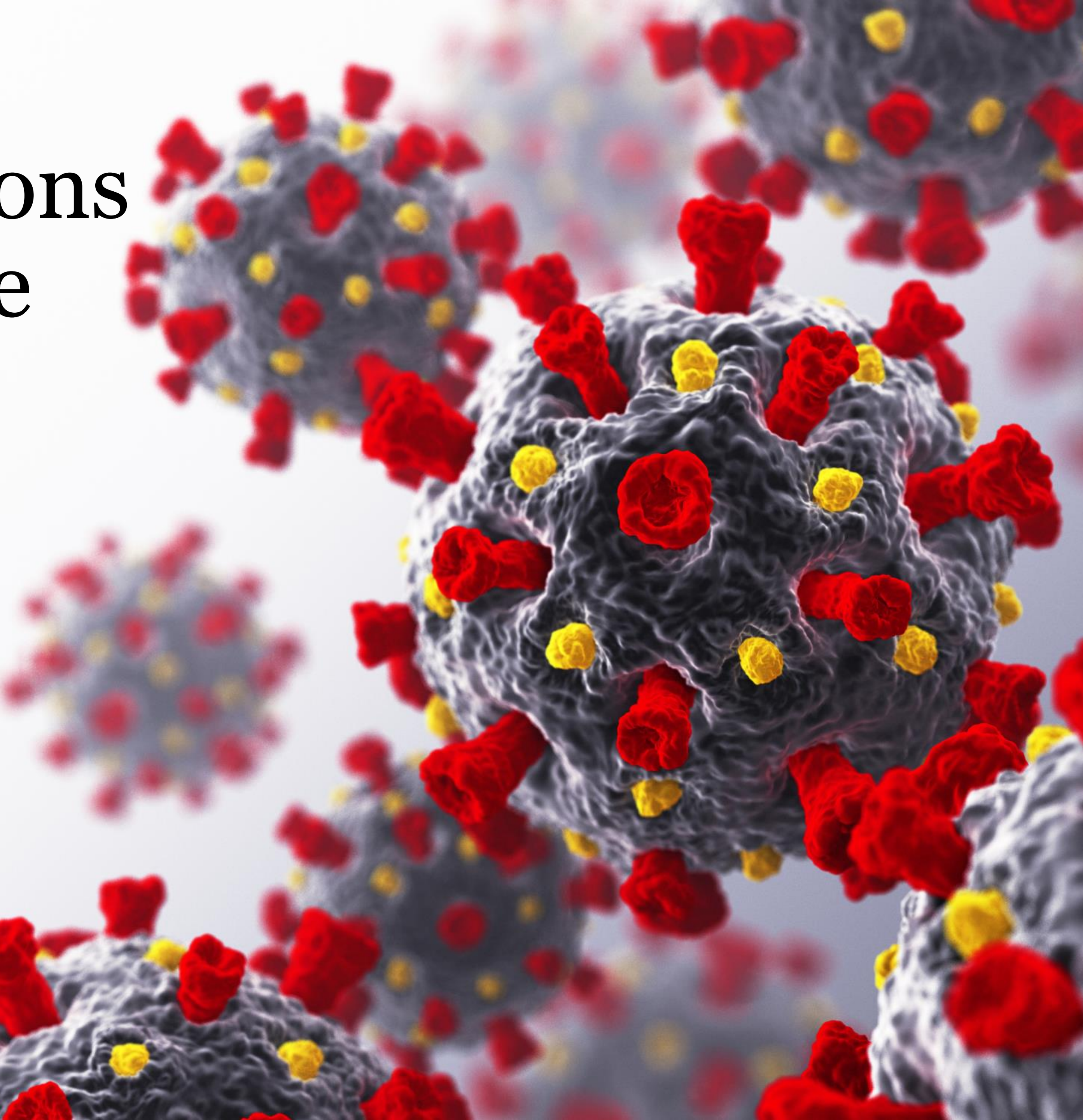
Employment Provisions of the FFCRA and the CARES Act



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Overview

- Emergency Paid Sick Leave and Expanded FMLA Leave
- Employee retention credit
- Payroll tax deferral
- Questions

Families First Coronavirus Response Act (FFCRA)

Applies to employers that employ < 500 employees

- When to measure
- Who is an employee
- Integrated and joint employers

Emergency Paid Sick Leave

Up to 80 hours of leave, with job restoration, if employee is unable to work (or telework) due to:

1. Employee is subject to a federal, state or local quarantine or isolation order

   Includes state stay at home orders if "but for" the order the employee would be able to work

2. Employee has been advised by healthcare provider to self-quarantine

   Employee has, may have or is particularly vulnerable to COVID-19

3. Employee is experiencing COVID-19 symptoms & is seeking a medical diagnosis

   Applies when employee is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a test for COVID-19

Emergency Paid Sick Leave Compensation

For reasons 1, 2 and 3:

- Regular rate of pay (or minimum wage if higher) capped at $511/day
- Group health plan coverage
- Cannot require substitution of other forms of leave, but can agree
- State law may provide for greater benefits

Emergency Paid Sick Leave & FMLA+

Up to 80 hours of leave, with job restoration, if employee is unable to work (or telework) due to:

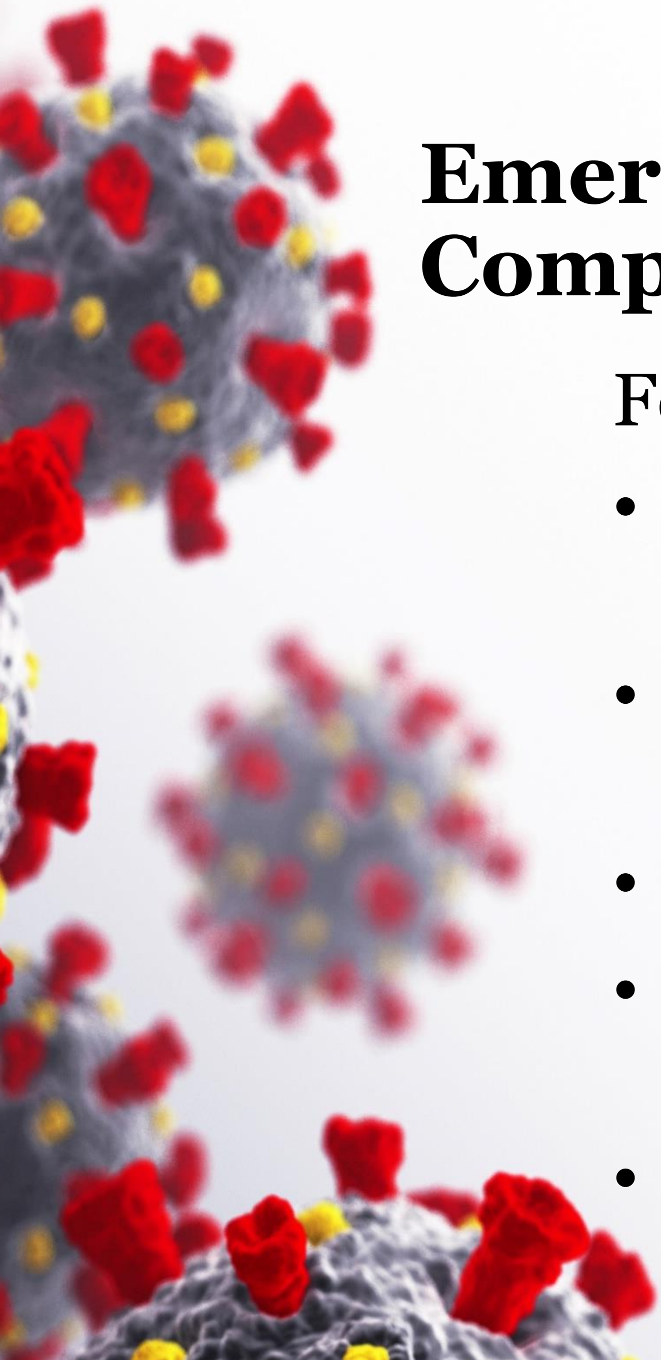
4. Employee is caring for an individual subject to a federal, state or local quarantine or isolation order <u>or</u> has been advised to a health care provider to self-quarantine

   Immediate family member, a person who regularly resides in employee's home, or a similar person with whom employee has a relationship

Up to 80 hours of EPSL & 12 weeks FMLA+ leave, with job restoration, if employee is unable to work (or telework) due to:

5. Employee is caring for a son or daughter if the school or place of care is closed or the child care provider is unavailable

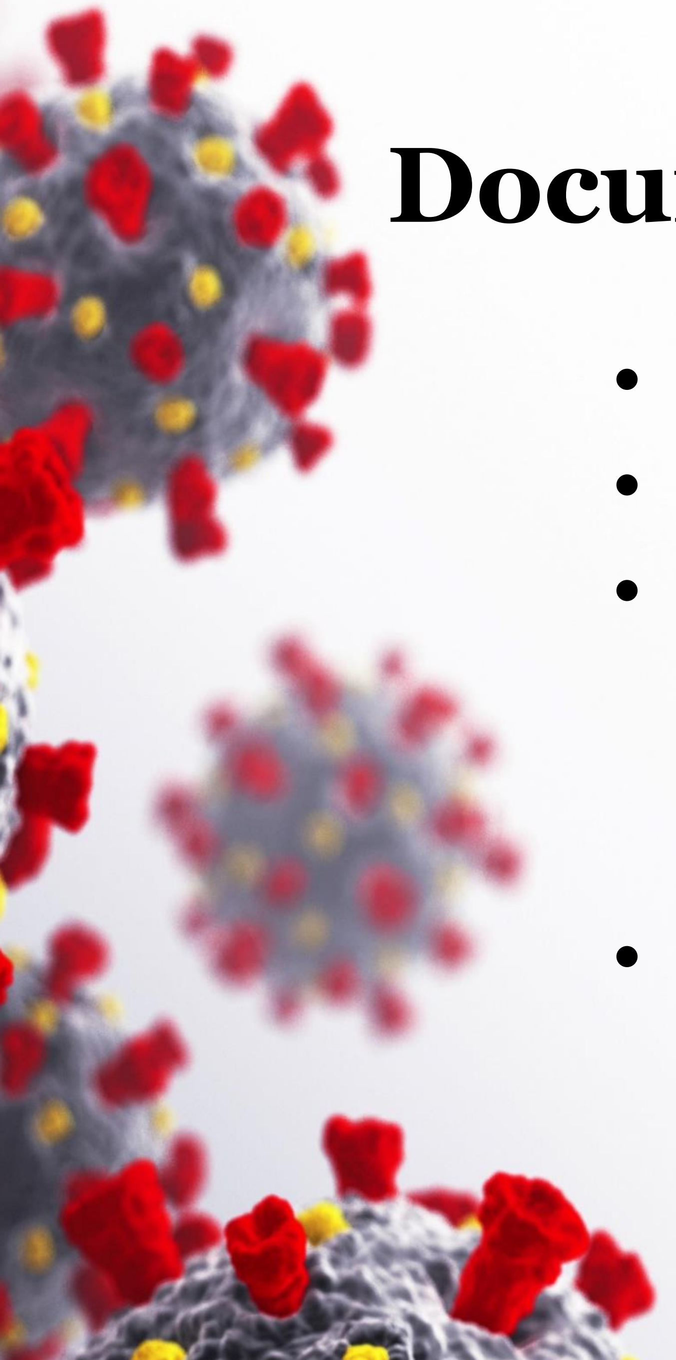
   May agree to intermittent leave



Emergency Paid Sick Leave & FMLA+ Compensation

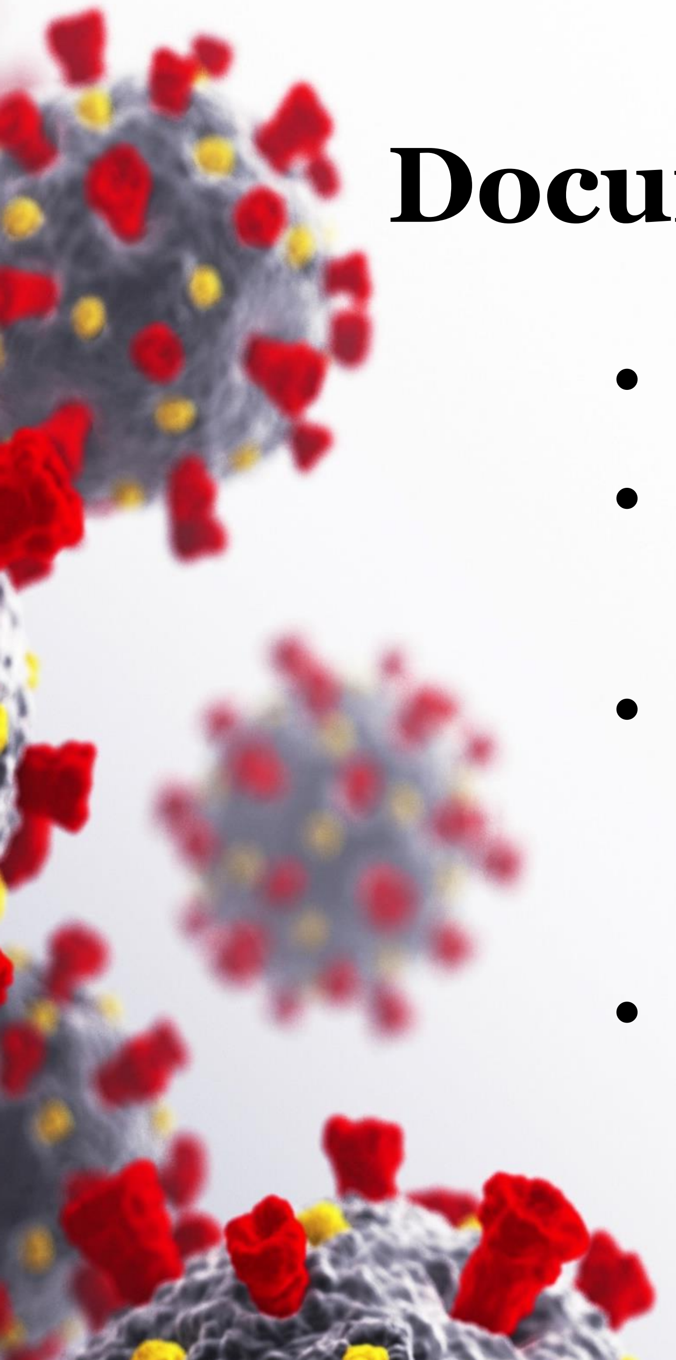
For reasons 4 and 5 and FMLA+ leave:

- 1st 10 days of FMLA+ leave unpaid, but employee may elect to use EPSL or other accrued leave
- 2/3 regular rate of pay (or minimum wage if higher) capped at $200/day
- Group health plan coverage
- Cannot require substitution of other forms of leave, but can agree
- State law may provide for greater benefits



Documentation

- Employee's name
- Dates for which leave is requested
- COVID-19 related reason for leave and support
  - Name of government entity
  - Name of healthcare provider
  - Person's name and relation to employee
- A statement that the employee is unable to work, including telework

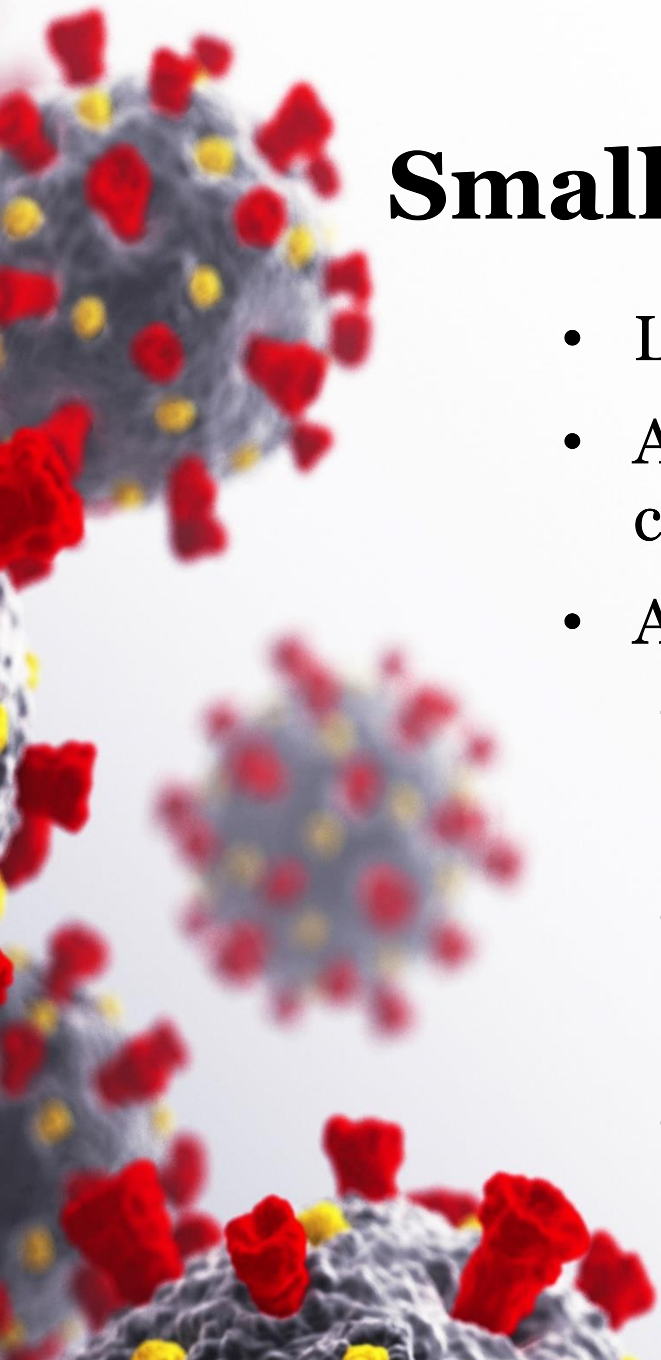


Documentation

- Name and age of children
- Name of the school that has closed or place of care that is unavailable
- Representation that no other person will be providing care for the child during the period for which the employee is receiving leave
- Statement that special circumstances exist requiring the employee to provide care for a child older than 14 during daylight hours

FMLA Covered Employers

- FMLA required paperwork does not apply, but can be used
- FMLA+ counts toward employee 12 week FMLA entitlement
- FMLA key employee applies to FMLA+

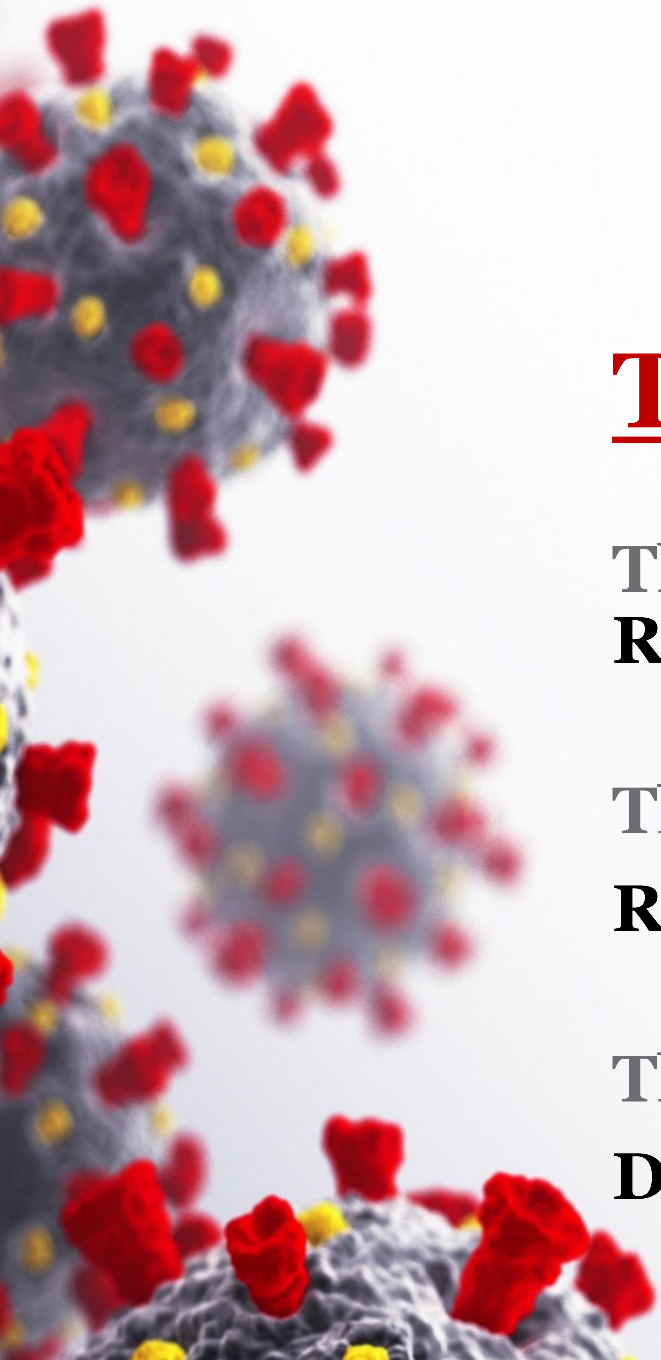


Small Business Exemption

- Less than 50 employees
- Applies to leave to care for a child when the school or place of care is closed or child care provider is unavailable
- Authorized officer of the employer determines and documents:
  - Providing the paid leave would result in expenses & financial obligations exceeding available business revenues and causes the business to cease operating at a minimal capacity;
  - Absence of the employee would entail a substantial risk to the financial health or operation capabilities because of the employee's specialized skills, knowledge of the business or responsibilities; or
  - There are not sufficient workers who are able, willing and qualified or who will be available and the labor or services are needed to operate at a minimal capacity.

Job Restoration Exemption

- Less than 25 employees
- Applies to leave to care for a child when the school or place of care is closed or child care provider is unavailable
- Position no longer exists due to economic or operating conditions that affect employment & COVID-19 reasons
- Reasonable efforts to restore to same or equivalent position
- Continue to make reasonable efforts to contact employee for 1 year beginning on the earlier of the date the leave concludes or the date 12 weeks after leave began



The Three Programs

The Families First Coronavirus Response Act –
Refundable Tax Credit

The CARES Act –

Refundable Retention Credit

The CARES Act –

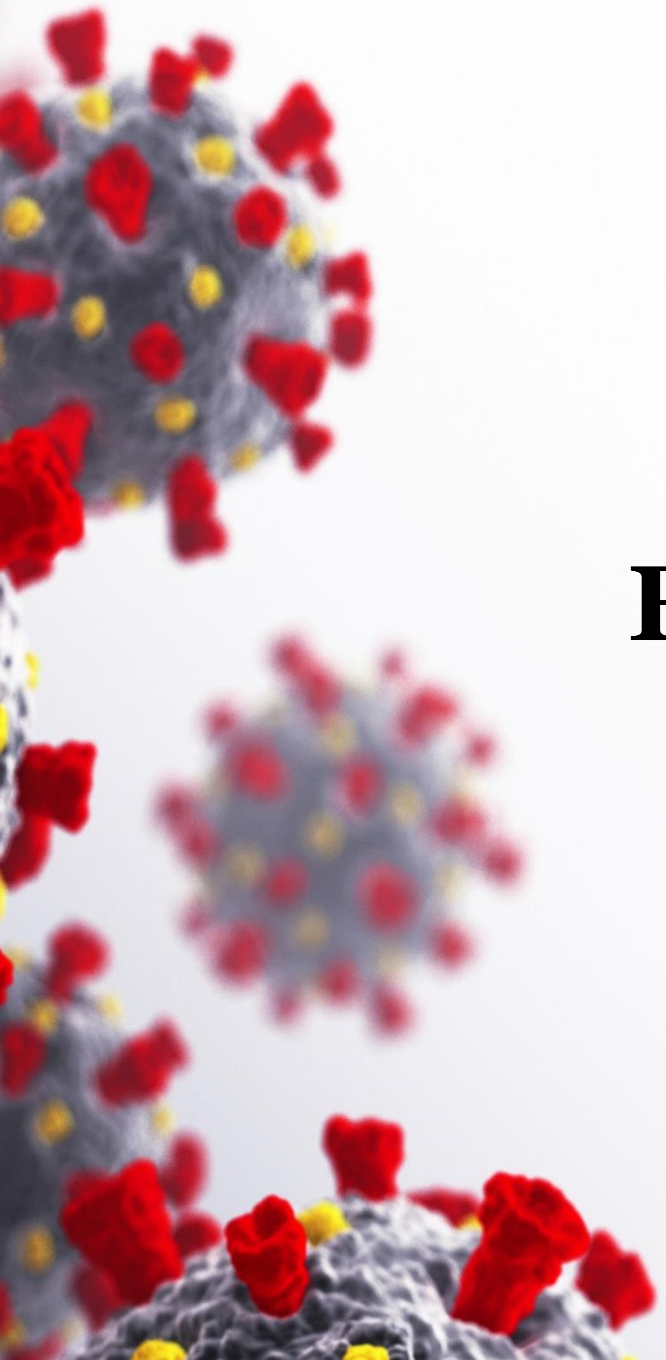
Delay of Payment of Payroll Taxes

Agenda

- Purpose & Objective of the Three Programs
- Refundable Tax Credit
  - Employers Eligible for the Refundable Tax Credit
  - Definition of Qualified Sick Wages and Qualified Family & Medical Leave Wages
  - Determining the Amount of the Refundable Tax Credit
  - Procedures to Obtain the Refundable Tax Credit
- Refundable Retention Credit
- Delay of Payment of Payroll Taxes

Purpose & Objective of the Three Programs

- The purpose and objective of the Families First Coronavirus Response ACT ("FFCRA") – Refundable Tax Credit, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act – Refundable Retention Tax Credit, and the CARES Act – Delay of Payment of Payroll Taxes is to:
  - maintain the workforce employed;
  - assist employers with cash flow and liquidity; and
  - assist employers endure the COVID-19 pandemic.



FFCRA - Refundable Tax Credit

Employers Eligible for the Refundable Tax Credit

- Businesses and Tax-Exempt Organizations that have fewer than 500 employees AND are required under FFCRA to pay Qualified Emergency Sick Leave wages or Qualified Expanded Family & Medical Leave wages, are eligible for the Refundable Tax Credit.

- Self Employed Individuals also qualify for the Refundable Tax Credit.

Definition of Qualified Emergency Sick Leave Wages and Qualified Family & Medical Leave Wages

- Wages paid for Emergency Sick Leave or Family & Medical Leave are considered "Qualifying" wages only if:
  1. Such leave is taken by an employee between April 1, 2020 through December 31, 2020; AND
  2. Such leave was granted for COVID-19 reasons listed in the FFCRA; AND
  3. Such leave is granted by an "Eligible Employer" *as defined on page 5*; AND
  4. Amounts and days for which such leave is paid cannot be in excess of the maximum.
- **It is important to note** - if an employer receives a loan under the Paycheck Protection Program ("PPP") and uses those funds to pay Emergency Sick Leave wages or Family & Medical Leave wages mandated under FFCRA AND includes such wages paid to obtain PPP loan forgiveness then the employer cannot use the same wages as Qualified wages to obtain the Refundable Tax Credit.

Illustration of Qualified Emergency Sick Leave Wages and Qualified Family & Medical Leave Wages

- Employer ABC Corp employs <500 employees. Mr. Lacey, Ms. Jane & Mr. Smith are employees of ABC Corp and are paid at a daily rate of $600, $700, and $400, respectively.
  - On March 1, 2020 Mr. Lacey requested and was granted a paid two week leave at his regular pay rate of $600 per day because he was experiencing COVID-19 symptoms.
  - On April 15, 2020, Ms. Jane requested and was granted three weeks of paid sick leave at her regular pay rate of $700 per day because she experienced COVID-19 symptoms.
  - On April 15, 2020, Mr. Smith requested and was granted one week of sick leave at his regular pay rate of $400 per day because he experienced COVID 19 symptoms

- *In the case of Mr. Lacey* - ABC Corp, under FFCRA, is not required to pay sick leave to him because his sick leave occurred before April1, 2020. Mr. Lacey can still take sick leave and get paid for such sick leave as a part of the company's employee benefit policies, but wages paid for his sick leave (even for COVID-19 reasons) cannot be used in calculation of the Refundable Tax Credit.
- *In the case of Ms. Jane* – she was paid $700 per day for three weeks totaling $10,500. However, wages paid that would qualify for the Refundable Tax Credit would be limited to $511 per day for a maximum 10 days ($511 x 10 days).
- *In the case of Mr. Smith* – the employer can pay him $400 per day (instead of required Maximum of $ 511) and the total sick pay wages of $2,000 would qualify for the Refundable Tax Credit.

Determining the Amount of the Refundable Tax Credit

- Refundable Tax Credit for each calendar quarter is calculated as follows:
  1. Qualifying wages paid for Emergency Sick Leave or Family & Medical Leave; PLUS
  2. Employer's share of Medicare tax paid on such qualifying wages; PLUS
  3. Qualified health plan expenses allocable to such wages.
     - Guidance with respect to qualified health plan expenses can be found in the IRS's *COVID-19 Related Tax Credits for Required Paid leave Provided by Small and Midsize Businesses FAQs* - Questions 31 through 36: https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#basic
- **It is important to note** - the employer is not required to pay the employer's share of Social Security taxes (6.2%) on wages paid for Qualified Emergency Sick Leave or Qualified Family & Medical Leave.

Illustration of Determining the Amount of the Refundable Tax Credit

- Continuing on the facts laid out in the previous Illustration - let us assume that the per diem per employee qualified health insurance cost of ABC Corp is $20. ABC Corp's Refundable Tax Credit would be calculated as follows:

Qualifying Sick Leave Wages Paid to Ms. Jane ($511 x 10 days)	$5,110	
Qualifying Sick Leave Wages Paid to Mr. Smith ($400 x 5 days)	2,000	
Qualifying Sick Leave Wages Paid to Mr. Lacey	*n/a*	
Total Qualifying Sick Leave Wages Paid		**$7,110**
Medicare Tax burden of ABC Corp ($7,110 x 1.45%)		103
Qualified group health Insurance expenses allocable: Ms. Jane ($20 x 10 days)		200
Qualified group health Insurance expenses allocable: Mr. Smith ($20 x 5 days)		100
Qualified group health Insurance expenses allocable: Mr. Lacey		*n/a*
Refundable Tax Credit		**$7,513**

- ABC Corp is not required to pay employer share of Social Security taxes (6.2%) on $7,110
- ABC Corp must also include the Refundable Tax Credit amount of $ 7,513 as an addback to its gross income while preparing business income tax return.

Procedures to Obtain the Refundable Tax Credit

- In order to assist eligible employers pay for Qualified Emergency Sick leave or Qualified Family & Medical Leave, the law allows such employers to use any of the following procedures to recoup amounts paid by them:
  1. Reduction of Payroll Tax Deposit;
  2. Refund of Excess Deposit; or
  3. Advance refund.
- The payroll taxes that are available for reduction or refund include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees

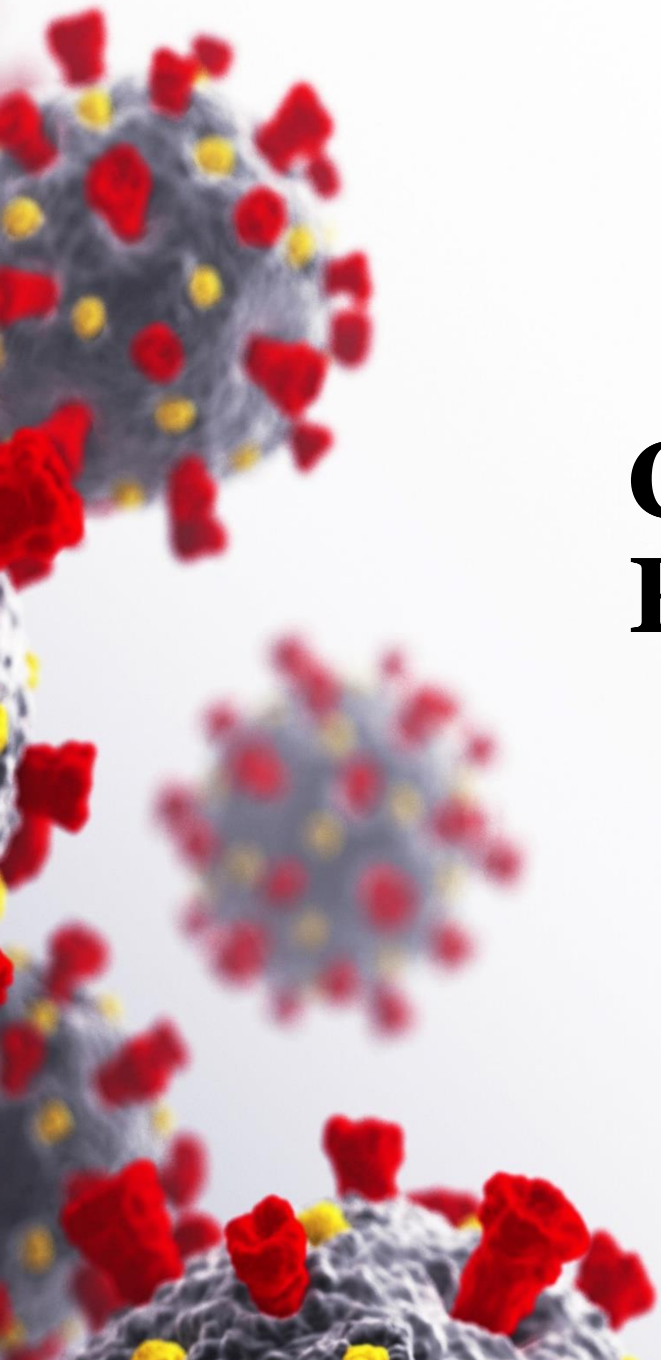
- IRS Form 941 will be revised for the second quarter of 2020 (April to June) to reflect various credits including the Refundable Tax Credit resulting from qualified wages paid under FFCRA for Emergency Sick Leave and Family & Medical leave.

Procedures to Obtain the Refundable Tax Credit

- Reduction of Payroll Tax Deposits:
  - The Treasury has indicated that employers who accrue Qualified Sick Leave or Family & Medical Leave credits during a calendar quarter can reduce their overall payroll tax deposits for all employees for that quarter by the amount of the accrued credit.
  - Encouraged in the instructions to Form 7200 – "*should retain an amount of the payroll taxes equal to the [credits] rather than depositing these amounts with the IRS*".
  - Provides employers with the quickest possible access to cash resulting from the credit.
  - Any reduction in deposits resulting from the credits will be reported on the employer's next Form 941.

Procedures to Obtain the Refundable Tax Credit

- Refund of Excess Credit:
  - In the event that an employer ends up with a greater credit amount than the reduction in payroll tax deposits, the employer is entitled to claim a refund for the excess credit amount on Form 941 for that quarter, unless the employer has already claimed an Advance Refund.
- Advance Refund:
  - Employer is not required to wait until Form 941 is filed in order to claim a refund.
  - At any point during a calendar quarter in which an employer is accruing the Refundable Tax Credit, if the employer has accrued credits at that point in excess of reductions the employer has made in payroll tax deposits for that quarter, the employer can file Form 7200 claiming an Advance Refund in the amount of the excess.
  - An employer is entitled to file multiple Forms 7200 with respect to a single quarter, through the end of month following the quarter end.



CARES Act –
Refundable Retention Credit

Refundable Retention Credit

- During the COVID -19 pandemic, in order to avoid unemployment from increasing dramatically, the CARES Act created a new Refundable Employee Retention Tax Credit ("Refundable Retention Credit").

- To be eligible for the Refundable Retention Credit, an employer must carry on a trade or business in 2020 AND experience either:

  1. 50% reduction in quarterly gross receipts for a calendar quarter as compared to the same calendar quarter in the prior year ("Gross Receipts Decline"); OR
  2. A Government ordered full or partial shutdown ("COVID-19 Shutdown").

- The Refundable Retention Credit is calculated based on Qualified Wages paid to employees from March 13, 2020 to December 31, 2020. The credit amount is 50% of wages up to a maximum of $10,000 per employee. In the case of a Certified Professional Employer Organization ("CPEO"), the Refundable Retention Credit belongs to the customer of the CPEO and not to the CPEO.

Refundable Retention Credit

- While the Refundable Retention Credit is available to all employers, the definition of Qualified Wages for calculation of the Refundable Retention Credit depends upon whether employer has more than 100 employees (large size employer) or has 100 or fewer employees (small size employer).

  - *For an employer with more than 100 full time employees* - Qualified Wages are wages paid to employees when they are not working due to COVID-19 circumstances. The wages taken into account are limited to the amount an ABSENT employee would have been paid for equivalent amount of work in the 30 days immediately preceding the period for which the employee is paid.

  - *For employers with less than100 full-time employees* - Qualified Wages are wages paid to ALL employees during the COVID-19 Shutdown or during a calendar quarter of Gross Receipts Decline, without regards to whether employees are providing services.

Refundable Retention Credit

- The Refundable Retention Credit is subject to several rules to prevent double-dipping. An employer's deduction for wages on business income tax return must be reduced by the amount of the Refundable Retention Credit. In addition, the following wages are not considered qualified wages for the purposes of Refundable Retention Credit:
  - Wages taken into account under the FFCRA, which provides for the Refundable Tax Credit for Emergency Sick Pay and Family & Medical Leave Pay leave required to be provided by small employers.
  - Wages taken into account under IRC Section 45S (income tax credit for paid family and medical leave).
  - Wages paid to certain related individuals specified in IRC Section 51(i)(1).
  - Wages of an employee for whom a work opportunity tax credit is claimed.
  - Any employer that receives a Paycheck Protection Program loan is not eligible for the Refundable Retention Credit.

Refundable Retention Credit

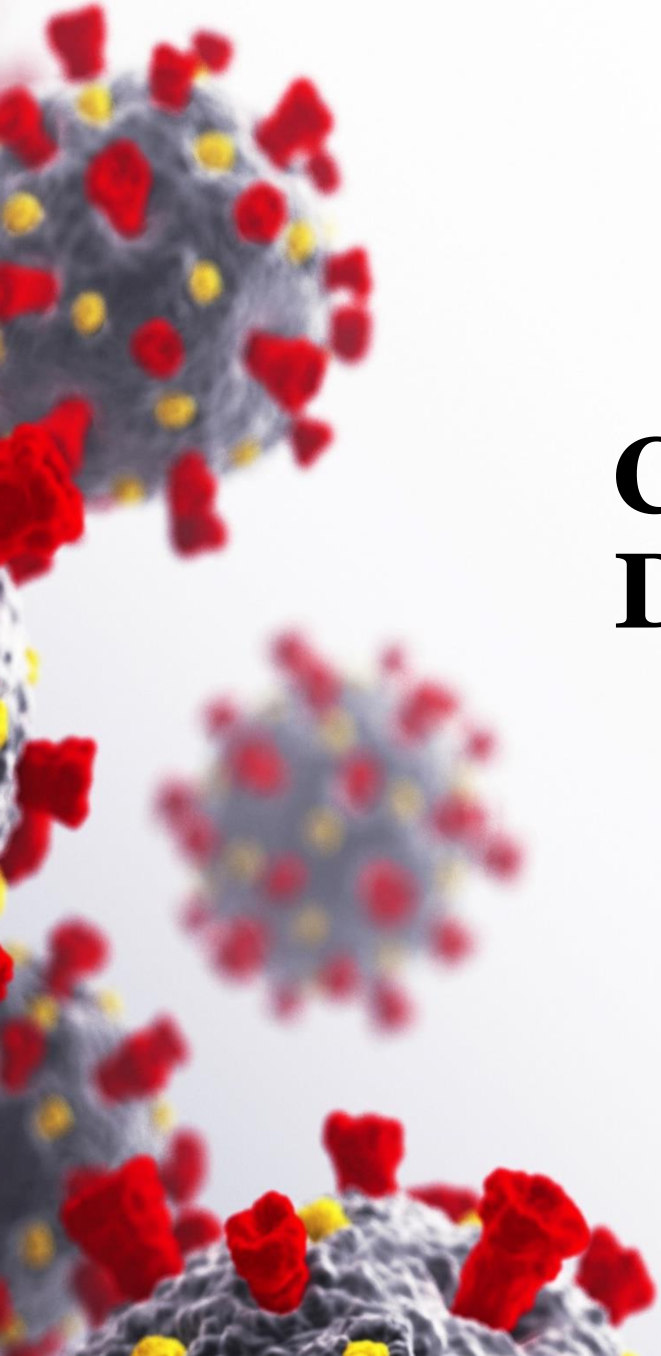
- Procedure for claiming Refundable Retention Credit is similar to the process described in obtaining the Refundable Tax Credit under FFCRA.

- Employers have three different ways to claim the Refundable Retention Credit:

  1. Reduction of Payroll Tax deposits (941 tax deposits);

  2. Refund of Excess Credit as reflected on Form 941; or

  3. Advance Refunds by filing Form 7200



CARES Act – Delay of Payment of Payroll Taxes

Delay of Payment of Payroll Taxes

- Employers (for profit and not-for-profit) can delay the payment of the employer's portion of social security tax (6.2% of wages) incurred between March 27, 2020 and December 31, 2020.

- This applies to payroll taxes for the period from enactment of the CARES Act (March 27, 2020) to December 31, 2020.

- Delayed payments will be considered timely paid if 50% of the delayed payment is paid by December 31, 2021 and the remaining 50% is paid by December 31, 2022.

- Similarly, self-employed individuals can delay payment of half of his/her self-employment tax (50% of 12.4%) if the delayed payment is paid on the dates indicated in the preceding paragraph.

Delay of Payment of Payroll Taxes

- It is important to note:

1. There is no dollar cap on the wages that are counted in calculating the taxes that may be deferred.
2. The payroll tax deferral does not apply to federal tax withholding, Medicare taxes, or the employee's portion of social security tax.
3. With respect to self-employed individuals, otherwise required estimated tax payments during the deferral period will exclude the payroll taxes that are being deferred.
4. If the business receives a loan forgiveness under the new Paycheck Protection Program, then the business is not eligible to delay the payment of payroll taxes.

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