




Special Issues for Employers: Taxation and Deductibility of Tax Credits

These updated FAQs were released to the public in [Fact Sheet 2022-16](#) , March 3, 2022.

Note that the American Rescue Plan Act of 2021, enacted March 11, 2021, amended and extended the tax credits (and the availability of advance payments of the tax credits) for paid sick and family leave for wages paid with respect to the period beginning April 1, 2021, and ending on September 30, 2021. These FAQs do not currently reflect the changes made by the American Rescue Plan Act; however, please continue to check IRS.gov for any updates related to the change in law.

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? (Updated January 28, 2021)

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? (Updated January 28, 2021)

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.

50a. What are the tax consequences of claiming the tax credits for a tax-exempt Eligible Employer?(Updated January 28, 2021)

An Eligible Employer that is exempt from federal income taxation under section 501(a) of the Internal Revenue Code (the “Code”) must allocate the credits 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) (“tax credits”) between activities substantially related to its exempt purposes and any unrelated trade or business activities, using the same allocation it uses in allocating 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) for purposes of calculating its unrelated business taxable income for the year.

The portion (if any) of the tax credits that is allocable to an unrelated trade or business must be included in gross income from that unrelated trade or business for purposes of the tax imposed by section 511 of the Code. The portion (if any) of the tax credits that is allocable to the tax-exempt Eligible Employer’s exempt activities is exempt from federal income taxation under section 501(a) of the Code.

A tax-exempt Eligible Employer may deduct from gross income from an unrelated trade or business the amounts 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) that are directly connected with carrying on that unrelated trade or business.

Note: The Federal government, the governments of any State or political subdivision thereof, and any agencies or instrumentalities of those governments are not Eligible Employers and are not entitled to receive tax credits for providing paid leave wages under the EPSLA or Expanded FMLA. Tribal governments that provide paid sick and paid family and medical leave pursuant to the EPSLA or Expanded FMLA are eligible to claim the tax credits for qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see [“What is an Eligible Employer?”](#)

Example. X, a tax-exempt Eligible Employer, derives gross income from the conduct of an unrelated trade or business. X employs Y who devotes 90% of her time to X’s exempt activities and 10% of her time to X’s unrelated business activity. X receives \$2,000 in tax credits for qualified leave wages paid to Y.

X allocates \$200 (10% of \$2,000) of the tax credits to gross income from its unrelated trade or business. X may deduct \$200 (10% of \$2,000), the portion of Y’s qualified leave wages that is allocable to X’s unrelated business activity, from its gross income from the unrelated trade or business.

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? (Updated January 28, 2021)

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

51a. Does a government employer that provides paid leave wages under the EPSLA or Expanded FMLA have to pay the employer's share of social security tax on the paid leave wages? (Updated January 28, 2021)

No. Section 7005(a) of the FFCRA states that paid leave wages are not considered wages under section 3111(a) of the Internal Revenue Code (the "Code"), which covers the employer portion of the Old-Age, Survivors, and Disability Insurance tax (social security tax), or compensation under so much of section 3221(a) of the Code as is attributable to the rate in effect under section 3111(b) of the Code, which covers the Railroad Retirement Tax Act Tier 1 rate.

51b. Does a government employer receive a credit for the employer's share of Medicare tax on paid leave wages it provides under the FFCRA? (Updated January 28, 2021)

No. Governmental employers are not Eligible Employers and are not entitled to receive tax credits for providing paid leave wages under the EPSLA or Expanded FMLA.

Note that Tribal governments that provide paid sick and paid family and medical leave pursuant to the FFCRA are eligible to claim the tax credits for qualified leave wages, including for the Eligible Employer's share of Medicare tax on the qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see ["What is an Eligible Employer?"](#)

51c. Does a governmental employer receive a credit for the health care expenses allocable to the qualified leave wages? (Updated January 28, 2021)

No. Governmental employers are not Eligible Employers and are not entitled to receive tax credits for any health care expenses allocable to paid leave they provide under the EPSLA or Expanded FMLA.

Note that Tribal governments that provide paid sick and paid family and medical leave pursuant to the FFCRA are eligible to claim the tax credits for qualified leave wages, including for any qualified health care expenses allocable to the qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see ["What is an Eligible Employer?"](#)


Special Issues for Employers: Interaction of the 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? (Updated January 28, 2021)

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 the 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.

52a. Can an employer receive both the Paycheck Protection Program Loan (“PPP loan”) and the leave credit during the same period? (Updated January 28, 2021)

Yes. Receiving credits for qualified leave wages does not disqualify an eligible recipient from receiving the PPP loan to which it is otherwise entitled under section 1102 of the CARES Act. However, the amount of the PPP loan is reduced by the amount of the qualified leave wages for which an employer is allowed tax credits, and those wages are not eligible as “payroll costs” for purposes of receiving loan forgiveness under section 1106 of the CARES Act.


For more information on the PPP loan, see [Paycheck Protection Program](#) .

Special Issues for Employers: Use of Third-Party Payers

53. Can an eligible common law employer that uses a third-party to report and pay employment taxes to the IRS get the sick and family leave credits? (updated November 25, 2020)

Yes. If a common law employer is otherwise eligible to claim the sick and family leave credits, it is entitled to the credit, regardless of whether it uses a third-party payer (such as a reporting agent, payroll service provider, professional employer organization (PEO), certified professional employer organization (CPEO), or section 3504 agent) to report and pay its federal employment taxes. The third-party payer is not entitled to the tax credits with respect to the wages it remits on the common law employer's behalf (regardless of whether the third-party is considered an "employer" for other purposes of the Internal Revenue Code). If a common law employer uses a third-party to file, report, and pay employment taxes, different rules will apply depending on the type of third-party payer the common law employer uses for claiming/reporting the sick and family leave credits.

If an eligible common law employer uses a reporting agent to file its federal employment tax returns the reporting agent will need to reflect the tax credits for qualified leave wages on the federal employment tax returns it files on the common law employer's behalf.

If an eligible common law employer uses a CPEO or a section 3504 agent that received its designation as an agent by submitting [Form 2678, Employer/Payer Appointment of Agent](#) , to report its federal employment

taxes on an aggregate [Form 941](#) [PDF](#), the CPEO or section 3504 agent will report the tax credits for qualified leave wages on its aggregate [Form 941](#) [PDF](#) and [Schedule R, Allocation Schedule for Aggregate Form 941 Filers](#) [PDF](#), that it already files. An eligible common law employer can submit its own [Form 7200](#) [PDF](#) to claim the advance credit. The eligible common law employer will need to provide a copy of the [Form 7200](#) [PDF](#) to the CPEO or section 3504 agent so the CPEO or section 3504 agent can properly report the sick and family leave credits on the [Form 941](#) [PDF](#).

If an eligible common law employer uses a non-certified PEO or other third-party payer (other than a CPEO or section 3504 agent that submitted [Form 2678](#) [PDF](#)) that reports and pays the common law employer's federal employment taxes under the third-party's Employer Identification Number (EIN), the PEO or other third-party payer will need to report the tax credits for qualified leave wages on an aggregate [Form 941](#) [PDF](#) and separately report the tax credits for qualified leave wages allocable to the common law employers for which it is filing the aggregate [Form 941](#) [PDF](#) on an accompanying [Schedule R](#) [PDF](#). The PEO or other third-party payer does not have to complete Schedule R with respect any common law employer for which it is not claiming tax credits for qualified leave wages. The eligible common law employer will need to provide a copy of any [Form 7200](#) [PDF](#) that it submitted for an advance payment of the credit to the PEO or other third-party payer so the PEO or other third-party payer can properly report the tax credits for qualified leave wages on the [Form 941](#) [PDF](#). These rules are similar to the rules that apply with respect to the payroll tax election available under section 41(h) of the Code for the credit for certain research and development expenses.

53a. May a payroll reporting agent sign and submit Form 7200 on behalf of a client employer? (added November 25, 2020)

A payroll reporting agent may sign [Form 7200](#) [PDF](#) for a client employer for which it has the authority, via [Form 8655, Reporting Agent Authorization](#) [PDF](#), to sign and file the federal employment tax return. The signatory must be the Principal or Responsible Official listed on the RA's e-file application. The signatory may sign with ink on paper or may use the alternative signature method (rubber stamp, mechanical device, or computer software program; for details and required documentation, see [Rev. Proc. 2005-39](#) [PDF](#), 2005-28 I.R.B. 82). Consistent with [Rev. Proc. 2005-39](#) [PDF](#), an alternative signature must be in the form of a facsimile signature.

The reporting agent must obtain written authorization from the client employer (paper, fax, or e-mail) to perform these actions regarding the Form 7200. The reporting agent need not submit that authorization to the IRS but should retain it in its files so that the reporting agent can furnish it to the IRS upon request. For a client employer for which a third-party does not have a Reporting Agent Authorization, it may complete and print the form, or it may provide the client employer a means to complete and print the form, but the client employer will have to sign it.

The signatory for the reporting agent must sign, date, and print his or her name in the relevant boxes on [Form 7200](#) [PDF](#). In the box, "Printed Title," the signatory must include the reporting agent company name or name of business as it appeared on line 9 of the [Form 8655](#) [PDF](#). If the reporting agent company name or name of business from the [Form 8655](#) [PDF](#) is missing, the [Form 7200](#) [PDF](#) cannot be processed.

53b. What information must third-party payers obtain from their client employers to claim the sick leave and

family leave credits on their client employer's behalf? (added November 25, 2020)

If a third-party payer (CPEO, PEO, or section 3504 agent) is claiming the sick leave and family leave credits on behalf of the client employer, it must collect from the client employer any information necessary to accurately claim the credit on its client employer's behalf. This includes obtaining information with respect to the client employer's claims for credits under section 45S of the Internal Revenue Code and the employee retention credit.

53c. When should the name and EIN of a third-party payer be included on Form 7200? (added November 25, 2020)

Common law employers who file [Form 7200](#) [PDF](#) to claim an advance payment of credits are required to include on the form the name and EIN of the third-party payer they use to file their federal employment tax returns (such as the [Form 941](#) [PDF](#)) if the third-party payer uses its own EIN on the federal employment tax returns. This will ensure advance payment of the credits received by the common law employer is properly reconciled to the federal employment tax return filed by the third-party payer for the calendar quarter for which the advance payment of the credits is received.

To help expedite and ensure proper processing of [Form 7200](#) [PDF](#) and reconciliation of advance payment of the credits to the federal employment tax return for the calendar quarter, only those third-party payers who will file a federal employment tax return on behalf of a common law employer using the third-party payer's name and EIN should be listed on the [Form 7200](#) [PDF](#). Typically, CPEOs, PEOs, and other section 3504 agents fall into this category of third-party payers.

If a third-party payer will file the federal employment tax return on a common law employer's behalf using the common law employer's name and EIN and not the name and EIN of the third-party payer, the common law employer should not include the name and EIN of the third-party payer on the Form 7200. Typically, reporting agents and payroll service providers fall into this category of third-party payers.

53d. If a common law employer uses a third-party payer for only a portion of their workforce, should they list the third-party payer on the Form 7200? (added November 25, 2020)

In some cases, a common law employer may use the services of a third-party payer (such as a CPEO, PEO, or other section 3504 agent) to pay wages for only a portion of its workforce. In those circumstances, the third-party payer files a federal employment tax return for the wages it paid to the common law employer's employees under its name and EIN, and the common law employer files a federal employment tax return for wages it paid directly to employees under its own name and EIN.

If the common law employer is claiming advance payments of credits for both wages paid directly to employees that will be reported on its own federal employment tax return and wages paid to other employees by a third-party payer that will be reported on the third-party payer's federal employment tax return, two separate [Forms 7200](#) [PDF](#) should be filed: one for the wages paid by the common law employer with the name and EIN of the common law employer, and one for the wages paid by the third-party payer with the name and EIN of both the common law employer and the third-party payer.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the

credits to the federal employment tax return when a common law employer uses a third-party payer such as a CPEO, PEO, or other section 3504 agent for only a portion of their workforce, a common law employer should include the name and EIN of the third-party payer only on the [Form 7200](#) [PDF](#) for advance payment of the credits for wages paid by the third-party payer and reported on the third-party payer's federal employment tax return. The common law employer should not include the name and EIN of the third-party payer on the [Form 7200](#) [PDF](#) for advance payments of the credits claimed for wages paid by the common law employer and reported on the common law employer's federal employment tax return.

53e. What information must third-party payers obtain from their client employers to claim the sick and family leave credits on their client's behalf? (added November 25, 2020)

If a third-party payer (such as a CPEO, PEO, or other section 3504 agent) is claiming the sick and family leave credits on behalf of the client employer, it must collect from the client employer any information necessary to accurately claim the sick and family leave credits on its client employer's behalf.

53f. May third-party payers rely on client employer information regarding the sick and family leave credits? (added November 25, 2020)

Yes. If a third-party payer (such as a CPEO, PEO, or other section 3504 agent) is claiming the sick and family leave credits on behalf of the client employer, the third-party payer may rely on the client employer's information regarding the client employer's eligibility to claim the sick and family leave credits, and the client employer may maintain all records which substantiate the client employer's eligibility for the sick and family leave credits.

However, upon request by the IRS, the third-party payer must obtain from the client employer and provide to the IRS records that substantiate the client employer's eligibility for the sick and family leave credits. The client employer and the third-party payer will each be liable for employment taxes that are due as a result of any improper claim of the sick and family leave credits in accordance with their liability under the Internal Revenue Code and applicable regulations for the employment taxes reported on the federal employment tax return filed by the third-party payer on which the credits were claimed.

53g. Upon request by the IRS, what records must third-party payers obtain from their client employers to substantiate the client employer's eligibility for the sick and family leave credits? (added November 25, 2020)

If a third-party payer is claiming the sick and family leave credits on behalf of the client employer, it must, at the IRS's request, be able to obtain from the client employer and provide to the IRS records that substantiate client employer's eligibility for the sick and family leave credits.

53h. Are client employers responsible for avoiding a "double benefit" with respect to the sick and family leave credits and the credit under section 45S of the Code? (added November 25, 2020)

Yes. The client employer is responsible for avoiding a "double benefit" with respect to the sick and family leave credits and the credit under section 45S of the Internal Revenue Code. The client employer cannot use wages that were used to claim the sick and family leave credits, and reported by the third-party payer on the client employer's behalf, to claim the section 45S of the Code credit on its income tax return.

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.

54a. If the amount of paid sick leave or paid family leave an Eligible Employer pays to an employee is exempt from social security and Medicare taxes, can the Eligible Employer still claim tax credit for paying that amount to the employee? (Updated January 28, 2021)

It depends. The tax credit for providing paid sick leave or paid family leave is only allowed for qualified leave wages paid to employees. An amount must constitute wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code") for social security and Medicare tax purposes, determined without regard to section 3121(b)(1)-(22) of the Code and section 7005(a) of the FFCRA) or compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the Code, and without regard to section 7005(a) of the FFCRA) in order to be qualified leave wages.

Example 1: A church in State X employs an ordained minister; the minister is a common law employee of the church. The church pays the ordained minister sick leave for periods during which he is unable to work because he is experiencing symptoms of COVID-19 and seeking a medical diagnosis. Although the minister's salary and parsonage allowance are not subject to social security and Medicare taxes because they are not considered as being provided for "employment" under section 3121(b)(8) of the Code, the payment is nonetheless a wage as defined in section 3121(a) of the Code when disregarding the exclusion in section 3121(b)(8) of the Code. Therefore, the paid sick leave is qualified leave wages for which the church may claim tax credits under the FFCRA.

Example 2: A licensed real estate agent at Brokerage Firm Y receives substantially all of her payments for services directly related to home sales and performs services under a written contract providing that she will not be treated as an employee for federal tax purposes. Therefore, the licensed real estate agent at Brokerage Firm Y is treated as a statutory nonemployee under the Code. Brokerage Firm Y pays the agent sick leave for periods during which she is unable to work because she has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. Amounts paid to the agent by Brokerage Firm Y do not constitute wages within the meaning of section 3121(a) of the Code. Therefore, the paid sick leave is not qualified leave wages for which Brokerage Firm Y may claim tax credits under the FFCRA.

Example 3: Employer Z provides its employees with, and the employees make, pre-tax salary reduction contributions to or for, a qualified 401(k) plan, a fully-insured group health plan, a dependent care assistance program satisfying the requirements of section 129 of the Code, and qualified transportation benefits satisfying the requirements of section 132(f) of the Code. Employer Z also makes matching and nonelective contributions to the qualified 401(k) plan and pays for the remaining portion of the cost of maintaining the fully-insured group health plan.

Employer Z may treat as qualified leave wages the amounts its employees contribute as pre-tax salary reduction contributions to the qualified 401(k) plan because those amounts are wages within the meaning of section 3121(a) of the Code. Employer Z may also treat all amounts paid toward maintaining the fully-insured group health plan (including any employee pre-tax salary reduction contribution) as qualified health plan expenses that are allocable to qualified leave wages. See [“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?”](#)

Employer Z may not treat as qualified leave wages the amounts Employer Z contributes as matching or nonelective contributions to the qualified 401(k) plan, nor may it treat as qualified leave wages any employee pre-tax salary reduction contributions toward the dependent care assistance program or qualified transportation benefits. These amounts do not constitute wages within the meaning of section 3121(a) of the Code and are not qualified health plan expenses; therefore, these amounts are not qualified leave wages under the FFCRA.

54b. How do Eligible Employers report qualified leave wages? (Updated March 17, 2021)

Eligible Employers must report the amount of qualified sick and family leave wages paid to employees under the EPSLA and Expanded FMLA on [Form W-2, Wage and Tax Statement](#) [PDF](#), either in Box 14, or in a statement provided with the Form W-2. Eligible Employers must report qualified sick and family leave wages paid in 2020 on the 2020 Form W-2. Eligible Employers must report qualified sick and family leave wages paid in 2021 on the 2021 Form W-2.

For more information, including optional language that Eligible Employers may use in the Form W-2 instructions for employees, see [Notice 2020-54](#) [PDF](#).

54c. Does an Eligible Employer need to report qualified leave wages in Box 14 (or a separate statement) of the Form W-2 if those amounts are not “wages” due to an exclusion from “employment” under section 3121(b) of the Internal Revenue Code (the “Code”) or “compensation” under section 3231(e)(1) of the Code? (Added January 28, 2021)

Yes. Section 7002(d)(3) of the FFCRA reduces the qualified sick leave equivalent amount for which a self-employed individual may claim a tax credit to the extent that the sum of the qualified sick leave equivalent amount described in section 7002(c) of the FFCRA and any amounts described in section 7001(b)(1) of the FFCRA exceeds the applicable thresholds under section 5102(a) of the ESPLA. Similarly, section 7004(d)(3) of the FFCRA reduces the qualified family leave equivalent amount for which a self-employed individual may claim a tax credit to the extent that the sum of the qualified family leave amount described in section 7004(c) of the FFCRA and

any amounts described in section 7003(b)(1) of the FFCRA exceeds \$10,000.

Sections 7001(b)(1) and 7003(b)(1) of the FFCRA describe the amounts of qualified sick leave wages and qualified family wages taken into account for purposes of the employer payroll tax credits for paid sick leave and paid family leave, respectively. Sections 7001(c) and 7003(c) of the FFCRA define these qualified leave wages as wages (as defined in section 3121(a) of the Internal Revenue Code (the “Code”) determined without regard to section 3121(b)(1)-(22) of the Code and without regard to section 7005(a) of the FFCRA), and compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the Code and without regard to section 7005(a) of the FFCRA).

Therefore, Eligible Employers will determine the amount to report in Box 14 of the Form W-2 without regard to the exclusions from “employment” under section 3121(b)(1)-(22) of the Code and without regard to the exclusions from “compensation” under section 3231(e)(1) of the Code.

54d. Is an Eligible Employer that does not claim the tax credits for qualified leave wages required to report the sick leave wages and family leave wages paid to employees in Box 14 of Form W-2 or a separate statement? (Added March 15, 2021)

No. If an Eligible Employer does not claim the tax credits for qualified leave wages, it will be treated as having elected under sections 7001(e)(2) and 7003(e)(2) of the FFCRA not to apply the tax credits available under sections 7001 and 7003. Accordingly, the sick leave wages and family leave wages it paid to employees are not considered qualified sick leave wages or qualified family leave wages under the FFCRA and those wages do not have to be reported to employees in Box 14 of Form W-2, or in a statement provided with Form W-2.

54e. Are governmental employers that are not permitted under the FFCRA to claim the tax credits for qualified leave wages required to report sick leave wages and family leave wages paid to employees in Box 14 of Form W-2 or a separate statement? (Added March 15, 2021)

No. The government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of those governments (governmental employers) are not permitted to claim the tax credits under sections 7001 and 7003 of the FFCRA. Because governmental employers cannot claim the tax credits, the sick leave wages and family leave wages paid to employees are not considered qualified leave wages under the FFCRA. Therefore, those wages do not have to be reported to employees in Box 14 of Form W-2, or in a statement provided with Form W-2.

This rule does not apply to Tribal governments that are Eligible Employers permitted to claim the tax credits for sick leave wages and family leave wages paid to employees.

54f. Is an Eligible Employer that did not claim the tax credits for qualified leave wages, but reported the sick leave wages and family leave wages paid to employees in 2020 in Box 14 of Form W-2 or a separate statement required to issue a Form W-2c, Corrected Wage and Tax Statement, or provide a corrected statement? (Added March 15, 2021)

Yes. If an Eligible Employer that did not claim the tax credits for qualified leave wages reported the sick leave wages and family leave wages paid to employees in Box 14 of Form W-2 or in a statement provided with Form

W-2, the Eligible Employer must either furnish a Form W-2c or provide a corrected statement to employees correcting the erroneous reporting. However, the Eligible Employer should not file Form W-2c with the SSA solely to correct the amount in Box 14.

54g. Is an Eligible Employer that claims the tax credits for qualified leave wages paid after December 31, 2021, for leave taken by an employee in 2020 or 2021 required to furnish to the employee a Form W-2c to correct the amount of sick leave and family leave wages reported in Box 14 of the employee's 2020 and/or 2021 Form W-2? (added March 3, 2022)

Yes. If an Eligible Employer reports sick leave or family leave wages paid after December 31, 2021, for leave taken by an employee after March 31, 2020, and before April 1, 2021, and claims a credit for those sick and family leave wages, the Eligible Employer must either (1) furnish to the employee a Form W-2c, Corrected Wage and Tax Statement, reporting the corrected amounts of sick leave and family leave wages (to include the qualified leave wages paid after December 31, 2021) in Box 14, or (2) provide a corrected statement to the employee correcting the prior reporting.

For qualified leave wages paid after December 31, 2021, for leave taken in 2020, the Eligible Employer must furnish a Form W-2c (or provide a corrected statement) to the employee that corrects the leave wage amounts reported in Box 14 (or in a separate statement) of the employee's 2020 Form W-2, Wage and Tax Statement. For qualified leave wages paid after December 31, 2021, for leave taken in 2021, the Eligible Employer must furnish a Form W-2c (or provide a corrected statement) to the employee that corrects leave wage amounts reported in Box 14 (or in a separate statement) of the employee's 2021 Form W-2.

The Eligible Employer should not file a Form W-2c with the SSA solely to correct the amount in Box 14.

55. Should Eligible Employers withhold federal employment taxes on qualified leave wages paid to employees? (updated November 25, 2020)

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. Is a tax-exempt employer eligible for the tax credit? (Updated January 28, 2021)

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 EPSLA or Expanded FMLA. Tax-exempt organizations that are required to provide such paid sick leave or expanded paid family and medical leave may claim the tax credits.

56a. Can an employer choose not to claim the tax credits? (Updated January 28, 2021)

Yes. An employer is not required to claim the tax credits even if it is an Eligible Employer entitled to the tax credits. However, even if the employer does not claim the tax credit, it must provide the paid sick leave and paid

family to the extent it is required by the FFCRA.

For more information on the rules regarding paid sick leave and paid family leave, see the [Department of Labor's Families First Coronavirus Response Act: Questions and Answers](#) .

56b. Can an employer claim the tax credits for employees if it has closed its worksite after April 1, 2020 (the effective date of the FFCRA)? (Updated January 28, 2021)

Yes. Regardless of whether an employer has closed its worksite after the FFCRA took effect, the employer is entitled to claim the tax credits to the extent it provides an employee with qualified leave wages, for example, for periods before the worksite closure, and it is otherwise an Eligible Employer. Similarly, the tax credits for qualified health plan expenses and for Medicare tax may be claimed only for periods for which the employer is obligated to provide paid sick or family leave.

For more information on an employer providing paid sick or family leave under the EPSLA or Expanded FMLA, respectively, in the event of worksite closures and other suspensions of operations, see the Department of Labor's Families First Coronavirus Response Act: Questions and Answers.


56c. Can an employer claim the tax credit for employees it has rehired? (Updated January 28, 2021)

Yes. Eligible Employers that pay qualified leave wages to certain rehired employees who take sick or family leave for reasons related to COVID-19 can claim the tax credit. A rehired employee for this purpose is one that the Eligible Employer laid off or otherwise terminated on or after March 1, 2020, rehired or otherwise reemployed on or before March 31, 2021, and had been on the Eligible Employer's payroll for 30 or more of the 60 calendar days prior to the date the employee was laid off or otherwise terminated. The Eligible Employer would be entitled a tax credit for these qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on qualified leave wages).

Example: An Eligible Employer originally hires an employee on January 15, 2020, lays the employee off on March 14, 2020, and rehires the employee on October 1, 2020. The Eligible Employer may receive a tax credit for any qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on qualified leave wages) that it subsequently provides.

56d. Can an employer receive tax credits for providing paid leave that an employee is entitled to under the employer's policy? (Updated January 28, 2021)

Generally, no. An employer is entitled to tax credits for paid leave only to the extent that it is paid under the EPSLA or Expanded FMLA. Accordingly, an employer may not require an employee to use provided or accrued paid vacation, personal, medical, or sick leave before the paid leave under the EPSLA or Expanded FMLA. An employer may not require an employee to use such existing leave concurrently with the paid leave under the EPSLA or Expanded FMLA, either.

For more information regarding circumstances in which, for example, paid sick leave under the EPSLA may be substituted for paid sick leave to which an employee is already entitled, see the [Department of Labor's Families First Coronavirus Response Act: Questions and Answers](#) .

56e. May an employer increase the tax credit for its share of Medicare tax by taking into account amounts contributed on a pretax basis to a cafeteria plan under section 125 of the Internal Revenue Code (the “Code”)? (Updated January 28, 2021)

No. An employer may claim a tax credit under the FFCRA only for those payments that are qualified leave wages, which must be either wages (as defined in section 3121(a) of the Internal Revenue Code (the “Code”) determined without regard to section 3121(b)(1)-(22) of the Code and without regard to section 7005(a) of the FFCRA) or compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the Code, and without regard to section 7005(a) of the FFCRA). Section 7005(b)(1) of the FFCRA increases this tax credit by the Eligible Employer’s share of Medicare tax imposed on these qualified leave wages. However, amounts contributed on a pretax basis to a plan that meets the requirements of section 125 of the Code do not constitute wages or compensation. See [Publication 15-B, Employers' Tax Guide to Fringe Benefits](#) [PDF](#), for more information. Accordingly, those amounts are not qualified leave wages and are not factored into the calculation of the amount by which the FFCRA increases the employer’s credit on account of the Eligible Employer’s share of Medicare tax.

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