

Late Friday, the [Internal Revenue Service and Department of Labor issued an announcement](#) on this very critical question. In the announcement, the DOL also made it clear it would not bring an enforcement action against employers for any violations *within the first 30 days* the law is in effect so long as the employer is acting in good faith to comply.

### **IRS Guidance on Reimbursement of Paid Leave Provided by Employers**

As you likely are aware by now, the new law provided employees (at employers with fewer than 500 employees) paid sick leave and paid FMLA leave for COVID-19 related reasons but also made clear that this paid leave would be *100% refundable* to employers providing it.

As written, the law simply was not realistic or workable as to employer tax credits, since the employer would be reimbursed at some later date — some weeks, months or even a year later — after the coronavirus damage had already been done.

In Friday's guidance, however, the IRS made clear that employers would be able to recoup these payments *immediately* by *keeping a portion of the deposit* it otherwise would pay as part of their employees' federal, social security and Medicare taxes.

Here's how the IRS explains how you will recoup this money immediately:

When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns ([Form 941](#) series) with the IRS.

Under guidance that will be released next 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 them with the IRS.*

*The payroll taxes that are available for retention 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 there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, ***employers will be able file a request for an accelerated payment from the IRS.*** The IRS ***expects to process these requests in two weeks or less.*** The details of this new, expedited procedure will be announced next week.

What does this mean? In a nutshell, it means that any taxes held in escrow for payment on federal, social security and Medicare taxes now could be used to pay employees taking paid leave under the law effective April 2. Notably, this would allow employers to draw funds from the payroll and income tax they withhold from or pay on behalf of all employees and not just those to whom they must provide paid leave under the new statute.

### **Examples of How You'll Be Reimbursed *Immediately***

In its announcement, the IRS gave examples of its guidance above:

**If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.**

**If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.**



**Meanwhile, the DOL Will Not Bust You  
for Non-Compliance — Well, for At least Not for 30 Days**

Although the details presumably will be announced this week or the next, the DOL clarified in the same announcement that it would be “issuing a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the Act. Under this policy, Labor 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. Labor will instead focus on compliance assistance during the 30-day period.”

What does “good faith” mean? DOL says this:

**For purposes of this non-enforcement position, “good faith” exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.**