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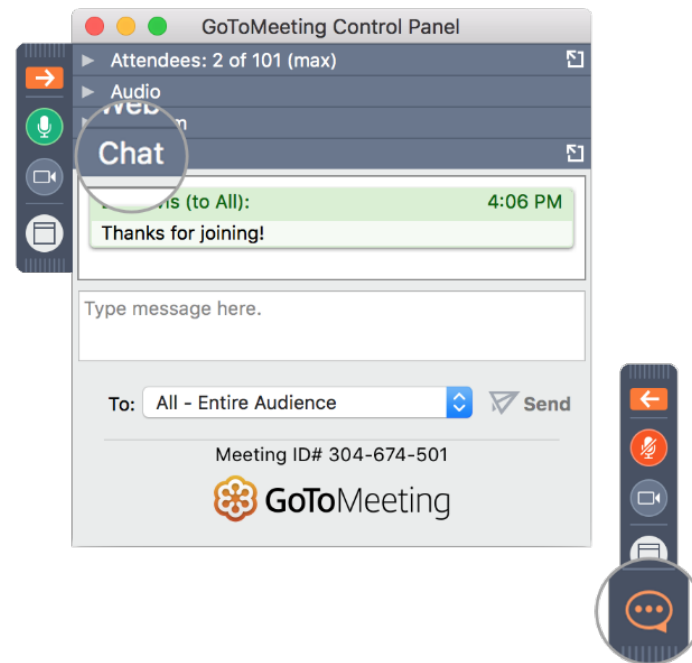


# Maximizing Payroll Tax Credits and HR Policy Implications

April 8, 2020

# Webinar Instructions

+Please submit questions through the Chat Box in the webinar control panel



# Presenters

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# Families First Coronavirus Response Act (FFCRA)

# Who does this apply and not apply to?

## +Applies to:

- + Public and private employers with fewer than 500 employees.

## +Does not apply to:

- + Employees of the Federal government are covered under Title II which was not amended by this Act therefore are not covered by the FFCRA.
- + Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailable if the leave requirements would jeopardize the viability of the business as a going concern.

## +Leave taken on April 1, 2020 and will remain in effect until December 31, 2020.



# What must covered employers provide?

- + **Paid sick leave:** Employers are required to provide two weeks (up to 80 hours) at the employee's regular rate of pay up to \$511 per day (max of \$5,110).
  1. to federal, state or local quarantine,
  2. been advised by a health care provider to self-quarantine
  3. experiencing COVID-19 symptoms and seeking a medical diagnosis.



# What must covered employers provide?

- + Employers are required to provide two weeks (up to 80 hours) at two-thirds the employee's rate of pay up to \$200 per day (max of \$2,000) if they are
  4. unable to work because of a need to care for an individual subject to quarantine
  5. to care for a child (under the age of 18) whose school or child care provider is closed or unavailable for reasons related to COVID-19
  6. the employee is experiencing a sustainably similar condition.
  
- + **Expanded Family and Medical Leave:** If an employee has been employed for at least 30 days, up to an additional ten weeks at two thirds of the employee's regular rate of pay up to \$200 per day (max \$10,000) if
  - + an employee is unable to work due to a need to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

# Are the self-employed covered?

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**Paid sick leave:** They are paid up to ten days, lesser of 100% of average daily self-employment income or \$511 per day.

**Expanded Family and Medical Leave:** They are paid up to 50 days, lesser of 2/3 average daily self-employment income or \$200 per day.

Average daily self-employment income equals net earnings from self-employment for the taxable year divided by 260.





# Are there tax credits for providing sick leave & family and medical leave wages?

- + Dollar for dollar reimbursement through tax credits for all qualifying wages paid, expenses incurred to maintain health insurance coverage plus the 1.45% match of Medicare tax.
- + These wages are not subject to the Social Security Match
- + Health insurance coverage includes amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent that those amounts are excluded from the gross income of the employee (after tax deductions). Contributions to HRA and health FSA (not QSEHRA) are included. HSA and MSA contribution are NOT included.

# Are there tax credits for providing sick leave & family and medical leave wages?

- + Credits will be taken against 941 deposits, if not sufficient then you will request advance refunds on Form 7200 for the balance.
- + Form 7200 can be faxed to 855-248-0552.
- + The credits taken will be included in Gross Taxable Income



# What documentation do I need from the employee?

- + A written request from the employee for leave must be made and include:
  - + The employee's name.
  - + The date or dates for which leave is requested.
  - + A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason.
  - + A statement that the employee is unable to work, including the means of telework, for such reason.
- + Name of the government entity ordering; or the name of healthcare provider 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.

# What documentation do I need from the employee?

- + Based upon school closing or child care provider unavailability; the statement should include :
  - + The name and age of the child(ren),
  - + The name of the school/provider
  - + 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
  - + With respect to the employee's inability to work or telework because of a need to provide care for a child older than 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care.



# Case Studies

# Scenario #1 – Part-time Employee

# Scenario #1 – Part-time Employee

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We have a part-time employee who has requested time off because they were in close contact with an individual who tested positive for COVID-19 and they are currently experiencing symptoms.



# Scenario #1 – Part-time Employee

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Is this employee eligible for paid sick time?

*Yes. All employees (including part-time) of covered employers are eligible for two weeks of paid sick time for specified reasons related to COVID-19. An employee is eligible for paid sick time if they are unable to telework and are experiencing COVID-19 symptoms and seeking a medical diagnosis.*





# Scenario #1 – Part-time Employee

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Is this employee eligible for 80 hours of paid leave?

*Maybe, a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.*



# Scenario #1 – Part-time Employee

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How do I count hours worked by a part-time employee for purposes of paid sick leave?

*The employer may use a six-month average to calculate the part-time employee's average daily hours. The employee may then take paid sick leave for this number of hours per day for up to a two-week period.*



# Scenario #2 – Documentation for Tax Credits

# Scenario #2 – Documentation for Tax Credits

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One of our employees has a serious medical condition and are considered high-risk for COVID-19. The full-time employee requested two weeks of paid sick leave and has provided us with a doctor's note advising the employee to self-quarantine because of their medical condition.



# Scenario #2 – Documentation for Tax Credits

Do we need any other documentation to receive the tax credits for the paid sick leave?

*Regardless of whether the request is granted or denied, the employer must document*

- 1) The name of your employee requesting leave*
- 2) The date(s) for which leave is requested*
- 3) The reason for leave*
- 4) A statement from the employee that they are unable to work because of the reason*



# Scenario #2 – Documentation for Tax Credits

*If the employee requests leave to self-quarantine based on the advice of a health care provider, the name of the health care provider who gave advice should be documented.*

*The CDC recommends that employers should not require a doctor's note for employees who are sick because medical facilities may be extremely busy and not able to provide documentation.*



# Employee Retention Credit Effective Dates Qualified Wages paid to employees after March 12, 2020 and before January 1, 2021

# Employee Retention Credit Qualifications

- + The operation of the business was fully or partially suspended during any calendar quarter during 2020 due to order from the appropriate government authority resulting in COVID-19.
- + The business remained open, but during any quarter in 2020, gross receipts for the quarter were less than 50% of what they were for the same quarter in 2019.
- + For each quarter, until the business has a quarter where its receipts exceeded 80% of what they were the same quarter in the previous year.



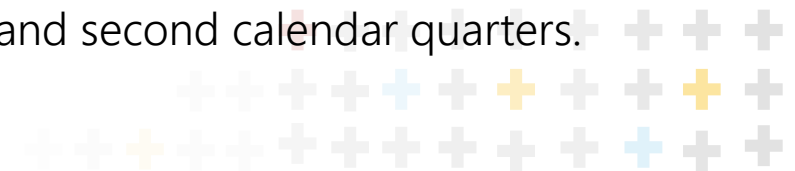


# When is the operation of a trade/business partially suspended?

- + The operation of a trade or business may be partially suspended if an appropriate governmental authority imposes restrictions upon the business operations by limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19 such that the operation can still continue to operate but not at its normal capacity.
- + Example: A state governor issues an executive order closing all restaurants, bars, and similar establishments in the state in order to reduce the spread of COVID-19. However, the executive order allows those establishments to continue food or beverage sales to the public on a carry-out, drive-through, or delivery basis. This results in a partial suspension of the operations of the trade or business due to an order of an appropriate governmental authority with respect to any restaurants, bars, and similar establishments in the state that provided full sit-down service, a dining room, or other on-site eating facilities for customers prior to the executive order.

# What is the significant decline in gross receipts?

- + Begins with the first quarter in which an employer's gross receipts for a calendar quarter in 2020 are less than 50 percent of its gross receipts for the same calendar quarter in 2019.
- + Ends with the first calendar quarter that follows the first calendar quarter for which the employer's 2020 gross receipts for the quarter are greater than 80 percent of its gross receipts for the same calendar quarter during 2019.
- + Example: An employer's gross receipts were \$100,000, \$190,000, and \$230,000 in the first, second, and third calendar quarters of 2020, respectively. Its gross receipts were \$210,000, \$230,000, and \$250,000 in the first, second, and third calendar quarters of 2019, respectively.
  - + Thus, the employer's 2020 first, second, and third quarter gross receipts were approximately 48%, 83%, and 92% of its 2019 first, second, and third quarter gross receipts, respectively.
  - + The employer had a significant decline in gross receipts commencing on the first day of the first calendar quarter of 2020
  - + Ending on the first day of the third calendar quarter of 2020 (the quarter following the quarter for which the gross receipts were more than 80% of the same quarter in 2019).
  - + The employer is entitled to a retention credit with respect to the first and second calendar quarters.



# Employee Retention Credit

- + Qualified wages are wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code")) and compensation (as defined in section 3231(e) of the Code) paid by an Eligible Employer to employees after March 12, 2020, and before January 1, 2021. Qualified wages include the Eligible Employer's qualified health plan expenses that are properly allocable to the wages.
- + The definition of qualified wages depends, in part, on the average number of full-time employees (as defined in section 4980H of the Code) employed by the Eligible Employer during 2019.
- + If the Eligible Employer averaged more than 100 full-time employees in 2019, qualified wages are the wages paid to an employee for time that the employee is not providing services due to either (1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or (2) a significant decline in gross receipts. For these employers, qualified wages taken into account for an employee may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.
- + If the Eligible Employer averaged 100 or fewer full-time employees in 2019, qualified wages are the wages paid to any employee during any period of economic hardship described in (1) and (2) above.

# Employee Retention Credit

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## Qualified wages:

- + In both cases qualified wages include any "qualified health plan expenses. In either case, however the amount of qualified wages for EACH employee for all quarters may not exceed \$10,000.
- + This also excludes the employer from the retention credit if the employer takes out a payroll protection loan under Section 7(a) of the Small Business Act.



# How is the maximum amount of ERC available to Eligible Employers determined?

- + The credit equals 50 percent of the qualified wages (including qualified health plan expenses) that an Eligible Employer pays in a calendar quarter. The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is \$10,000, so that the maximum credit for qualified wages paid to any employee is \$5,000.
- + Example 1: Eligible Employer pays \$10,000 in qualified wages to Employee A in Q2 2020. The Employee Retention Credit available to the Eligible Employer for the qualified wages paid to Employee A is \$5,000.
- + Example 2: Eligible Employer pays Employee B \$8,000 in qualified wages in Q2 2020 and \$8,000 in qualified wages in Q3 2020. The credit available to the Eligible Employer for the qualified wages paid to Employee B is equal to \$4,000 in Q2 and \$1,000 in Q3 due to the overall limit of \$10,000 on qualified wages per employee for all calendar quarters.



# Are employers required to pay qualified wages to employees under the CARES act?

- + No. The CARES Act does not require employers to pay qualified wages. In addition, Eligible Employers may elect to not claim the credit for the Employee Retention Credit. (The FFCRA does require certain employers to pay sick or family leave wages to employees who are unable to work or telework due to a COVID-19 circumstance. These employers may be entitled to a refundable tax credit for those wages paid, although the employers may elect not to claim the credit.)



# How does an eligible employer claim the refundable tax credit for qualified wages?

- + Eligible Employers will report their total qualified wages and the related credits for each calendar quarter on their federal employment tax returns, usually Form 941, Employer's Quarterly Federal Tax Return. Form 941 is used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer's portion of social security and Medicare tax.
- + In anticipation of receiving the credits, Eligible Employers can fund qualified wages by accessing federal employment taxes, including withheld taxes, that are required to be deposited with the IRS or by requesting an advance of the credit from the IRS.

# 941 Reporting for 1<sup>st</sup> Qtr 2020

- + The refundable tax credit is equal to 50% of qualified wages paid to employees after March 12, 2020, and before January 1, 2021.
- + If you paid any qualified wages between March 13, 2020, and March 31, 2020, inclusive, you will include 50% of those wages together with 50% of any qualified wages paid during the **second** quarter of 2020 on your second quarter Form 941, 941-SS, or 941-PR to claim the employee retention credit. Do **not** include the credit on your first quarter Form 941, 941-SS, or 941-PR.





# How does an eligible employer claim the refundable tax credit for qualified wages?

+ **Example:** An Eligible Employer paid \$10,000 in qualified wages (including qualified health plan expenses) and is therefore entitled to a \$5,000 credit, and is otherwise required to deposit \$8,000 in federal employment taxes, including taxes withheld from all of its employees, for wage payments made during the same quarter as the \$10,000 in qualified wages. The Eligible Employer has no paid sick or family leave credits under the FFCRA. The Eligible Employer may keep up to \$5,000 of the \$8,000 of taxes the Eligible Employer was going to deposit, and it will not owe a penalty for keeping the \$5,000. The Eligible Employer is required to deposit only the remaining \$3,000 on its required deposit date. The Eligible Employer will later account for the \$5,000 it retained when it files Form 941, Employer's Quarterly Federal Tax Return, for the quarter.

# Can the employer get an advance of the credits?

- + The Eligible Employer should first reduce its remaining federal employment tax deposits for wages paid in the same calendar quarter by the maximum allowable amount. If the anticipated credit for the qualified wages exceeds the remaining federal employment tax deposits for that quarter, the Eligible Employer can file a Form 7200, Advance Payment of Employer Credits Due to COVID-19, to claim an advance refund for the full amount of the anticipated credit for which it did not have sufficient federal employment tax deposits.



# May an eligible employer receive both the tax credits for the qualified leave wages under the FFCRA and the ERC under the CARES Act?

- + Yes, but not for the same wages. The amount of qualified wages for which an Eligible Employer may claim the Employee Retention Credit does not include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA.



## May an eligible employer receive both the ERC and a Small Business Interruption Loan under the Paycheck Protection Program that is authorized under the CARES Act?

- + No. An Eligible Employer may not receive the Employee Retention Credit if the Eligible Employer receives a Small Business Interruption Loan under the Paycheck Protection Program that is authorized under the CARES Act (“Paycheck Protection Loan”). An Eligible Employer that receives a paycheck protection loan should not claim Employee Retention Credits.



# Delay of Employer Payroll Taxes and Self-Employment Tax

- + 6.2% employer's share of social security tax that would be otherwise due from the date of enactment through December 31, 2020 deferred to be paid 50% on December 31, 2021 and 50% on December 31, 2022.
- + This applies to both businesses and self-employment tax. This does NOT apply to businesses that takes out a payroll protection loan forgiven.



# Case Studies

# Scenario #1 – Personal Leave

# Scenario #1 – Personal Leave

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We have a full-time employee in our Kentucky location who had previously requested time off to go on spring break out of state. The employee has returned from vacation and is not currently experiencing COVID-19 symptoms. However, this employee had traveled to a high-risk area and we are worried about the spread of the virus in our workplace.





# Scenario #1 – Personal Leave

Should we require this employee to self-quarantine for 14 days?

*Yes. The Governor issued an executive order on March 30, 2020 stating that Kentucky residents are instructed not to travel into any other state except for*

- 1. travel to other states for work or groceries,*
- 2. travel to care for loved ones,*
- 3. travel to obtain health care and*
- 4. travel when required by a court order. Residents who travel out of state for a reason other than those listed, must self-quarantine for 14 days.*

# Scenario #1 – Personal Leave

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Is this employee eligible for paid leave under the Paid Sick Leave Act?

*Yes, if the employee is unable to telework. This would qualify under the FFCRA as a qualified reason for paid sick time due to the employee's need for leave because the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.*



# Scenario #2 – Extended FMLA

# Scenario #2 – Extended FMLA

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We have a full-time employee who cannot work because their child's school is closed. They do not have anyone else who is able to care for their child during this time and they are unable to work remote. This employee took four weeks of FMLA in January for a personal health issue.



# Scenario #2 – Extended FMLA

Are they eligible for paid extended FMLA and if so, how many weeks?

*Yes. Eligible employees may take up to 12 weeks of paid leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19. Because this employee has already used 4 weeks of unpaid leave, they may use the remaining 8 weeks as paid leave under the extended FMLA.*



# Scenario #3 – Not Qualified for Unemployment

# Scenario #3 – Not Qualified for Unemployment

One of our employees has requested paid Extended FMLA to care for their child whose place of care is closed due to COVID-19. During their leave, they are only eligible to receive two-thirds of their regular rate of pay.



# Scenario #3 – Not Qualified for Unemployment

Is this employee eligible for unemployment benefits so that they may receive full pay during their time off?

*No. An individual receiving paid sick leave or paid family leave is still receiving pay. Thus, generally speaking, the individual is not "unemployed," and is not eligible for unemployment insurance.*





# Questions?

Please submit questions in Chat Box

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# Thank You

for your time!



**MCM COVID-19 Resource Center**

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