Families First Act

The passage of the Families First Coronavirus Response Act (Families First Act) on March 18 will have a significant impact on both individuals and businesses. In addition to containing four new tax credits for businesses and self-employed individuals, the Families First Act includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act, which are aimed at helping employees who have lost wages due to business closures.

Families First Act Paid Leave Requirements

The Families First Act generally requires employers to provide an employee with paid sick time to the extent that the employee is unable to work or telework due to a need for leave in any of the following situations: 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 caring for an individual who is either subject to a quarantine order or is self-quarantining (as described in the previous two items); the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis; the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 precautions; or the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Full-time employees are entitled to 80 hours of paid sick time. Part-time employees are entitled to paid sick time equal to the average number of hours that the employee works over a two-week period. Paid sick time under this provision does not carry over from one year to the next. Additionally, a notice of the requirements under this law must be posted in a conspicuous place on the employer's premises.

The Families First Act requires that certain employers provide public health emergency leave to employees under the Family and Medical Leave Act of 1993. This requirement generally applies when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency. A public health emergency is defined as an emergency with respect to COVID-19 declared by a federal, state, or local authority. The first 10 days of public health emergency leave required under the law may consist of unpaid leave, after which paid leave is required. The paid leave is for the duration of the period provided in the Families First Act, which is a maximum of 10 weeks. The amount of required paid leave under the provision is based on an amount not less than two-thirds of an employee's regular rate of pay, and the number of hours the employee would otherwise be normally scheduled to work. Additional guidance is provided for employees with varying schedules. The paid leave mandated by the Families First Act may not exceed $200 per day and $10,000 in the aggregate.

Families First Act Employer Tax Credits

Paid Sick Leave Credit: For an employee who is unable to work because of Coronavirus quarantine or self-quarantine or has Coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee's regular rate of pay, up to $511 per day and $5,110 in the aggregate, for a total of 10 days. For an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to $200 per day and $2,000 in the aggregate, for up to 10 days. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period. A similar credit is available for self-employed individuals.

Child Care Leave Credit: In addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or child-care facility is closed or whose child care provider is unavailable due to the Coronavirus, eligible employers may receive a refundable child care leave credit. This credit is equal to two-thirds of the employee's regular pay, capped at $200 per day or $10,000 in the aggregate. Up to 10 weeks of qualifying leave can be counted towards the child-care leave credit. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period. A similar credit is available for self-employed individuals.

Eligible employers who pay qualifying sick or child-care leave can 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.

Eligible employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick leave and emergency paid family and medical leave under the Families First Act. Eligible employers can claim these credits based on qualifying leave they provide between the effective date (which is defined as not later than 15 days after the date the Act was signed on March 18) and December 31, 2020.

Additional Economic Relief Legislation: The CARES Act

The CARES Act is a $2 trillion economic relief package that was signed into law on March 27, 2020. A brief summary of its numerous tax provisions follows.

For individual taxpayers, the CARES Act -

Provides 2020 recovery rebates of up to $1,200 for singles and $2,400 for joint filers which begin phasing out at adjusted gross income of $75,000 and $150,000 respectively. Taxpayers with children will receive an additional $500 per child. Rebates will be issued based on 2019 income tax returns, or 2018 returns for individuals who haven't yet filed in 2019.

Waives the 10% early withdrawal penalty for coronavirus-related distributions from retirement plans and provides the option of recontributing the funds for up to three years after such distributions are made.

Temporarily waives the required minimum distribution rules for 2020 for defined contribution plans, including an eligible deferred compensation plan, and individual retirement plans.

Allows an above the line deduction of up to $300 for charitable contributions and relaxes the limitations on deductible charitable contributions for taxpayers who itemize.

Modifies the limitations on individual and corporate charitable contributions made during 2020 and increases the limit on contributions of food inventory.

Excludes from income certain student loan debt repaid by an individual's employer for repayments made after date of enactment and before 2021.

For business taxpayers, the CARES Act -

Provides an employee retention credit against applicable employment taxes of 50% of wages for employers subject to closure due to COVID-19.

Extends the time for paying employer payroll taxes.

Temporarily repeals the taxable income limitation for net operating losses and allows a five-year carryback for losses incurred after 2017 and before 2021.

Eliminates the limitation on excess farm losses for years after 2017 and before 2026.

Modifies the credit for prior year minimum tax liability of corporations by reducing the limitation on the amount of the credit that is refundable.

Modifies the limitation on deductions for business interest by increasing the amount of taxable income which limits the deduction from 30% to 50%.

Fixes the technical glitch in the Tax Cuts and Jobs Act which prevented qualified improvement property from qualifying as 15-year depreciation property and bonus depreciation property.