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To: Madden, John G.
Subject: LMG COVID-19 UPDATE: IRS ISSUES TAX CREDITS GUIDANCE FOR PAID LEAVE



COVID-19 UPDATE- IRS ISSUES INITIAL GUIDANCE FOR TAX CREDITS FOR EMERGENCY EMPLOYER PAID CHILDCARE AND SICK LEAVE

The IRS has issued initial guidance regarding tax credits and other implementation matters in connection with The Family First Coronavirus Response Act (“the Act”) that was signed into law by the President on March 18, 2020 and will become effective on April 2, 2020. Please see our March 20, 2020 communication which provides a summary of the new law.

Implementation of Tax Credits to Reimburse Employers for Paid Family/Medical Leave (“Child Care Leave”) and Sick Leave under the Act

Summary of Tax Credits

Under guidance that the IRS has indicated it expects to release in the coming week, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit that portion of payroll taxes with the IRS. The maximum tax credits available for these leave wages are: 1.) Childcare leave- up to two-thirds of an employee’s regular rate capped at \$200 per day and \$10,000 in the aggregate per employee; 2.) Sick leave used for an employee’s own COVID-19 related sickness - paid at the employee’s regular rate up to \$511 per day and \$5,110 in the aggregate per employee; 3.) Sick leave used to care for another’s COVID-19 related sickness or for childcare leave - up to two-thirds of an employee’s regular rate capped at \$200 per day and \$2,000 in the aggregate.

Taxes Available for Reimbursement of Emergency Paid Leave

The payroll taxes that are available for retention by the employer as reimbursement for paid childcare or sick leave will include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If Paid Leave Exceeds Taxes Available for Reimbursement

If there are not sufficient payroll taxes to cover the cost of paid qualified sick and childcare leave, employers will be able to file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The IRS has indicated it expects to announce the details for this new, expedited procedure in the coming week.

Paid Leave Wages Are Not Subject to the Employer's Share of Social Security or Medicare Taxes

Any required payments for emergency paid sick leave or childcare leave under the Act will not be subject to the employer's portion of the Social Security tax. In addition, the tax credits available to an employer are increased by the amount of the employer's share of Medicare tax on wages paid under the Act, effectively exempting the emergency sick and childcare leave payments from that tax as well.

The Tax Credits Are Increased for Allocable Health Plan Expenses

The tax credits will be increased by the amount of any health plan expenses that are properly allocable to any paid emergency sick or childcare leave. The Act indicates that such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which the paid emergency sick or childcare leave relates). The Act also indicates the IRS may issue guidance for the proper allocation of health plan expenses. "Qualified health plan expenses" are defined as the amount paid or incurred by an employer to provide and maintain a group health plan but only to the extent such amounts are excluded from the gross income of employees under Internal Revenue Code Section 106(a).

Self-Employed Individuals

Equivalent childcare leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and would reduce estimated tax payments.

Examples

If an eligible employer paid \$5,000 in qualified sick and/or childcare leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer would be able to retain \$5,000 of the payroll taxes as reimbursement for making qualified leave payments. The employer would only be required to deposit the remaining \$3,000 on its next regular deposit date.

If an eligible employer paid \$10,000 in qualified sick and/or childcare leave and was required to deposit \$8,000 in payroll taxes, the employer would be able to retain the entire \$8,000 of taxes as reimbursement for making the qualified leave payments and file a request for an accelerated credit (under forthcoming guidance to be issued by the IRS) for the remaining \$2,000.

Small Business Exemption

Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or childcare unavailability where the requirements would jeopardize the ability of the business to continue. The exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern. The U.S.

Department of Labor (DOL) will be providing emergency guidance and rulemaking to clearly articulate this standard.

Non-Enforcement Period

The DOL will be issuing a temporary non-enforcement policy that provides a period of time (up to 30 days) for employers to come into compliance with the Act. Under this policy, the DOL will not bring an enforcement action against any employer for violations of the Act so long as the employer has acted reasonably and in good faith to comply with the Act. The DOL will instead focus on compliance assistance during the 30-day period.

Please do not hesitate to contact us with any questions regarding the implementation of the Act and the tax credits that will be available to offset the cost of any sick or childcare leave paid in accordance with the Act.

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