wage and Hour Division](#)

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- [1] Wage and Hour Division does not administer this aspect of the law but notes that every dollar of required paid leave (plus the cost of the employer's health insurance premiums during leave) will be 100% covered by a dollar-for-dollar refundable tax credit available to the employer. For more information, please see the Department of the Treasury's website.
 - [2] Employers of health care providers or emergency responders may elect to exclude such employees from eligibility for the leave provided under the Act.
 - [3] Employers of health care providers or emergency responders may elect to exclude such employees from eligibility for the leave provided under the Act.
 - [4] Certain provisions may not apply to certain employers with fewer than 50 employees. See Department of Labor FFCRA regulations (expected April 2020).

USDOL

Protection from phone scams

People should be on the lookout for fake Social Security calls

There are many telephone scams going on. Scammers are trying to trick people into giving them their personal information and money. People shouldn't get fooled!

Scammers pretend they're from Social Security. The number seen on the caller ID may even look like an official government number, but it's not. The caller may say there's a problem with the Social Security number or account. They may ask for personal information like the Social Security number or bank account. They may request the problem be fixed now, to avoid arrest, by paying a fine or fee using retail gift cards, prepaid debit cards, wire transfers or cash. These calls are **not** from the Social Security Administration. Always protect personally identifiable information.

Social Security will **not**:

- Threaten.
- Advise the Social Security number has been or might be suspended.
- Call to demand an immediate payment.
- Ask for credit or debit card numbers over the phone.
- Require a specific means of debt repayment, like a prepaid debit card, a retail gift card, or cash.
- Demand payment of a Social Security debt without the ability to appeal the amount owed.
- Promise a Social Security benefit approval, or increase, in exchange for information or money.

- Request personal or financial information through email, text messages, or social media.

Social Security **will**:

- Call sometimes to confirm a filed claim or to discuss other ongoing business with them.
- Mail a letter if there is a problem.
- Mail a letter to submit payments that will have detailed information about options to make payments and the ability to appeal the decision.
- Use emails, text messages and social media to provide general information (not personal or financial information) on its programs and services if people have signed up to receive those messages.

If a suspicious call is received from someone alleging to be from Social Security, people should:

- Hang up right away.
- Never give personal information, money or retail gift cards.
- Report the scam to Social Security's law enforcement team at the [Office of the Inspector General](#).

Everyone should share this information with family and friends. **SSA**

Key points about the 2020 Forms W-2, W-3, and instructions

The IRS released the 2020 Form W-2, Wage and Tax Statement; Form W-3, Transmittal of Wage and Tax Statements; and the General Instructions for Forms W-2 and W-3, in the spring. Here's important information for payroll professionals and tax practitioners:

Future developments. Information about any future developments affecting Forms W-2 and W-3 and their instructions (such as legislation enacted after their release) will be posted on the IRS.gov pages for [Form W-2](#) and [Form W-3](#).

Truncation of Social Security numbers on employee copies of Form W-2. Employers may now truncate the employee's SSN on employee copies of Forms W-2. Employers may not truncate the employee's SSN on Copy A filed with the Social Security Administration. To truncate on state copies (Copies 1 and 2), check state law requirements. To truncate where allowed, replace the first five digits of the nine-digit number with asterisks (*) or X's. For example, an SSN of 987-56-1234 would appear on the employee copies as ***-**-1234 or XXX-XX-1234.

Potential lowering of the e-filing threshold for information returns. While the Taxpayer First Act authorized the IRS to lower the e-filing threshold to 100 information returns for 2020 and then to 10 returns thereafter, the IRS has not issued regulations to implement the lowered threshold. If the IRS does not issue regulations lowering the threshold, the existing 250-return limit remains in effect for 2020 returns filed in 2021.

What's new with W-2 and W-3

Clarification on Code P reporting in Box 12. The only amounts to be reported in Box 12 under Code P are moving expense reimbursements paid directly to a member of the U.S. armed forces who moves because of a military order and incidental to a permanent change of station. Employers should not report any other amounts under Code P.

Military Spouses Residency Relief Act (MSRRA) change. Because of changes made to the MSRRA, civilian spouses of service members can elect to use the same residence as the service member for purposes of taxation.

Awards compensating employees for lost wages are subject to the Railroad Retirement Tax Act (RRTA). In *BNSF Railroad Company v. Loos*, 139 S. Ct. 893, the U.S. Supreme Court ruled that award payments to employees to compensate for working time lost because of an on-the-job injury is taxable "compensation" under the RRTA, and more generally, that "compensation" under the RRTA encompasses any money remuneration that stems from the "employer-employee relationship." Railroad employers must withhold Tier 1 and Tier 2 taxes when paying such awards to employees covered by the RRTA.

Disaster tax relief. Disaster tax relief may be available for those affected by recent disasters. The IRS issues notices of when disaster tax relief is available. For more information about disaster relief, visit the IRS webpage, [Tax Relief in Disaster Situations](#).

Penalties. Penalty amounts are adjusted for inflation annually for failure to file correct information returns and to furnish correct payee statements for forms that are required to be filed or furnished. The penalties for forms filed after December 31, 2020, include:

- *Failure to file correct information returns.* The amount of the penalty is based on when the corrected return is filed. If corrected within 30 days of the due

date, the penalty is \$50 per Form W-2, and the maximum penalty is \$565,000 per year (\$197,500 for small businesses). If corrected more than 30 days after the due date, but by August 1, the penalty is \$110 per Form W-2, and the maximum penalty is \$1,696,000 per year (\$565,000 for small businesses). If corrected after August 1, the penalty is \$280 per Form W-2, and the maximum penalty is \$3,392,000 per year (\$1,130,000 for small businesses).

- *Failure to furnish correct payee statements.* The amount of the penalty is based on when the employer furnishes the correct payee statement. This penalty is an additional penalty and is applied in the same manner, and with the same amounts, as the failure to file correct information returns.
- *Intentional disregard.* The penalty for intentionally disregarding Form W-2 obligations — failure to file correct information returns, to furnish correct payee statements, or both — remains at \$560 per return for 2020 and there is no calendar year limit.

Other changes

New Box 1 clarification. For item 20, the language was clarified: Amounts includible in income under § 409A from a nonqualified deferred compensation (NQDC) plan because the amounts are no longer subject to a substantial risk of forfeiture and were not previously included in income. See NQDC plans under Special Reporting Situations for Form W-2.

Reminders

Extensions. Extensions of time to file Forms W-2 with the Social Security Administration are not automatic. Employers may request from the IRS one 30-day extension to file Forms W-2 by submitting a complete application using Form 8809, Application for Extension of Time to File Information Returns, indicating that at least one of the criteria on the form and instructions for granting an extension applies and by signing under penalties of perjury. The IRS will only grant the extension in extraordinary circumstances or catastrophe. This does not affect extensions of time to furnish Forms W-2 to employees, which involves a different process.

De minimis error safe harbor. The safe harbor rule generally applies if no single amount in error differs from the correct amount by more than \$100 and no single amount reported for taxes withheld differs from the correct amount by more than \$25. If the safe harbor applies, employers do not have to correct the Form W-2 to avoid penalties. However, if the employee elects for the safe harbor not to apply, employers may have to issue a corrected return to avoid penalties (See [Notice 2017-09](#), [2017-4 IRB 542](#), [De Minimis Error Safe Harbor to the I.R.C. §§ 6721 and 6722 Penalties](#)).

Limit on health flexible spending arrangement (FSA). For 2020, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in excess of \$2,750. The salary reduction contribution limitation of \$2,750 does not include any amount (up to \$500) carried over from a previous year.

This article was written by the American Payroll Association (APA). For more information on APA, go to www.americanpayroll.org. 