

# What is the FFCRA and How Does It Impact Your Business? Q&A



By Keith A. Ashmus | May 14, 2020

Disclaimer:

These comments are not intended to and do not constitute legal advice; instead, all information, content, and slides are provided for general informational purposes only. This information may not constitute the most up-to-date legal or other information.

Users should contact their attorney to obtain advice with respect to any particular legal matter. No user should act or refrain from acting on the basis of these comments without first seeking legal advice from counsel in the relevant jurisdiction. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. Reviewing these materials does not create an attorney-client relationship between the user and author, and their respective employers.

The views expressed at, are those of the individual author writing in her individual capacities only – not those of her employer. All liability with respect to actions taken or not taken based on the contents are hereby expressly disclaimed. The content is provided "as is;" no representations are made that the content is error-free.

Question Asked	Answer Provided
Do you only deduct the tax due or do you also deduct the wages paid from your tax deposit?	You can deduct all the wages and employment costs paid from the amount of tax you have due.
Would per-diem be included in payroll cost up to the maximum \$511 per day?	Yes.
If an employee wants to collect unemployment instead of FFCRA through employer, what is required to happen? Must they do FFCRA or are they allowed unemployment	An employee is only eligible for paid sick leave if they are employed. An employee does not have the option to elect unemployment or paid sick leave. If they are laid off, they can apply for unemployment. If they are not laid off and become eligible for paid sick leave under one of the 6 qualifying reasons, they are entitled to leave.
How does the Payroll Tax Credit differ from the Employer Social Security Payroll Tax Deferment?	The credit is total, and you never have to pay it back. The deferment is a delay in when you need to pay the tax owed. You can take advantage of both.
You are allowed to defer the 6.2% employer social security tax payment until December 2020 and pay back 50% in 2021 and 50% in 2022 - I was wondering what the Payroll Tax Credit is and how that differs. Can you direct	See the previous answer. You can deduct all the wages and employment costs paid from the amount of tax you have due. For further information, go to the IRS link in the materials.

<p>me to where I can research the Payroll tax credit?</p>	
<p>If an employer closed prior to 3/31 due to govt stay-at-home order, when they reopen are their employees eligible for emergency paid sick leave and expanded family leave?</p>	<p>Employees would be eligible after the business re-opens. If the business is closed, and the employees are not working from home, there is therefore no work for them to do and no work for them to be relieved from. Once the business opens, and there is work to do, if an employee cannot tele-work, they would then be entitled to leave prospectively if they otherwise qualify.</p>
<p>Employer closed mid-March, but paid employees on 4/1 for two weeks payroll (even though they did not work during the period in March). Can the employer use this payroll for the 2 weeks emergency sick pay even though they were closed?</p>	<p>Generally, no. No other forms of leave can supplant paid sick leave or emergency medical leave.</p>
<p>We voluntarily shut down a job site due to suspected COVID-19 of an employee of a sub. We are waiting to hear if the sub's employee is confirmed positive or not before we reopen the site. This prevents our superintendent from working. In this scenario, does our superintendent qualify for FFCRA? Also, if so, and the job site is only shut down for 2-3 days, then can our superintendent get FFCRA allowable pay for the 2-3 days and still qualify later on to use the remaining days? In other words, can the FFCRA be used in increments like this for someone who doesn't telework?</p>	<p>The superintendent is not exhibiting any of the 6 qualifying factors entitling him to paid sick leave. If the superintendent were awaiting a test result for himself, he could be entitled. If the superintendent were eligible for leave, he could take 2-3 days and then use the rest at a later date. Yes, employees may use the leave incrementally.</p>
<p>Is the regular rate of pay to be computed as defined by the FSLA or what the agreed rate of pay is between the employee and employer? The DoL poster for public display does not stipulate - and employees could receive less than their agreed rate of pay based off the FSLA calculation method.</p>	<p>It is generally the regular rate. In most cases, that will be greater than stated rates, since it includes certain bonus and incentive payments. However, if there is an agreed rate that is higher, there is nothing prohibiting an employer from using the reasonable higher agreed rate.</p>
<p>Do I need to keep a separate account for showing we used the money from PPP to pay 75% of salaries?</p>	<p>This is not really a FFCRA question, but the answer is that you need to be able to substantiate the amounts paid for qualifying expenses in order</p>

	<p>to qualify for loan forgiveness under PPP loans. The recent SBA guidance on loan forgiveness provides more information on what is required in the way of documentation.</p>
<p>Can you clarify the employer matching portion of the leave wages as it relates to the payroll tax credit? The IRS/DOL FAQs are confusing. They reference that leave wages are not subject to employer matching SS, but subject to Medicare tax, but then the Medicare tax is credited. Sage does not allow us to turn off the employer matching because it will result in payroll audits. So, I'm just not sure how to handle the tax credit as it relates to employer matching</p>	<p>This is a SAGE system question. As far as the rules go, what you pay to employees for qualifying leave is not subject to the employer side of SS tax and qualifies for the credit. Medicare tax is payable on those wages.</p>
<p>Do you have advice as to how a business should book the FFCRA-related FICA credit in their GL? Should it be booked as a revenue item, or against a specific expense. If against an expense, would it be appropriate to book the consolidated credit each quarter against a general FICA expense line item?</p>	<p>I am not an accountant, but it seems logical to book the potential credit against the tax liability. Sage would be able to provide more definitive guidance, I expect.</p>
<p>For an Employer with fewer than 25 employees, does the EFMLEA *require* the employer to maintain a position for 10 or 12 weeks if the position would have otherwise been eliminated for lack of work available? Can you terminate an employee for lack of work and *not* allow the requested leave under these circumstances?</p>	<p>This is difficult to answer without more specific information. In general, an employer can lay off employees as it sees fit. Laid off employees are not entitled to the paid leave (they are not on leave from a job they are currently performing.) If they do go on leave and their job is eliminated while they are on leave, they are not entitled to reinstatement. The employer with less than 25 employees is then required to try to find a position or hold the position for the laid off individual in case it becomes needed again.</p>
<p>Does an unpaid family member, who normally provides care for your child but becomes unavailable because of COVID, count as childcare? for the purpose of making the employee/parent eligible for the EPSL or EFMLEA?</p>	<p>Potentially, if the family member is over 18 and is a grandparent, aunt, uncle or sibling who lives in another home.</p>
<p>If you worked for one company and took the full leave allowed and then changed to another company. After 30 days can you take that leave again with the new company?</p>	<p>No, presuming the question relates to paid sick leave. An employee is only entitled to 10 days/80 hours maximum of paid sick leave.</p>
<p>If you have funds from the PPP Loan can you use also use the FFCRA benefit?</p>	<p>All employers with 500 employees or less must provide EPSL and EFML unless they meet one of the other qualifying reasons. Since the paid leave</p>

	benefit is for employees on the payroll, amounts paid to employees on paid leave qualify towards PPP forgiveness.
For the Emergency Paid Sick Leave Act - we do not offer paid sick leave - does this pertain to us?	Yes. Employees are entitled to Paid Sick leave regardless of whether an employer offers regular sick leave.
If an employer received the CARES Act PPP loan, can we take advantage of these Acts as well?	Yes.
After an employee who is diagnosed with COVID-19 used up the EPSL hours and need additional time off, is this employee eligible for EFMLA or just the traditional FMLA and with their approval to use their accrued PSL?	Employees are only eligible for EFML if they cannot work or telework because their son's or daughter's school or childcare place is closed due to COVID-19. The employee who is sick herself would need to use regular FMLA or some other leave.
The deferral is an employer election to not pay the employer FICA for a period of time. Its effectively an interest free loan. The credit is a permanent savings.	Correct.
If you submit 941 taxes online through EFTPS, when you are deducting the payments made through this FMLA, which taxes do you deduct it from? The Federal portion, FICA portion, Medicare portion, or something else?	I do not know the answer to this specific question. The credit is against the employer portion of social security tax.
I had an employee take time off to care for his children, but there were others who could care for his children. Are we required to pay him as noted even though there were others who could care for his children?	Potentially. The employee must submit a certification claiming no other childcare options are available. The employee can be required to submit further justification if the child is over 14. If the employee has submitted, they cannot work or telework, there is not much an employer can do absent more compelling evidence.
If an employee is ordered to quarantine while awaiting test results and then finds out they are negative but wishes to stay home the day they receive the results, are you required to include the day they chose to stay home since they could have worked?	Likely no, however, this seems highly determinative upon when they receive the results. Once the employee receives the negative test results (and presumably are not ordered to quarantine), they are no longer seeking a medical diagnosis and are not prohibited from working.
What happens if employee says family member has cov19. but is unwilling to provide proof	Employees need to provide the required paperwork/verification to qualify for pay.
Can you please clarify if sick leave wages are subject to employer matching SS and Medicare? They are referenced differently in the IRS FAQs. I am very confused.	I believe they are not subject to SS but are subject to Medicare tax.

<p>For the payroll tax credit – If an employee makes \$10 for 10 hours – is the entire \$100 allowed to be credited? Or do you have to subtract the employee portion of payroll taxes and the remainder is available for the credit?</p>	<p>In this example, the entire \$100 is creditable. You have paid the \$100 and the employee (not you) pays the employee portion.</p>