

arrangement (QSEHRA), are contributions to the HRA, health FSA, or QSEHRA included in the qualified health plan expenses?

## How to Claim the Credits

➤ 37. How does an Eligible Employer claim the refundable tax credits for qualified leave wages (plus any allocable qualified health plan expenses and the amount of the Eligible Employer's share of Medicare tax)?

➤ 38. Can an Eligible Employer required to pay qualified leave wages fund these payments before receiving the credits by reducing its federal employment tax deposits?

➤ 39. Is an Eligible Employer that reduces its federal employment tax deposits to fund qualified leave wages that it has paid subject to penalty for failing to deposit federal employment taxes?

➤ 40. How can an Eligible Employer that is required to pay qualified leave wages fund the payment of these wages if the Eligible Employer does not have sufficient federal employment taxes set aside for deposit to cover those payments? Can the employer get an advance of the credits?

➤ 41. If 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) exceed the Eligible Employer's share of social security tax owed for a quarter, how does the Eligible Employer get a refund of the excess credits? Does this affect what the Eligible Employer puts on its Form 941?

➤ 42. How does an Eligible Employer obtain Form 7200 and where should it send its completed form to receive the advance credit?

➤ 43. What if an Eligible Employer does not initially pay an employee qualified leave wages when the employee is entitled to those wages, but pays those wages at a later date?

## How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?

✓ 44. What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

1. The employee's name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

#### ✓ **45. What additional records should an Eligible Employer maintain to substantiate eligibility for the sick leave or family leave credit?**

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if, in addition to the information set forth in FAQ 44 ("**What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?**"), the employer creates and maintains records that include the following information:

1. Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.
2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. See FAQ 31 ("[Determining the Amount of Allocable Qualified Health Plan Expenses](#)") for methods to compute this allocation.
3. Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
4. Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer's entitlement to the credit claimed on Form 941).

#### ✓ **46. How long should an Eligible Employer maintain records to substantiate eligibility for the sick leave or family leave credit?**

An Eligible Employer should keep all records of employment taxes for at least 4 years after the date the tax becomes due or is paid, whichever comes later. These should be available for IRS review.

## Periods of Time for Which Credits are Available

### ✓ 47. How long are the refundable tax credits for qualified leave wages available?

The credits for Eligible Employers for qualified leave wages apply to wages paid with respect to the period of April 1, 2020, through December 31, 2020.

For more information on requirements and eligibility related to paid sick leave and expanded family and medical leave, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

### ✓ 48. Are wage payments for qualified leave wages made after December 31, 2020, but for periods of leave taken before December 31, 2020, eligible for the credits?

Yes. Notice 2020-21 provides that the payroll credits for paid qualified sick leave wages and paid qualified family leave wages apply to those wages paid for periods beginning on April 1, 2020 and ending on December 31, 2020. While the wages can only be for periods of leave between April 1, 2020, and December 31, 2020, a payment of qualified leave wages that is made after the end of this period may nonetheless be eligible for the credits if the wages are for leave that an employee took between April 1, 2020, and December 31, 2020.

For more information, see [Notice 2020-21 \(PDF\)](#).

## 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?

### > 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?

### > 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?