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Employment Update: DOL's Summary of Key FFCRA Components *Posted March 23, 2020*

The U.S. Department of the Treasury, IRS, and the U.S. Department of Labor (DOL) are busy working out how to implement the paid leave for workers and the tax credits provided under the Families First Coronavirus Relief Act ("FFCRA") We expect further guidance this week, but below is what we know right now, courtesy of the DOL.

Summary of Key Employment Components:

Employee Paid Leave Benefit:

The new FFCRA provides workers with emergency paid sick leave of up to 2 weeks for COVID-19 reasons (in addition to any existing employer-provided paid sick leave) and expanded paid FMLA leave for child care when the employee's children's school is closed or child care provider is unavailable due to COVID-19. Details of these benefits can be found here: <https://www.dpf-law.com/blogs/lex-vini/employers-summary-of-families-first-coronavirus-relief-act/>

Employer Tax Benefit:

The FFCRA provides 100% reimbursement for paid leave under the act, including health insurance costs, with no payroll tax liability for employers.

In order to provide reimbursement of these funds to employers quickly, the IRS plans to provide an immediate dollar-for-dollar tax offset against payroll taxes. This means that businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes and use those funds to pay for leave for their employees instead. If the payroll taxes are not enough to cover the paid leave, a refund will be sent by the IRS as quickly as possible. The IRS will be releasing a claim form this week that can be used to request an expedited advance from the IRS. Additionally, eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

Less than 50 Employee Exemption:

The DOL also plans to provide guidance regarding the small business exemption soon and will clearly articulate the standard to be applied in determining whether businesses qualify for the exemption. For now, we know that small businesses with less than 50 employees will be eligible for an exemption from the leave requirements **relating to school closings or child care unavailability only**, where the requirements would jeopardize the ability of the business to continue. Additionally, the DOL has announced they will issue a temporary non-enforcement policy for the first 30-days the FFCRA is effective and will instead focus on compliance assistance during this 30-day period. Under this policy, the DOL will not bring an enforcement action against any employer for violations of the Act as long as the employer has acted reasonably and in good faith to comply with the act.

The full press release can be accessed here: <https://www.dol.gov/newsroom/releases/osec/osec20200320>