

Families First Coronavirus Response Act (FFCRA)

Human Resources Guide to the FFCRA Leave Requests

Please Note, this form is a ***TEMPLATE*** and should be customized to meet your dealership's individual needs and practices. Additionally, this form does not constitute legal advice or counsel and is being provided for educational purposes only. Finally, because of the changing nature of the Department of Labor's and Internal Revenue Service's interpretations, we strongly encourage dealers to consult with your labor and employment counsel.

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Human Resources Guide to the Families First Coronavirus Response Act (“FFCRA”) Leave Requests

On April 01, 2020 employees of dealerships with between 1 and 499 employees are eligible to request paid leave under the FFCRA. These leave provisions were created by a time-limited statutory authority established under the FFCRA and are set to expire on December 31, 2020.

The FFCRA provides for two different types of paid leave, Emergency Paid Sick Leave Act (“EPSLA”) leave and Emergency Family Medical Leave Expansion Act (“EFMLEA”) leave. Each type of leave has differing requirements and things you need to consider. This guide is an attempt to assist HR Personnel with understanding the steps involved with the leave. Please note this guide does not constitute legal advice or counsel and you are strongly encouraged to consult with your counsel. Also, this information is based on current information which may change as further government guidance is issued.

Step 1: Complete a Leave Application for FFCRA.

Because documentation will be crucial to recouping these costs from the IRS, we strongly encourage dealerships to document the leave request through a written request by the employee. The Dealership will be required to provide substantiation and supporting material in order to receive the reimbursement. OADA has prepared a template for your use however you should customize it to ensure it meets your needs. Please reach out to OADA for more information.

At a minimum, the dealership must document and maintain the following information:

- The name of the employee requesting leave;
- The date(s) for which leave is requested;
- The reason for the leave;
- Whether the leave was approved or denied; and
- A statement from the employee that he/she is unable to work because of the reason

In addition to a written leave request, other documentation should be maintained to support a reimbursement request including:

- Records to support amount of leave paid such as time records;
- How the amount of qualified health plan expenses allocated to wages was determined;
- Copies of completed Forms 7200 Advance of Employer Credits Due to COVID-19 submitted to the IRS; and
- Copies of completed Forms 941, Employer’s Quarterly Federal Tax Return submitted to the IRS.

Step 2: Is the Applicant an Employee of the Dealership?

While this may seem like a basic question, the first step is to confirm that the applicant for leave is an employee of the dealership at the time of application. Given the significant decrease in sales and service, the dealership may have taken actions to furlough, layoff, or terminate employees and those employees may believe they are entitled to the benefits of this law. It is important to determine whether an employee who has been “laid off” is still considered an employee of the dealership and has

an expectation to return to work. An example is an employer who was laid employees off due to a government order because the employer is not an “essential business” or the employee does not work for an “essential function” of the business.

According to the Department of Labor (“DOL”), if the dealership has closed its worksite and stops paying employees because it does not have work for them to do, the employee would not be eligible for any of the leave outlined by the FFCRA whether it closed the dealership before or after April 01, 2020. This is true whether the dealership closes for lack of business or because it is required to close pursuant to a Federal, State, or local directive. If the dealership closes after the FFCRA’s effective date (even if the employee requested leave prior to the closure), the employee will not get paid sick leave or expanded family and medical leave. (See Questions 23 and 24 [HERE](#) for more detailed guidance).

Additionally, if the dealership furloughs employees on or after April 01, 2020, but remains open, any furloughed employees would be ineligible for the paid leave benefits of the FFCRA. (See Question 26 [HERE](#) for more detailed guidance). This law is not retroactive. Therefore, if an employee was laid off or furloughed before April 01, 2020, they would also be ineligible for the paid leave benefits. Only employees who are currently eligible and receiving pay from the dealership would be eligible for paid leave. An employee who is called back to work, may be eligible for the paid leave benefits. Note that an employee who is called back and subsequently requests EFMLEA leave may get credit for previous service in determining the 30 days of employment requirement.

Step 3: Is the Employee Able to Work or Telework?

An employee is unable to work if the dealership has work for the employee, but one of the COVID-19 qualifying reasons under the FFCRA prevents you from being able to perform that work, either under normal circumstances at the dealership or by teleworking.

If an employee is able to telework, they would not be eligible for the paid leave unless one of the qualifying reasons prevents them from being able to perform that work either at the dealership or teleworking. Under the DOL guidance an employee is able to telework when “your employer permits or allows you to perform work while you are at home or at a location other than your normal workplace. Telework is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.” (See Question 17 [HERE](#) for more guidance)

If the applicant is a current employee and is unable to telework, then they would be eligible employees for paid federal leave, however they would still need to qualify. Depending on the type of leave requested there are different requirements, please see each section below.

Step 4: Family Medical Leave Act Coverage and Limitations on FFCRA Leave.

If an employee has previously used unpaid leave under the Family Medical Leave Act (FMLA), there may be an impact on the employee’s eligible leave under the FFCRA. Therefore, during the initial process, the HR Manager should review the employee’s records to determine if any FMLA leave has been taken in the previous 12-month period.

(a) Emergency Sick Leave. Any eligible employee is entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave an employee has taken under the FMLA.

(b) EFMLEA Leave. If the employee was covered the FMLA prior to April 1, 2020, then the employee's eligibility for EFMLEA leave depends on how much leave they have already taken during the 12-month period that the dealership uses for FMLA leave. The employee may take a total of 12 workweeks for FMLA **OR** EFMLEA leave reasons during a 12-month period. If the employee has taken some, but not all, 12 workweeks of his/her leave under FMLA during the current 12-month period determined by the dealership, the employee may take the remaining portion of leave available. If the employee has already taken 12 workweeks of FMLA leave during this 12-month period, he/she may not take additional expanded family and medical leave. If your employer only becomes covered under the FMLA on April 1, 2020, this analysis does not apply.

For example, assume you are eligible for preexisting FMLA leave and took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. You therefore have 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, you would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave you take would count against your entitlement to preexisting FMLA leave.

(For more detailed guidance, see Question 44 [HERE](#)).

Emergency Sick Leave

Step 5: Determining the Grounds for Leave.

If an eligible employee applies for the paid emergency sick leave, they must provide a qualifying reason. ***Leave should not be permitted without them providing grounds and support.*** According to the statute, there are only 6 reasons. Those are:

- (1) The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- (4) The employee is caring for an individual who is subject to an order or self-quarantined as described above under (1) and (2);
- (5) The employee is caring for a son or daughter if school or child care is closed/unavailable; or
- (6) The employee is experiencing "any other substantially similar condition" specified by HHS.

It is recommended that you have your employees designate one of these 6 reasons and provide additional information as required. Additionally, employees will need to provide additional support for their request. This could include:

- *A copy of the order that places them in quarantine or isolation;*
- *A letter or statement from the healthcare provider instructing them to self-quarantine (for themselves or the individual they are caring for);*
- *Confirmation of appointment for medical treatment or to obtain a medical diagnosis;*
- *A statement or notice from the school or child care provider stating that the school is closed or unable to care for child because of COVID-19 related issues.*

Notes on Individual Criterion

(a) Federal, state, or local quarantine or isolation order. In consultation with Fisher Phillips, we believe that only your employees who are members of a vulnerable population (65 or older or have a high risk medical condition, as defined by the CDC) are able to claim paid sick leave coverage under criterion (1): **the employee is subject to a federal, state, or local isolation or quarantine order related to COVID-19.** The DOL guidance states that “subject to a quarantine or isolation order” includes when a state authority has advised categories of citizens (e.g., of certain age ranges or of certain medical conditions) to stay-at-home. Ohio’s Amended Stay-At-Home Order issued April 02, 2020, states that people at high risk of severe illness from COVID 19 including elderly people, are urged to stay in their residence. Therefore, your employees who are elderly or at high risk due to medical conditions and advised to stay at home under the Ohio Stay-At-Home order, (and are not able to telework), are eligible for emergency paid sick leave.

Your employees are **not** eligible for paid sick leave under this criterion if there is work available for them and they are not a member of a vulnerable population advised to stay home by the Ohio Order. The DOL’s commentary states that an employee may take paid sick leave if being subject to one of these orders **prevents him/her from working or teleworking.** The question is whether the employee would be able to work “**but for**” being required to comply with the quarantine or isolation order. The Ohio Order permits employees of essential businesses to work as necessary to serve those essential services. Because motor vehicle dealerships fall under the essential services definition of the Director’s Order, the employee is not prevented from working due to a quarantine or isolation order. Furthermore, if an employee was asked to stay home because there was not sufficient work available, then the employee would still not be eligible for the FFCRA leave because they may not take paid sick leave when furloughed due to lack of work. However, the employee may be eligible for unemployment compensation. Because this is a developing situation and more guidance is becoming available daily, we strongly recommend consulting with your labor and employment counsel prior to making an adverse leave decision. (For more detailed guidance, see the DOL’s Commentary on Page 13-15 [HERE](#).)

(b) Self-quarantine Order by a Health Care Provider. The term “health care provider,” as used to determine individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA. (See Question 55 [HERE](#) for more detailed guidance).

(c) Caring for Someone Under Quarantine. An employee may take paid sick leave to care for an individual who, as a result of being subject to a quarantine or isolation order is unable to care for themselves and genuinely depends on the employee for care if providing care prevents you from working or teleworking. Such individuals include immediate family members or someone who regularly resides in your home. You may also take leave to care for someone if you're relationship creates an expectation that you would care for the person and that individual depends on you for care during the quarantine or self-quarantine. An employee may **NOT** take leave to care for someone with whom they have no relationship or someone who does not expect or depend on your care during his/her quarantine or self-quarantine. (See Questions 63 – 65 [HERE](#) for more detailed guidance).

(d) Caring for Son or Daughter. Under the statute, an employee may utilize paid sick leave to care for a son or daughter if school or place of care cannot care for the child because that facility is unavailable because of a COVID-19 related situation. Generally, an employee is able to take this leave only when there is a genuine need and you are actually caring for your child and are unable to work or telework. An employee generally does not need such leave if a co-parent, co-guardian, or your usual child care provider is available to provide the care your child needs. The DOL provides some additional context. First, it defines a “place of care” as any physical location in which care is provided for a child, and does not have to be solely dedicated to such care.

Some examples include:

- Day care facilities;
- Preschools;
- Before-and-after school care programs;
- Schools;
- Homes;
- Summer camps;
- Summer enrichment programs; and
- Respite care programs.

Additionally, the DOL defines a “child care provider” as someone who cares for the child, including both paid individuals (e.g. nannies, au pairs, and babysitters) and those who provide child care at no cost on a regular basis (e.g. grandparents, aunts, uncles, and neighbors). A child care provider does **NOT** need to have a license in order to be eligible for the leave. (For more guidance see Questions 67 and 68 of the DOL's guidance [HERE](#).)

(e) Any other substantially similar condition. At this point the Department of Health and Human Services (“HHS”) has not released any additional guidance that we are aware of.

If an employee becomes ill with COVID-19 symptoms, he/she cannot get paid sick leave if the employee unilaterally decided to quarantine themselves for two weeks and then return to work unless they are seeking a medical diagnosis or receive advice to quarantine by a healthcare provider. (For more guidance, see Question 62 [HERE](#).)

Step 6: Determining Leave Amount Pay.

If an employee takes paid sick leave under reasons (1) – (3), then the employee will be entitled to either the employee’s regular rate of pay or any applicable federal, state, or local minimum wage, whichever is greater.

If an employee requests leave for reasons (4) – (6), then the employee will be entitled either to two-thirds of his/her regular rate of pay or two-thirds of any applicable federal, state, or local minimum wage, whichever is greater.

Finally, any amount of paid to an employee is capped to a maximum amount under the FFCRA. Those maximums are outlined in section (b) of this step.

For the purposes of our analysis, we presume that all employee’s regular rate of pay will meet or exceed any minimum wage obligations.

(a) What is the employee’s regular rate of pay?

For purposes of the FFCRA, an employer must determine the employee’s regular rate of pay over a 6-month period prior to the date on which the employee begins his/her leave. An employee’s regular rate of pay is determined by the total pay for employment (except for the statutory exclusions) in any workweek divided by the total number of hours actually worked in that workweek. For more information on how to calculate an employee’s regular rate of pay, see the DOL’s factsheet [HERE](#).

If an employee has not worked for the dealership for six months, the regular rate used to calculate the employee’s paid leave is the average of his/her regular rate of pay for each week he/she has worked for the dealership.

All compensation, including commissions, tips, or piece rates, will be incorporated into the above calculation.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

(b) FFCRA Statutory Maximum

	Reasons (1) – (3)	Reasons (4) – (6)
Maximum Daily Pay	\$511.00/Day	\$200/day
Maximum Aggregate Pay	\$5,110 Total	\$2,000 total

Overtime Information. The Emergency Paid Sick leave requires that paid sick leave be paid only up to 80-hours over a two-week period. Employees should be paid their regularly scheduled hours up to that threshold. For example, if an employee normally works 50-hours a week, the employee may take 50-hours of paid sick leave in the first week and 30-hours of paid sick leave in the second week. Again, under no circumstances may the employee be compensated for more than 80-hours under the paid sick leave provisions. Note, however, that while the overtime hours are used in the calculation, there is not premium paid for overtime hours under either the paid sick leave or the EFMLEA Leave. (For more guidance on this issue, see Question 6 [HERE](#)).

Remember, an employee may take up to two weeks/10-days of paid leave for any combination of qualifying reasons. The TOTAL number of hours for which you receive paid sick leave is capped at 80-hours. An employee may not take 80-hours of paid sick leave for one reason and then another amount of paid leave for a different reason. (See question 9 for more detailed guidance [HERE](#).)

Step 7: Determine the Amount of Time for Leave Requested.

While a full-time applicant may take a maximum of 10 days/two weeks (80 hours), a part-time applicant would be entitled to only two weeks of paid time based on the average number of hours that the employee works over a typical two-week period. For example, if a part-time employee only works 15 hours per week for the dealership, then he/she would only be entitled to 15-hours per week on leave, for a total of 30 hours of paid sick leave.

Additionally, an employee may be able to take intermittent leave if they are teleworking. In that situation, the employee and employer may agree that the employee may take paid sick leave intermittently while teleworking. Similarly, an employer and employee may agree to an intermittent leave schedule leave required because the employee needs to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons. Intermittent leave for the purpose of provide child care may be apply to employees who are reporting to work as well as employees who are teleworking.

If teleworking is unavailable, then sick leave cannot be taken intermittently if the leave is being taken because:

- You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- You are caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Remember, unless you are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments.

EFMLEA Leave

Step 5: Determining the Grounds for Leave.

If an eligible employee applies for paid EFMLEA leave, they must have worked for the dealership for at least 30 calendar days and be unable to work (or telework) due to the need for leave to care for a ***son or daughter*** under 18 years of age because the child’s school or place of care has been closed or the son or daughter’s caregiver is unavailable due to an emergency with respect to COVID-19 declared by a federal, state, or local emergency. A “son or daughter” is defined by the FMLA regulations as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age, or is age 18 or older who is incapable of self-care because of a mental or physical disability.

According to the DOL, an employee is considered to have been employed for at least 30 ***calendar days*** if the employee was on the employer’s payroll for the 30 calendar days immediately prior to the day the employee’s leave would begin. For example, if an employee wanted to take leave beginning on April 6, 2020, the employee would need to have been on the employer’s payroll as of March 6, 2020. In the DOL’s temporary rule, the department states that the EFMLEA applies to employees who were laid off or otherwise terminated on or after March 1, 2020, had worked for the employer for at least thirty of the prior 60 calendar days, and were subsequently rehired or otherwise reemployed by the same employer.

Under the statute, an employee may utilize EFMLEA leave to care for a son or daughter if school or place of care cannot care for the child because that facility is unavailable because of a COVID-19 related situation. Generally, an employee is able to take this leave only when there is a genuine need and you are actually caring for your child and are unable to work or telework. An employee generally does not need such leave if a co-parent, co-guardian, or your usual child care provider is available to provide the care your child needs. The DOL provides some additional context. First, it defines a “place of care” as any physical location in which care is provided for a child, and does not have to be solely dedicated to such care. Some examples include:

- Day care facilities;
- Preschools;
- Before-and-after school care programs;
- Schools;
- Homes;
- Summer camps;
- Summer enrichment programs; and
- Respite care programs.

Additionally, the DOL defines a “child care provider” as someone who cares for the child, including both paid individuals (e.g. nannies, au pairs, and babysitters) and those who provide child care at no cost on a

regular basis (e.g. grandparents, aunts, uncles, and neighbors). A child care provider does **NOT** need to have a license in order to be eligible for the leave. (For more guidance see Questions 67 and 68 of the DOL's guidance [HERE](#).)

Additionally, employees will need to provide additional support for their request. This could include:

- *The name and address of the school and/or childcare facility;*
- *A statement or notice from the school or child care provider stating that the school is closed or unable to care for child because of COVID-19 related issues;*
- *Confirmation that no other person will providing care for the child during the period for which I would be receiving family medical leave.; and*
- *If your child is over the age of 14 needs care during daylight hours then a statement on the special conditions needed.*

An employee may still take paid sick leave or EFMLEA leave if the child's school or place of care has moved to online instruction or required to complete assignments at home so long as the physical location where the employee's child received instruction or care is not closed. This is true even in some or all instruction is being provided online. (See Question 70 [HERE](#) for more detailed guidance).

Step 6: Determining Leave Amount Pay.

A qualifying employee is entitled to either a two-thirds of his/her regular rate of pay or the FFCRA threshold, ***whichever is less***.

According to the DOL, the dealership may require the employee to take any existing leave that, under your policy would be available to the employee concurrently with the EFMLEA leave after the first two weeks. If you do so, you must pay your employee the full amount to which the employee is entitled to under your existing paid leave policy. (For more detailed guidance, see Question 33 [HERE](#))

(a) What is the employee's regular rate of pay?

For purposes of the FFCRA, an employer must determine the employee's regular rate of pay over a 6-month period prior to the date on which the employee begins his/her leave. An employee's regular rate of pay is determined by the total pay for employment (except for the statutory exclusions) in any workweek divided by the total number of hours actually in that workweek. For more information on how to calculate an employee's regular rate of pay, see the DOL's factsheet [HERE](#).

If an employee has not worked for the dealership for six months, the regular rate used to calculate the employee's paid leave is the average of his/her regular rate of pay for each week he/she has worked for your current employer.

All compensation, including commissions, tips, or piece rates, will be incorporated into the above calculation.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

(b) Statutory Maximum

EFMLA Leave	
Maximum Daily Pay	\$200/day
Maximum Aggregate Pay	\$10,000 total

Overtime Hours: Remember, that overtime hours should be included in the wage calculations. Under the EFMLEA leave, the dealership is required to pay an employee for hours the employee would have normally scheduled to work even if that is more than 40-hours in a week. Note, however, that while the overtime hours are used in the calculation, there is not premium paid for overtime hours under either the paid sick leave or the EFMLEA Leave. For more guidance on this issue, see Question 6 [HERE](#).

Step 7: Determine the Amount of Time for Leave Requested.

If an employee qualifies for leave, then they are entitled to 12 weeks of job protected leave. However, only 10 weeks are paid. The first two weeks of EFMLA leave are unpaid. *However, an employee may elect, but cannot be required, to supplement the unpaid leave with either emergency paid sick leave or any accrued PTO, vacation, or sick leave. You should ask the employee if they wish to supplement the unpaid portion of the leave.*

A part-time applicant would be entitled to only 12 weeks of leave, 10 of which are paid time, but only the number of hours equal to the average number of hours that the employee works over a typical two-week period. So, for example, if a part-time employee only works 15 hours per week for the dealership, then he/she would only be entitled to 15-hours per week of paid leave.

Remember, an employee may take intermittent leave in any increment for EFMLA leave, provided that the employee and the dealership agree. For example, if the dealership and the employee agree, the employee may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while the employee's child is at home because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of your leave.

Pay Out Leave

Step 8: Notify Payroll of Modification.

Based on the information above, you will need to notify your payroll processor to change the compensation. Dealerships should pay employees who are on paid sick leave or EFMLEA leave in accordance with their regular pay practices.

Step 9: Consider Necessary and Voluntary Wage Deductions.

In addition to the calculations outlined in Step 5, there are additional considerations. First, a dealership should withhold federal employment taxes on qualified leave wages paid to employees. Qualified leave wages are subject to withholding of:

- Federal income tax;
- Employee's share of social security taxes; and
- Employee's share of Medicare taxes.

Additionally, leave wages are also considered wages for the purposes of other benefits that the dealership provides. Because the FFCRA does not include any provisions explicitly prohibiting salary reductions for employer-sponsored programs such as health plans, a 401(k) or other retirement program, or any other benefits, the amount paid can be subject to a salary reduction agreement in place between the dealership and the employee. (For more detailed guidance on salary reductions, see Questions 54 and 55 [HERE.](#))

Reimbursement for Leave Paid

Step 10: Deducting Leave Costs from Outstanding Payroll Tax Obligations.

Eligible Employers are entitled to receive a credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and the employer's share of Medicare tax, paid for leave during the period beginning April 1, 2020, and ending December 31, 2020. The credit is allowed against the taxes imposed on employers by section 3111(a) of the Internal Revenue Code (the "Code") (the Old-Age, Survivors, and Disability Insurance tax (social security tax)) and section 3221(a) of the Code (the Railroad Retirement Tax Act Tier 1 rate) on all wages and compensation paid to all employees.

The federal employment taxes that are available for retention by Eligible Employers include:

- Federal income taxes withheld from employees;
- Employees' share of social security and Medicare taxes; and
- Employer's share of social security and Medicare taxes with respect to all employees.

Qualified Health Plan Expenses

Generally, the tax credits for qualified sick leave or EFMLEA leave wages are increased by the qualified health plan expenses allocable to each type of qualified leave wages. “Qualified health plan expenses” are amounts paid or incurred by the dealership to provide or maintain a group health plan (as defined in Section 5000(b)(1) of the IRC), but only to the extent that those amounts are excluded from the gross income of employees by reason of section 106(a) of the IRC. Qualified health plan expenses are properly allocated to the qualified sick or family leave wages if the allocation is made on a pro rata basis among covered employees (for example, the average premium for all employees covered by a policy) and pro rata on the basis of periods of coverage, relative to the time periods of leave to which such wages relate. (For more detailed guidance, see questions 31-36 [HERE](#).)

For example, if an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

Step 11: Requesting Reimbursement if Leave Costs Exceed Payroll Tax Obligations.

If the federal employment taxes yet to be deposited are not sufficient to cover the dealership’s cost of qualified leave wages, plus the allocable qualified health plan expenses and the amount of the employer’s share of Medicare tax imposed on those wages, the dealership will be able to file a request for an advance payment from the IRS. The IRS expects to begin processing these requests in April 2020. The amount of the credit exceeds the employer portion of these federal employment taxes, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) or 6413(a) of the Code.

The qualified sick leave wages and qualified family leave wages are not subject to the taxes imposed on employers by sections 3111(a) and 3221(a) of the Code and employers (other than those that are subject to the Railroad Retirement Tax Act) are entitled to an additional credit for the taxes on employers imposed by section 3111(b) of the Code (Hospital Insurance (Medicare tax)) on such wages.

For example, if an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.

Step 12: Record Retention of FFCRA Leave

The dealership should closely track the amount of leave paid to employee through the FFCRA because they are entitled to a dollar-for-dollar reimbursement of those expenses through their IRS payroll tax submissions. The dealership should also collect the supporting material (request for leave and supplemental information) prior to approval of the leave to be prepared to present if necessary. At a minimum, dealerships should retain:

- Records and documentation related to and supporting each employee’s leave to substantiate the claim for the credit;
- Forms 941, Employer’s Quarterly Federal Tax Return;
- Form 7200, Advance of Employer Credits Due to COVID-19; and
- Any other applicable filings made to the IRS requesting the credit.

Resources

All dealership personnel should be aware that this is a continuously evolving situation and should continue to look for updates. Please consult with these additional resources for additional and expanded guidance.

- Department of Labor – Families First Coronavirus Response Act: Questions and Answers - [HERE](#)
- Internal Revenue Service – Guidance on paid leave and tax credits - [HERE](#)
- Fisher Phillips LLP – Comprehensive and Updated FAQs For Employers on The COVID-19 Coronavirus - [HERE](#)
- Fisher Phillips LLP – Dealership FAQs on COVID-19 for Automobile Dealerships – [HERE](#)

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