



COVID-19 Benefits Compliance Updates & FAQ

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Please note that the following is intended to be used for general guidance purposes only — it is not intended to constitute legal advice, nor is it a dispositive position on coverage. Each claim is subject to review by the applicable insurer and coverage is dependent upon the terms and conditions of your specific insurance policy.

COVID-19 Benefits Compliance Updates & FAQs

AGENDA

1. FFCRA/CARES Act Updates
2. Current FAQs & Hot Topics
3. Questions (Q/A Session)

****Disclaimer:** The information presented here is current as of April 7, 2020. The government is frequently providing new guidance, and we will address new guidance each week.

FFCRA/CARES Act Updates



FFCRA – New Guidance (DOL, HHS, Treasury)

COVID-19 Testing

Section 6001 of the FFCRA:
Requires group health plans and health insurance issuers to provide benefits for certain items and services related to diagnostic testing for COVID-19.

Which health plans does it apply to?

- insured group health plans
- self-insured group health plans
- private employment-based group health plans (ERISA plans)
- non-federal governmental plans
- church plans
- individual coverage offered on/off the Exchange
- student health insurance coverage

Not:

- short-term, limited-duration insurance
- excepted benefit plans
- retiree only plans

FFCRA – New Guidance (DOL, HHS, Treasury)

COVID-19 Testing

Section 6001 of the FFCRA:
Requires group health plans and health insurance issuers to provide benefits for certain items and services related to diagnostic testing for COVID-19.

When are plans required to comply with section 6001 of the FFCRA and for how long?

- Plans must cover items and services described in section 6001(a) of the FFCRA that were furnished on or after March 18, 2020.
- Coverage requirements last throughout the public health emergency.
- Unless extended or terminated earlier, the public health emergency related to COVID-19 will end on June 16, 2020.

FFCRA – New Guidance (DOL, HHS, Treasury)

COVID-19 Testing

Section 6001 of the FFCRA:
Requires group health plans and health insurance issuers to provide benefits for certain items and services related to diagnostic testing for COVID-19.

May a plan or issuer impose any cost-sharing requirements, prior authorization requirements, or medical management requirements for benefits provided under section 6001(a)?

- No cost sharing is permitted (including deductibles, copayments, and coinsurance)
- No prior authorization requirements
- No medical management requirements

FFCRA – New Guidance (DOL, HHS, Treasury)

COVID-19 Testing

Section 6001 of the FFCRA:
Requires group health plans and health insurance issuers to provide benefits for certain items and services related to diagnostic testing for COVID-19.

Out-of-network (OON) providers: Do plans have to pay OON providers their billed charge rate?

Plans must reimburse OON providers of the diagnostic testing:

- in an amount that equals the cash price for such service as listed by the provider on a public internet website, or
- the plan or issuer may negotiate a rate with the provider for less than such cash price

If in-network: the plan must pay the negotiated rate provider in effect before the public health emergency was declared.

FFCRA – New Guidance (DOL, HHS, Treasury)

COVID-19 Testing

Section 6001 of the FFCRA:

Requires plans and issuers to cover items and services provided during a visit that “relate to the furnishing or administration” of COVID-19 diagnostic testing or that relate “to the evaluation of such individual for purposes of determining the need” for diagnostic testing.

What types of items and services must be covered under this requirement?

Plans and issuers must cover items and services furnished to an individual during visits (office or telehealth, urgent care, ER) that:

- result in an order for a COVID-19 diagnostic test
- result in administration of a COVID-19 diagnostic test

But only to the extent that the other items or services relate:

- to the furnishing or administration of the test, or
- to the evaluation of such individual for purposes of determining the need of the individual for the product

FFCRA – New Guidance (DOL, HHS, Treasury)

COVID-19 Testing

Section 6001(a) of the FFCRA (as amended by the CARES Act):

Requires plans and issuers to provide coverage for an “in vitro” diagnostic test for the detection of SARS-CoV-2 or the diagnosis of COVID-19, and the administration of such a test.

Do “in vitro diagnostic tests” include serological tests for COVID-19?

Serological tests for COVID-19 are used to detect antibodies against the SARS-CoV-2 virus, and are intended for use in the diagnosis of the disease or condition of having current or past infection with SARS-CoV-2, the virus which causes COVID-19.

FFCRA/CARES Act: DOL FAQs Part 42

DOL FAQs Part 42

Q8: “Visit” (to which requirements apply) construed broadly to include traditional and non-traditional settings.

Q10: States can impose add’l requirements or standards, so long as they are not more restrictive than FFCRA.

Q11/12: Can add COVID-19 testing to an EAP/on-site medical clinic w/o impacting ‘excepted benefit’ status (i.e., testing, by itself, is not considered ‘substantial’ medical care).

- Are states active on these coverage requirements?
- Are states active on other COVID-19 issues?
- Why does excepted benefit status matter?

FFCRA/CARES Act: DOL FAQs Part 42

DOL FAQs Part 42

Q9: Plan amendments can be done immediately. Addresses advance notification requirements.

Q13/14: Promotes/encourages use of telehealth (encourages plans/carriers to expand telehealth, notify/educate employees/participants of expanded access), and no advance notice requirements apply to telehealth expansions.

- Does telehealth coverage impact HSA eligibility?
- What about the 60-day advance notice requirement of SBC rules?
- How should notices be distributed, particularly with many employees working remotely?
- Must plan amendments be done according to formal procedures?

CURRENT ISSUES



Hot Topics: changing eligibility terms

ERISA Plan Amendments

- Review plan terms for leave (i.e., “employer-approved leave”)
- Review active eligibility terms
- Get approval from carriers
- Consider ACA mandates
- Take formal action to amend plan

- If we extend benefits to furloughed employees, do I need to amend my plan documents?
- How will employees pay for coverage?
- Can employer provide premium holiday?
- Do I need to amend cafeteria plan terms?

Hot Topics: changing eligibility terms

Notice Requirements:

SMM (summary of material modification: within 210 days after the end of the plan year when the changes were adopted.

Material reduction in benefits: participants must be notified within 60 days of the date the change is adopted.

SBC (summary of benefits and coverage): mid-year changes (good or bad) that affect the information in the SBC require an updated SBC at least 60 days before the mid-year change is to take effect.

- If we amend eligibility terms, how do we communicate changes?
- Does the timing differ if the change is good (premium holiday) or bad (plan termination)?
- What changes are required by the CARES Act?

Hot Topics: counting employees (staffing firms)

The FFCRA applies to companies with up to 500 employees:

Included within the count are:

- temporary employees jointly employed with another employer (regardless of whether another employer maintains the jointly employed employees on its payroll)
- day laborers a temporary agency supplies

- If I am a staffing company, how do I count internal workers and staffed workers under the FFCRA?

FAQ: FFCRA—Taking Leave

May I unilaterally decide to self-quarantine?

DOL FAQ #61/62

- Doctor/HCP advises you to self-quarantine
- Seeking medical diagnosis
- Also think about the employee leave request form and employer documentation requirements

FAQ: FFCRA—Taking Leave

May I take FFCRA to care for a child other than my child?

DOL FAQ #71/72

- For eFMLA, if for school/daycare closing, paid sick leave available only for your own 'son or daughter'
(includes biological, adopted, or foster child, stepchild, a legal ward)
- In loco parentis (someone with day-to-day responsibilities to care for or financially support a child)

FAQ: FFCRA—Taking Leave

Which individuals can I take leave to care for if they're actually quarantined?

DOL FAQ #64/65

- Immediate family member
- Someone who regularly resides in your home
- Someone where your relationship creates an expectation that you care for the person (and that person depends on you for care during the quarantine)
- Domestic partners?

FAQ: FFCRA—Taking Leave

If my child(ren)'s school/daycare has moved to online instruction, is it considered 'closed' such that I can take FFCRA-related leave to care for my child(ren)?

DOL FAQ #70

- Physical location must be closed
- Availability of online/distance learning doesn't matter
- Employee must be unable to work/telework, though—always comes back to this!

FAQ: FFCRA—Taking Leave

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Hot Topics: FFCRA Tax Credits

Most employers are aware of the payroll tax credits available for paid sick and family leave requirements under FFCRA

... many are unaware that credits are available for “qualified health plan expenses” related to that leave.

- How do you calculate “qualified health plan expenses?”
- Do you include both the employer and employee portion of the premium?
- What about HRAs, HSAs, FSAs?

FAQ: FFCRA Tax Credits

What is required for documentation of tax credits?

- Written request
- EE's name
- Date of leave
- Statement of COVID-19 related reason for the leave
- Statement that EE cannot work/telework

FAQ: FFCRA Tax Credits

Documentation:

Any difference on the type of leave?

- Leave based on quarantine order or self-quarantine advice
- Name of the governmental entity or health care provider ordering/advising quarantine

FAQ: FFCRA Tax Credits

Documentation:
Any difference on the
type of leave?

- Leave based on school/daycare closing:
- Name/age of the child(ren)
- Name of the school/daycare
- Statement that no other person will be providing care for child
- If child age 15-17, statement that special circumstances exist requiring the employee's attention/care

FAQ: FFCRA Tax Credits

Documentation: What other records should be retained?

- Either Leave Type:
- Documentation to show how employer determined the amount of qualified leave (i.e., how much the employer paid out)
- Documentation to show any qualified health plan expenses allocated to wages (see FAQ #31 of IRS to help calculate those expenses)
- Copies of Form 7200
- Copies of Form 941

Form 7200 (March 2020) Department of the Treasury Internal Revenue Service		Advance Payment of Employer Credits Due to COVID-19 ▶ Go to www.irs.gov/Form7200 for instructions and the latest information.		OMB No. 1545-0029
Name (not your trade name)			Employer identification number (EIN)	
Trade name (if any)			Applicable calendar quarter (check one)	
Number, street, and apt. or suite no. If a P.O. box, see instructions.			(2) <input type="checkbox"/> April, May, June (3) <input type="checkbox"/> July, August, September (4) <input type="checkbox"/> October, November, December	
City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.)				
Foreign country name		Foreign province/county		Foreign postal code
Does a third-party payer file your employment tax return? (See instructions.) If "Yes," enter its name.				Third-party payer's EIN (if applicable)

Tip: File Form 7200 if you can't reduce your employment tax deposits to fully account for these credits that you expect to claim on your employment tax return for the applicable quarter. Don't reduce your employment tax deposits and request advanced credits for the same expected credits. You will need to reconcile your advanced credits and reduced deposits on your employment tax return. You can't request an advance payment of the credit for sick and family leave for self-employed individuals.

Part I Tell Us About Your Employment Tax Return

- A** Check the box to indicate which employment tax return form you file (or will file for 2020):
 (1) ☐ 941, 941-PR, or 941-SS (2) ☐ 943 or 943-PR (3) ☐ 944 or 944(SP) (4) ☐ CT-1
- B** Is this a new business started on or after January 1, 2020? ▶ ☐ Yes ☐ No
 If "Yes," skip line C unless you've already filed Form 941, Form 941-PR, or Form 941-SS for at least one quarter of 2020.
- C** Amount reported on line 2 of your most recently filed Form 941 (or wages reported on Schedule R (Form 941), column (c), by your third-party payer (see instructions)). If you file a different employment tax return, see instructions ▶
- D** Enter the total number of employees you have. See instructions ▶

Part II Enter Your Credits and Advance Requested

1	Total employee retention credit for the quarter. See instructions	1	
2	Total qualified sick leave wages eligible for the credit and paid this quarter. See instructions	2	
3	Total qualified family leave wages eligible for the credit and paid this quarter. See instructions	3	
4	Add lines 1, 2, and 3	4	
5	Total amount by which you have already reduced your federal employment tax deposits for these credits for this quarter	5	



Department of the Treasury
Internal Revenue Service

Instructions for Form 7200

(March 2020)

Advance Payment of Employer Credits Due to COVID-19

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 7200 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form7200](https://www.irs.gov/Form7200).

General Instructions

Purpose of Form 7200

These instructions give you some background information about Form 7200. They tell you who may file Form 7200, when and how to file it, and how to complete it line by line. For the latest information about coronavirus (COVID-19) tax relief, go to [IRS.gov/Coronavirus](https://www.irs.gov/Coronavirus). If you want more in-depth information about payroll tax topics, see [Pub. 15](https://www.irs.gov/pub/irs-soi/19pub15) or go to [IRS.gov/EmploymentTaxes](https://www.irs.gov/EmploymentTaxes).

Use Form 7200 to request an advance payment of the tax credits for qualified sick and qualified family leave wages and the employee retention credit that you will claim on the following forms.

- Form 941, Employer's QUARTERLY Federal Tax Return.
- Form 941-PR, Planilla para la Declaración Federal TRIMESTRAL del Patrono.
- Form 941-SS, Employer's QUARTERLY Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands).
- Form 943, Employer's Annual Federal Tax Return for Agricultural Employees.

Background

P.L. 116-127, the Families First Coronavirus Response Act (FFCRA). [FFCRA](https://www.congress.gov/bills/116/127) is intended to help the United States combat COVID-19 by requiring certain businesses to provide paid leave to workers who are unable to work or telework due to circumstances related to COVID-19, and offsets the costs of providing the required leave with refundable tax credits against employment tax. FFCRA does this by implementing the Emergency Paid Sick Leave Act (EPSLA) to require certain small and medium-sized employers to provide such workers up to 80 hours of paid sick time, expanding the Family and Medical Leave Act to provide such workers paid family leave, and providing tax credits, dollar-for-dollar up to certain amounts, to cover the costs of providing the required qualified sick leave wages and qualified family leave wages. Employers will be allowed the full amount of this refundable credit even if it exceeds their employment tax liability. If quarterly employment tax deposits that are otherwise required are less than the amount of credit for which the employer is eligible, the employer may receive the remaining credit in advance, using this form. FFCRA also provides similar credits for certain self-employed persons in similar circumstances. However, advance payments aren't available for the credit for self-employed individuals.

Eligible employers entitled to claim these refundable tax credits are businesses and tax-exempt organizations that have fewer than 500 employees and are required to provide qualified sick leave wages and qualified family leave wages under FFCRA. Government entities aren't entitled to the credit. Eligible employers also get credit for the qualified health plan expenses allocated to the qualified leave wages and for the employer's share of

Form **941 for 2020: Employer's QUARTERLY Federal Tax Return**
(Rev. January 2020) Department of the Treasury — Internal Revenue Service

950117
OMB No. 1545-0029

Employer identification number (EIN) -

Name (not your trade name)

Trade name (if any)

Address

Number Street Suite or room number

City State ZIP code

Foreign country name Foreign province/county Foreign postal code

Report for this Quarter of 2020
(Check one.)

- ☐ 1: January, February, March
☐ 2: April, May, June
☐ 3: July, August, September
☐ 4: October, November, December

Go to www.irs.gov/Form941 for instructions and the latest information.

Read the separate instructions before you complete Form 941. Type or print within the boxes.

Part 1: Answer these questions for this quarter.

1 Number of employees who received wages, tips, or other compensation for the pay period including: *Mar. 12* (Quarter 1), *June 12* (Quarter 2), *Sept. 12* (Quarter 3), or *Dec. 12* (Quarter 4) **1**

2 Wages, tips, and other compensation **2**

3 Federal income tax withheld from wages, tips, and other compensation **3**

4 If no wages, tips, and other compensation are subject to social security or Medicare tax ☐ Check and go to line 6.

	Column 1	Column 2
5a Taxable social security wages . . .	<input type="text"/> × 0.124 =	<input type="text"/>
5b Taxable social security tips . . .	<input type="text"/> × 0.124 =	<input type="text"/>
5c Taxable Medicare wages & tips . . .	<input type="text"/> × 0.029 =	<input type="text"/>
5d Taxable wages & tips subject to Additional Medicare Tax withholding <input type="text"/> × 0.009 =		<input type="text"/>
5e Add Column 2 from lines 5a, 5b, 5c, and 5d . . .		5e <input type="text"/>
5f Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions) . . .		5f <input type="text"/>
6 Total taxes before adjustments. Add lines 3, 5e, and 5f . . .		6 <input type="text"/>
7 Current quarter's adjustment for fractions of cents . . .		7 <input type="text"/>
8 Current quarter's adjustment for sick pay . . .		8 <input type="text"/>



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2 Wages, tips, and other compensation 2

3 Federal income tax withheld from wages, tips, and other compensation 3

4 If no wages, tips, and other compensation are subject to social security or Medicare tax ☐ Check and go to line 6.

	Column 1		Column 2
5a Taxable social security wages . . .	<input type="text"/>	× 0.124 =	<input type="text"/>
5b Taxable social security tips . . .	<input type="text"/>	× 0.124 =	<input type="text"/>
5c Taxable Medicare wages & tips. . .	<input type="text"/>	× 0.029 =	<input type="text"/>
5d Taxable wages & tips subject to Additional Medicare Tax withholding	<input type="text"/>	× 0.009 =	<input type="text"/>
5e Add Column 2 from lines 5a, 5b, 5c, and 5d			5e <input type="text"/>
5f Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions) . . .			5f <input type="text"/>
6 Total taxes before adjustments. Add lines 3, 5e, and 5f			6 <input type="text"/>
7 Current quarter's adjustment for fractions of cents			7 <input type="text"/>
8 Current quarter's adjustment for sick pay			8 <input type="text"/>



FAQ: FFCRA Tax Credits

Claiming the FFCRA Tax Credit: Example

- In Q2 2020, ER pays \$10K in qualified sick/family leave wages. It does not owe the ER's share of SS tax on the \$10,000, but it will owe \$145 for the ER's share of Medicare tax. Its credits equal \$10,145 (\$10K in qualified wages plus \$145 of ER's share of Medicare tax), which may be applied against any employment taxes that ER is liable for on any wages paid in Q2 2020. So, if ER owes \$8K in taxes:
 - Owes \$0 (Reconciled on Form 941)
 - Excess credit (\$2,145) claimed as an advanced credit on Form 7200

Documentation:
How long does
employer need to
keep records?

4

Hot Topics: SBA PPP Loan covers “payroll costs”

Paycheck Protection Program

Payroll costs:

- salary, wages, commissions
- cash tips or the equivalent
- payment for vacation
- parental, family, medical, or sick leave (except FFCRA)
- allowance for separation
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement

Can I use loan funds on health insurance premiums?

If so, does that include self-insured plan claim payments?

If so, does that include HRA reimbursements?

What about HSA contributions?

Hot Topics: SBA PPP Loan and PEOs

Paycheck Protection Program

The PPP requires payroll documentation to quantify loan amount.

Some state registration laws require PEOs to report wage and other data on the Employer Identification Number (EIN) of the PEO.

- What if an eligible borrower uses a PEO to process payroll and report payroll taxes – does this make them ineligible for the loan?

FAQ: Employer COBRA Subsidies

Employee experiences a COBRA event (either through termination of employment or a reduction of hours coupled with a loss of health plan eligibility). May the employer subsidize COBRA coverage of an employee?

- Is furlough a COBRA-triggering event?
- Duration/amount of subsidy?
- Communication with employee?
- Tax consequences?

Questions and Answers



Resources

FFCRA <https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>

FFCRA: Questions and Answers <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

FFCRA Nonenforcement Bulletin <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1>

FFCRA Model Notice

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

FFCRA Notice FAQs <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

CARES Act <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

FFCRA Rules <https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>

Visit our Latest Insights page for more COVID-19 coverage

<https://www.nfp.com/about-us/news-perspectives/latest-insights?pagename=latest-insights>



Tomorrow's Webinar: COVID-19 HR Solutions Updates & FAQs

https://nfp.zoom.us/webinar/register/WN_v7PxVzb3QgeVzUolZw1Jiw

