

UPDATE:
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**Deep Dive Into FFCRA Tax Credits
for Paid Leave**

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The materials and information have been prepared for informational purposes only. This is not legal advice, nor intended to create or constitute a lawyer–client relationship. Before acting on the basis of any information or material, readers who have specific questions or problems should consult their lawyer.

Golden Rules

1. The right to FFCRA is over (for now)

- But organizations (private and public) can offer paid leave that is less than, equal to, or more than what was required by the FFCRA

Golden Rules

2. The federal government will help you pay for the paid leave IF the employee would have qualified for FFCRA IF the FFCRA had not expired.
 - But not if you are a public body. No tax credits for public employers.

Golden Rules

3. The EFMLEA (part of the FFCRA) provide an additional qualifying reason for FMLA but did NOT provide an additional amount of leave beyond the 12 weeks guaranteed by the FMLA

Golden Rules

4. Beginning January 1, 2021, do not deduct time that would have qualified for EFMLEA from employee's FMLA bank

Interaction Between the FFCRA Tax Credit and FMLA

- Only relevant to one reason for leave: child care/school
- Not relevant to most public bodies
- If an employee needs leave for this qualifying reason, and your organization chooses to pay for the leave, your organization can claim tax credits for amount it paid in leave **ONLY IF** the employee would have qualified for FFCRA.
 - Do they have some/all of the 80 hours of EPSLA left?
 - Do they have FMLA time available?
 - Maybe: have they used 12 weeks - in any FMLA year - for EFMLEA reason?

Question

If an employee used some FMLA in the past 12-month rolling year, and the employee now needs leave because of school/day care closing, can the employer pay for the leave and claim a tax credit for the paid leave?

- Yes, up to the amount of FMLA the employee has left in their FMLA bank.

Example 1

- Employer uses calendar year for FMLA year
- In 2020, employee used 8 weeks of FMLA for “regular” FMLA reason and then 4 weeks of FMLA for EFMLEA reason (school/day care)
- Employee cannot work for EFMLEA reason (not sure how long school will be closed)
- Result:
 - Employer can claim tax credit for 8 weeks of paid leave
 - Employer should NOT count this 8 weeks as FMLA and should NOT deduct from employee’s FMLA bank

Example 2

- Employer uses calendar year for FMLA year
- Employee uses 12 weeks of FMLA in 2020 for non-EFMLEA reasons
- Employee cannot work for EFMLEA reason and may need leave for a while (he is not sure how long school will be closed)
- Result:
 - Employer can claim tax credit for up to 12 weeks of paid leave for EFMLEA reason
 - Employer should NOT count this as FMLA and should NOT deduct from employee's FMLA bank

Example 3

- Employer uses calendar year for FMLA year
- In 2020, employee used 2 weeks of EPSLA (not for school/day care), and 10 weeks of FMLA for EFMLEA reason. Employee did not use any additional FMLA.
- Now, employee needs two weeks for EFMLEA reason.
- Result
 - Employer can claim tax credit for two weeks of paid leave
 - Employer should NOT count this as FMLA and should NOT deduct from employee's FMLA bank



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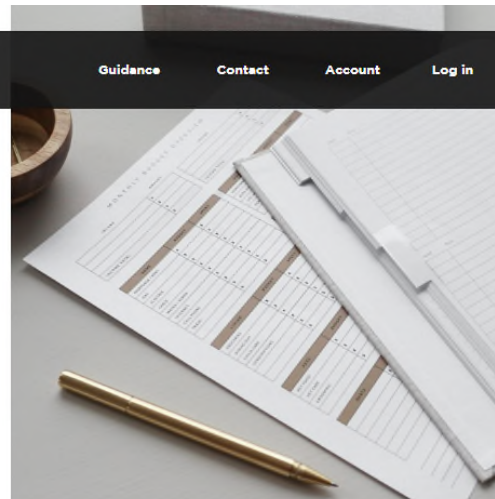
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