

How Lyons HR Clients Receive the Paid Leave Tax Credit

Dear Client:

As I am sure you know, Congress recently passed legislation in response to COVID-19 that may impact your company and your employees. While more legislation is in the works, we wanted to: a) give you a quick summary of the key provisions related to paid leave; b) provide an overview of how the payroll process at Lyons HR is adopting these provisions; and c) how Lyons HR is making the tax credits available to its clients. These provisions take effect on April 1, 2020 and only affect employers with fewer than 500 employees.

Summary of Key Leave Provisions

Emergency Paid Sick Leave: Employers must offer employees up to 80 hours of paid sick leave (up to monetary caps) to quarantine, to seek a diagnosis or preventive care for coronavirus, or to care for a child.

Emergency Family and Medical Leave: Employees can now take up to 12 weeks of job-protected leave (2 weeks unpaid followed by 10 weeks of paid leave up to monetary caps) if they are unable to work (including by telecommuting) due to a need to care for a child whose school or childcare provider is closed or unavailable due to the Coronavirus outbreak.

Paid Leave Tax Credits: To help bear the cost of the new paid-leave requirements, employers can offset the amounts paid from employment taxes.

Important Note for Clients subject to FMLA

*If your employees are eligible for twelve weeks of unpaid leave under the Family and Medical Leave Act, the paid Emergency Family and Medical Leave **does not** create an additional amount of leave time for your employees. In other words, leave taken pursuant to these entitlements cannot exceed 12 weeks, so you will need to track the total of FMLA and EFMLA for individual employees to ensure the leave used does not exceed 12 weeks.*

For your convenience, here are links to important information and resources from the Department of Labor:

- [General information from the DOL about the leave requirements](#)
- [FAQs about the leave requirements](#)

Lyons HR Payroll Process Changes

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As noted above, there are two components of leave associated with the recent legislation:

- Emergency Paid Sick Leave (“Sick Leave”)
- Emergency Family and Medical Leave (“Emergency Leave”)

As the pay amounts associated with the Sick Leave depend on whether the leave is a) associated with caring for a family member or child of the employee (Indirect Pay); or b) associated with caring for the employee (Direct Pay), Lyons HR has created the following payroll codes:

- **Pay Code 1: “COVIDSELSICK” – COVID-19 Paid Sick Leave**
 - Capped at \$511 per day or \$5,110 in the aggregate
 - **Full-time employees** – can be paid up to 80 hrs at 100% of their regular pay rate
 - **Part-time employees** – Prorated hours based on employee’s average number of work hours in a two-week period (look back 6-month period, average during employment, or reasonable expectation)
 - Reasons an employee can use this code:
 - The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
 - The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
 - The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis. Meaning the employee is waiting for COVID-19 test results, going to get tested, or waiting on a doctor’s appointment
- **Pay Code 2: “COVIDDEPSICK” – COVID-19 Dependent Childcare Paid Leave**
 - Capped at \$200 per day or \$2,000 in the aggregate
 - **Full-time employees** – can be up to 80 hrs at 2/3 of the employee’s regular rate of pay
 - **Part-time employees** - Prorated hours based on employee’s average number of work hours in a two-week period (look back 6-month period, average during employment, or reasonable expectation) at 2/3 of the employee’s regular rate of pay
 - Reason this code can be used:
 - The employee is caring for his/her child who is subject to an order or self-quarantine as described above
- **Pay Code 3: COVIDOTHSICK – COVID-19 Other Sick Leave**
 - Capped at \$200 per day or \$2,000 in the aggregate
 - **Full-time employees** – can be up to 80 hrs at 2/3 of the employee’s regular rate of pay

- **Part-time employees** - Prorated hours based on employee's average number of work hours in a two-week period (look back 6-month period, average during employment, or reasonable expectation) at 2/3 of the employee's regular rate of pay
- Reason this code can be used:
 - The employee is caring for an individual who is subject to an order or self-quarantine as described above.
- **Pay Code 4: COVIDEMGFMLA – COVID-19 Emergency FMLA**
 - Up to 12 weeks, 2 weeks unpaid
 - Capped at \$200 per day or \$10,000 in the aggregate
 - When EE is unable to work or telework because the EE caring for a son or daughter if school or childcare is closed/unavailable (adult child, too)
 - First 2 weeks are unpaid (but may be paid from other entitlements)
 - Next 10 weeks paid at 2/3 greater of:
 - EE's regular rate
 - Federal minimum wage
 - State/local minimum wage
- **Pay Code 5: COVIDFMLAup – COVID Emergency FMLA Unpaid 2wk**
 - 2 weeks are unpaid tracking
 - Use this code if the employee qualifies for emergency FMLA but does not qualify for COVID sick leave
 - This code will not be used if the employee qualifies for any of the COVID sick leave codes above

Lyons HR will have specific reports available to assist clients in tracking earnings associated with these COVID-19 payroll codes.

How Will Lyons HR Process Client Tax Credits?

As noted above, employers can offset the amounts paid for the Emergency Leave and Sick Leave from employment taxes. To facilitate this, Lyons HR has added a function to its payroll platform that tracks and automatically processes client payroll tax credits on their invoices. The credit issued on each client payroll invoice will be the lesser of the following: a) the sum of FICA payroll taxes (both employer and employee portions) and employee federal income tax withholdings on the invoice; or b) the total Emergency Leave and Sick Leave benefits paid to employees on the invoice (inclusive of the employer portion of Medicare payroll taxes on such wages). If benefit amounts paid to employees exceed the sum of the FICA payroll taxes and federal income tax

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withholdings, Lyons HR's system can track these "negative amounts" and add them to the next invoice. The example below illustrates these concepts:

- A Lyons HR client has the following employees paid during a weekly payroll period:
 - 2 employees each making \$1,500 per week that are not on leave for a total of \$3,000
 - 2 employees each making \$1,000 per week that are on Sick Leave— Indirect Pay (i.e. 2/3 normal wage up to \$200/day) for a total of \$2,000
 - Note that these wages are exempt from the employer portion of the Social Security payroll tax. Additionally, the employer portion of the Medicare payroll tax is subject to the tax credit.
 - Wages for the 4 employees total \$5,000
 - Total FICA payroll taxes would equal the sum of 15.3% of \$3,000 or \$459 (note this includes the employer and employee portions of FICA) related to non-leave payroll and 9.10% of the \$2,000 of COVID-19 Sick Leave- Indirect Pay or \$182 (note that leave pay is exempt from the employer portion of Medicare payroll tax). This total is \$641.
 - The total federal income tax withholdings for these employees equals \$570 (note this amount is influenced by several factors including employees W-4 elections and is shown for illustrative purposes).
 - The client would receive a credit equal to the lesser of a) the sum of the FICA payroll taxes (\$641) and the federal income tax withholdings (\$570) which equals \$1,211; or b) the total COVID-19 related benefits paid (inclusive of Medicare payroll tax) which equals \$2,029. In this example, the lesser is \$1,211.
 - As the total COVID-19 benefits exceeded the tax credit issued by \$818, this amount (i.e. the "negative amount") would carryforward towards the calculation of tax credits on subsequent invoices.

Necessary Documentation

In order to claim FFCRA tax credits, it is extremely important that you maintain documentation to support your employee's qualifying need for paid leave. It is also important to maintain records that support your denial of an employee's request for paid leave under the FFCRA. The Department of Labor has established the following guidelines for properly documenting paid leave under the FFCRA:

Employee Requests should include the employee's name, the date(s) requested for leave, the qualifying reason for leave and a statement from the employee as to why he/she is unable to work because of the qualifying reason.

- If the employee's reason for the paid leave request is that the employee is subject to a quarantine or isolation order or to care for an individual subject to an order, the employee should provide the name of the government entity that issued the order.

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- If the employee's leave request is due to the employee's own self-quarantine based on advice of a health care provider, the employee should provide the name of the health care provider.
- If the employee's leave request is due to the need to care for a child due to school closure or child care is unavailable, the employee should provide the name of the child(ren), the name of the school or place of child care, and a statement that no other suitable person is available.

**** Note that the employee may give oral notice of a need for paid leave, **
**but it is the employer's responsibility to document that notice and the reason **
the employee provided for needing leave.**

****Documentation is important, even if the employee's request for paid leave is denied.****

Please feel free to reach out to us if you have any questions or concerns about these new requirements. As always Lyons HR will keep you abreast of additional legislation (including the CARES Act) that may impact this process. Thank you.