



Applying the FFCRA Leave Options to Locations with < 50 Employees

SUMMARY

The Family First Coronavirus Response Act signed into law on March 18, 2020, included two Acts designed to provide employer and employee stability aimed at supporting the economy during the pandemic. The Emergency Paid Sick Leave Act and the Family and Medical Leave Act Expansion, offered additional leave options to employees experiencing various affects from the COVID-19 pandemic, either for **self-care** or the **care of others**. These ACTS also offer employers tax credits for the full amount of the FFCRA mandated paid leave wages, subject to certain caps, the Medicare taxes on those wages and the costs resulting from maintaining group health plan coverage for those wages. In addition, the employer is not subject to the OASDI portion of the FICA taxes for these wages (this is a direct reduction of the tax, it is not taken as a credit). The tax credits are meant to alleviate the financial burden of having to offer these wages.

While the tax credits will assist the location with the cost of the leave, the employer may have to hire someone to perform the duties of the employee on leave, adding an additional burden the tax credits do not cover. In addition, the employee may elect to “top off” the leave if the leave only allows for 2/3 of their pay. Causing the employer to pay out accrued leave over a short time frame, ultimately affecting their cash position.

As a result of the additional burdens an employer may experience, the Department of Labor has provided an exemption from offering these emergency and expanded paid leave options. If the employer has less than 50 employees and determined that offering these leave options will jeopardize the viability of the organization as a going concern, they may claim the exemption. An authorized officer of the organization must determine the following:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business’s expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

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In the UltiPro System all locations will have access to the earnings codes created to record and process these leave options. Care should be taken to only record hours against these earnings codes when the employee has completed and submitted all of the appropriate paper work and the leave situation has been reviewed by the location's Employee Relations Manager. As the use of the earnings codes automatically creates credits against the taxes paid to the Department of Treasury and the 941s that will be filed, all should ensure that these codes are not used in error. If an error in use is identified, please contact Tina Copper, Christina.Copper@archbalt.org to address the issue.

If a parish and *only a parish* with under 50 employees determines (this does not apply to a parish with a school or a separately incorporated school that has under 50 employees) that its ability to continue operating is in jeopardy, according to the criteria listed above, because of the need to offer these leave options, the earnings codes will be turned off in UltiPro. The Parish is not obligated to send any documentation to the US Department of Labor, however, the entity is expected to document why offering paid sick leave or supplemental family and medical leave under these conditions would jeopardize the ability of the parish to continue operating. The Archdiocese may then choose to have this documentation reviewed by legal counsel. All documentation should be retained for four years.

Please contact your Regional Controller, your Employee Relations Manager, as well as the UltiPro team to determine applicability of the small business exemption.