March 23, 2020

Treasury, IRS and Labor Announce Plan to Implement COVID-19 Paid Leave and Related Tax Credits

As reported in our earlier alert, the recently enacted Families First Coronavirus Response Act (the Act) requires employers with fewer than 500 employees to provide employees with paid family leave and paid sick leave if they (or their families) are affected by COVID-19. Employers providing paid leave pursuant to the Act are entitled to refundable tax credits which are designed to immediately reimburse them for the cost of providing COVID-19 related leave and maintaining health insurance coverage for affected employees. On March 20, the U.S. Treasury Department (Treasury), Internal Revenue Service (IRS) and the U.S. Department of Labor (Labor) issued guidance on how small and midsize employers can take advantage of these new tax credits.

Employers are required to withhold federal income, Social Security and Medicare taxes from their employees' wages. Normally, these withheld amounts must be deposited with the IRS along with the employer's share of Social Security and Medicare taxes. Under guidance that will be issued the week of March 23, an employer will be able to retain an amount of payroll taxes equal to the amount of qualifying COVID-19 related leave it has paid. If the amount of qualifying paid leave exceeds the amount of payroll taxes that would otherwise be deposited with the IRS, the employer is entitled to an accelerated refund from the IRS. The IRS expects that these refunds will be processed within two weeks.

The Act provides that the tax credit applies only to wages paid *after* a date selected by the Treasury Secretary within 15 days following enactment (March 18) and *before* December 31. We will publish another alert when the precise effective date is announced by Treasury.

The following examples show how the refundable tax credit works:

- An eligible employer paid $5,000 in qualifying sick leave and is otherwise required to deposit $8,000 in payroll taxes. Under the Act, the employer is entitled to retain $5,000 and deposit the remaining $3,000 on its next regular deposit date.
- An eligible employer paid $10,000 in qualifying sick leave and is otherwise required to deposit $8,000 in payroll taxes. Under the Act, the employer is entitled to retain the entire $8,000 of taxes and may file a refund request with the IRS for the remaining $2,000.

The March 20 guidance also notes that:

- For a 30-day period, Labor will focus on compliance assistance and will not bring an enforcement action against any employer for violations of the Act so long as the employer has made a reasonable and good faith attempt to comply with the Act.
- The Act gives the Secretary of Labor the authority to issue regulations exempting businesses with fewer than 50 employees from the requirement to provide paid family leave if it would jeopardize the viability of the business as a going concern. Labor will provide emergency guidance and rulemaking to articulate the standard applied in determining when the viability of an employer's business is in jeopardy.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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