GENERAL BUILDING CONTRACTORS ASSOCIATION

Leave Provisions of the Families First Coronavirus Response Act ("FFCRA")

Q1: I employ over 500 employees, does that mean none of the provisions of the FFCRA apply?

Both the Emergency Paid Sick Leave Act and Emergency Family Medical Leave Expansion Act ("FMLEA") only apply to private employers with less than 500 employees. Most public employers are covered by the Paid Sick Leave Act and the FMLEA regardless of size.

Q2: How do you determine if you have 500 employees for purposes of FFCRA coverage?

To determine the number of employees employed for the FFCRA, the employer must count all full-time and part-time employees employed within the United States at the time the employee requesting leave would take leave. Every part-time employee is counted as if he or she were a full-time employee.

The number of employees includes:

1. All employees currently employed, regardless of how long those employees have worked for the employer;
2. Any employees on leave of any kind;
3. Employees of temporary placement agencies who are jointly employed by the employer and another employer (regardless of which employer's payroll the employee appears on) as that term is defined under the Fair Labor Standards Act ("FLSA"); and
4. Day laborers supplied by a temporary placement agency (regardless of whether the employer is the temporary placement agency or the client firm).

Employers do not include workers who are independent contractors under the FLSA or workers who have been laid off or furloughed and have not subsequently been reemployed. To determine the number of employees employed, all common employees of joint employers or all employees of integrated employers must be counted together.

Separate entities are counted as one employer under the FFCRA if two or more entities are found to be "joint employers" under the FLSA or if two or more entities are an "integrated employer" under the FMLA. If the entities meet either of those standards, all of the employees of each entity will be counted in determining employer coverage for purposes of the FFCRA.

When assessing whether a "joint employer" relationship exists under the FLSA, the following non-exhaustive list of relevant factors are considered: (1) the alleged employer's authority to hire and fire the relevant employees; (2) the alleged employer's authority to promulgate work rules and assignments and to set the employees' conditions of employment including compensation, benefits, work schedules, and the rate and method of payment; (3) the alleged employer's involvement in day-to-day employee supervision, including employee discipline; and (4) the alleged employer's actual control of employee records, such as payroll, insurance, or taxes.

To determine whether an employer is an "integrated employer" under the FMLA, the following considerations should be taken into account: (1) common management; (2) interrelation between operations; (3) centralized control of labor relations; and (4) degree of common ownership/financial control Emphasis should be placed on the need to examine economic realities as opposed to corporate formalities.

To determine whether one entity can include other entities' employees when counting for FFCRA purposes, a careful factual examination of each element of both the "joint employer" and "integrated employer" tests must be conducted

Considering the intent of the FFCRA, until more formal guidance is provided by the Department of Labor ("DOL"), if an entity does not normally employ 500 or more employees on its own, it should be cautious when considering refusing to provide leave under the FFCRA based on the joint employer or integrated employer tests.

Q3: What is the small business exemption?

According to DOL guidance, an employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing paid sick leave and expanded family and medical leave due to school or place of care closures or childcare provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

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 would 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 is an insufficient number of 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.

Employers that intend to apply for the exemption should document why their businesses meet the criteria but should not send that documentation to the DOL.

Q4: How do I know if I have less than 50 employees for the small business exemption?

The DOL's guidance does not include an explanation of how to calculate the 50-employee threshold the way it does the 500-employee threshold.
Without additional guidance from the DOL, it seems likely that the method to calculate the 50-employee threshold will be the same as it is under the FMLA.

Q5: Does the small business exemption apply to the paid sick leave provisions of the act?

Yes. Regulations from the DOL provide that the small business exemption applies to leave *due to school closings or childcare unavailability* under both the FMLEA and the Emergency Paid Sick Leave Act if the leave requirements would jeopardize the viability of the business as a going concern.

The five other bases for paid leave under the Emergency Paid Sick Leave Act are not subject to the small business exemption.

Q6: How long must an employee be working for eligibility for leave under the FFCRA?

There is no minimum amount of time an employee must be employed to be eligible for paid sick leave under the Emergency Paid Sick Leave Act. However, under the FMLEA for childcare leave (which is leave at two-thirds pay up to certain caps), the employee has to be employed for at least 30 days to meet the definition of a covered employee. Pursuant to DOL guidance, an employee is considered to have been employed by an employer for at least 30 calendar days if the employer had him or her on its payroll for the 30 calendar days immediately prior to the day leave would begin. For example, if an employee wants to take leave on April 1, 2020, he or she would need to have been on the employer's payroll as of March 2, 2020.

If the employee had been working for a company as a temporary employee, and the company subsequently hires the employee on a full-time basis, the employee may count any days previously worked as a temporary employee toward this 30-day eligibility period.

Q7: What if my employee requests intermittent leave to take care of their minor son or daughter?

Eligible employees may take leave intermittently if both employer and employee agree and if the leave requested is to take care of the employee's minor son or daughter whose school or place of care is closed or unavailable due to COVID-19. An employee may not take paid sick leave intermittently for any other reasons.

Q8: Does an employer have to provide notice of the availability of leave under the FFCRA?

Employers are required to post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice of the requirements under the FFCRA. The Secretary of Labor has provided a model notice (WHD 1422 REV 03/20) which can be found on their website and is available through our office.

If your office or place of business is closed, an employer may email or mail the notice to their employees or post the notice to a website accessible by employees.

Q9: Are employees restored to their original positions after the leave period?

The FMLA "restoration to position" provisions are still in effect; however, they will not apply to employers with fewer than 25 employees if the following conditions are met:

1. The employee takes leave under the FMLEA because of a qualifying need related to a public health emergency;

2. The position held by the employee when the leave commenced no longer exists due to economic conditions or other changes in operating conditions of the employer:
    i. That affect employment; and
    ii. Are caused by a public health emergency during the period of leave;

3. The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with the same benefits, pay, and other terms and conditions of employment; and

4. If the reasonable efforts fail, the employer makes reasonable efforts for a one-year period to contact the employee if an equivalent position becomes available. The one-year period begins on when the leave concludes or twelve weeks after the leave began, whichever is earlier.

Employees are entitled to restoration to position when taking paid sick leave in the same manner as provided under the FMLEA. Employees are not immune from employment actions, including layoffs, that would have affected the employee regardless of whether he or she took leave.

Q10: Do I have to continue to provide the same benefits to employees on leave?

Yes. Employers must continue to maintain group health care coverage for family medical leave payments under the FFCRA due to the fact that the Emergency Family and Medical Leave Expansion Act amends the FMLA, which requires maintenance of such coverage. Most multiemployer plans satisfy the employer's obligation to continue health coverage during FMLA leave by providing that coverage but not requiring the "last" employer to continue contributions during the FMLA leave period. We are confirming whether the multiemployer plans sponsored by GBCA have assumed this obligation. The Department of Labor has provided guidance that health benefits are also required to be maintained during the Emergency Paid Sick Leave portion of the leave. An employer must maintain an employee's coverage under any group health plan on the same conditions and benefits as if the employee had been continuously employed during the entire leave period. However, an employee must continue to pay their health care premiums (if any) to retain coverage under the group health plan. An employee may choose not to retain group health plan coverage while on leave under the FFCRA in which case the employee is entitled to be reinstated after the leave period is over on the same terms as those prior to taking the leave without any additional qualifying period, physical examination, exclusion of pre-existing conditions, or any other requirements.

Except as required by COBRA, an employer is not required to maintain health benefits while an employee takes Paid Sick Leave if the employment relationship would have terminated, for example, if the employee fails to return from leave, or if the employer closes its business.

It is unclear whether other fringe benefits contributions (i.e., pension, annuity, etc.) must be made in connection with Emergency Paid Sick Leave or Emergency Family and Medical Leave. An employee's use of paid leave under the FFCRA does not diminish his or her rights or benefits under any collective bargaining agreement. Employers should review the fringe benefit contribution language in applicable collective bargaining agreements, and specifically whether fringe benefits must be paid on hours paid or hours worked.

Q11: When must the employer begin paying benefits under the FFCRA?

The FFCRA does not specify when payment under the Act is due, but under the FLSA, pay must be provided on the next pay period.

Q12: What documentation must employees provide prior to being paid under the FFCRA and are there any forms that we can use?

The DOL and/or IRS have not yet provided forms for this purpose.

The IRS states that an employer will substantiate eligibility for the sick leave or family leave credits if the employer obtains a written request for such leave from the employee in which the employee provides:

1. The employee's name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.

In addition to the information set forth above, the employer should create and maintain records that include the following information:

1. Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees eligible for the credit, including records of work, telework, and qualified sick leave and/or qualified family leave.
2. Documentation to show how the employer determined the amount of qualified health plan expenses the employer allocated to wages when taking the tax credits on those expenses.
3. Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
4. Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third-party payers to meet

their employment tax obligations, records of information provided to the third-party payer regarding the employer's entitlement to the credit claimed on Form 941).

An eligible employer should keep all records of employment taxes for at least 4 years after the date the tax becomes due or is paid, whichever comes later. These documents should be available for IRS review.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the healthcare professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

In the case of a leave request based on a school closing or childcare provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other suitable person is available to provide care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care for that child.

Department of Labor temporary regulations for the FFCRA, which were published on April 1, 2020, state that sons or daughters over 18 are covered by the school closure/childcare unavailability portion of the Act if the child has a physical or mental disability that renders them unable to care for themselves. For those individuals, the statement that special circumstances exist requiring the employee to care for them must be provided.

Q13: Can employers lay off their employees if the Governor has shut down their business to avoid triggering Emergency Paid Sick Leave and/or Emergency Family Medical Leave?

All employees that were employed on April 1, 2020, who otherwise meet the eligibility requirements are entitled to paid leave under the FFCRA. According to DOL guidance, if a worksite is closed or an employee is otherwise laid off due to lack of work either before or after April 1, 2020, the employee would not be entitled to Emergency Paid Sick Leave or Emergency Family Medical Leave. If the employee is already on Emergency Paid Sick Leave or Emergency Family Medical Leave when the workplace shutdown occurs, the employer must pay for any such leave used before the employer closed, but the employee is not entitled to additional paid leave during the shutdown.

An employee "subject to a quarantine or isolation order" includes any quarantine, isolation, containment, shelter-in-place, or stay-at-home order issued by any federal, state, or local government authority that causes the employee to be unable to work even if the employee is otherwise able to work.

As stated above, the FFCRA does not specifically prohibit layoffs. However, the Act does include prohibitions for discrimination, interference, and retaliation against employees who: (1) take leave in accordance with the Act; and (2) file any complaint or institute or cause to be instituted any proceeding

under or related to the Act (including a proceeding that seeks enforcement of the Act), or has testified or is about to testify in any such proceeding.

While the FFCRA does not specifically state (nor do the preliminary regulations address) that employers will be in violation of the law for laying off otherwise eligible employees to avoid paid leave, in similar situations (like where eligible employees are terminated so the employer can avoid allowing FMLA leave), courts have generally found that these anticipatory terminations to avoid allowing eligible employees to enforce their rights are unlawful.

Failure to provide Emergency Paid Sick Leave to eligible employees is considered a failure to pay the minimum wage as required by the FLSA, and the enforcement provisions of the FLSA will be applicable. Similarly, interfering with an eligible employee's right to Emergency Family Medical Leave is a violation of the FMLA, and the enforcement provisions of the FMLA will apply. Further, the FMLEA provides for a private right of action for employees to enforce the provision.

However, if the layoff arises because no work is available due to the shut-down order, the layoffs would not be in anticipation or response to employees taking leave and are not barred by the FFCRA.

Q14: How much is Emergency Paid Sick Leave under the FFCRA?

Full-time employees receive two weeks (up to 80 hours) of emergency leave where the employee is unable to work. Employees who regularly work less than 40 hours per week are entitled to an amount of paid sick leave equal to the number of hours they are regularly scheduled to work over a two- week period.

If a part-time employee's schedule varies from week-to-week to such an extent that an employer is unable to determine with certainty the number of hours the employee on leave would have worked, the employer must use the employee's average daily hours calculated by using a six-month period ending on the date the employee takes paid sick time (including hours for which the employee took leave of any type). If the employee did not work over such a period, the number must be the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

If an employee takes paid sick leave because he or she is unable to work or telework due to a need for leave because he or she: (1) is subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; or (3) is experiencing symptoms of COVID-19 and is seeking a medical diagnosis, the employee is entitled to receive for each applicable hour the greater of:

1. His or her regular rate of pay;
2. The federal minimum wage in effect under the FLSA; or
3. The applicable state or local minimum wage.

In these circumstances, the employee is entitled to a maximum of $511 per day, or $5,110 total over the entire paid sick leave period.

The employee is entitled to 2/3 pay for the paid sick leave for the following reasons:

1. Care for an individual subject to quarantine (pursuant to federal, state, or local government order or advice of a health care provider);
2. Care for a child (under 18 years of age) whose school or childcare provider is closed or unavailable for reasons related to COVID-19; or
3. The employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

In these circumstances, the employee is entitled to a maximum of $200 per day or $2,000 total over the entire sick leave period.

Q15: What if the employee refuses to come to work due to fear of exposure to COVID-19?

An employee may only request leave for a qualifying reason. If a workplace is open pursuant to an order by the governor or by waiver, the employee must report to work unless a qualifying reason prevents him or her from being able to work. If the employee cites a reason that is not a qualifying reason, such as cautionary isolation to avoid exposure, the employee is not entitled to benefits under the FFCRA. They may be entitled to any accrued leave that would otherwise be applicable.

Q16: An employee asked for leave because he was experiencing symptoms and wanted to get diagnosed. He then tested negative for COVID-19. Do I still have to pay him for the time he was on leave?

Yes. Under the FFCRA, an employee is entitled to Emergency Paid Sick Leave as long as he or she was experiencing symptoms of COVID–19 and was seeking a medical diagnosis. The result of the diagnosis is not controlling.

Q17: Can I lay off and replace an employee while he or she is on leave?

No. An employer cannot lay off an employee while he or she is on FFCRA leave and replace him or her with another employee. However, an employer can request a temporary employee (such as from a hiring hall) to fill the employee's role for the time he or she is on FFCRA covered leave.

The extent of the employer's obligation to return an employee to work after leave depends on the number of employees it has. Employers with 25 or more employees have an obligation to restore an employee to the same or equivalent position at the end of the leave.

Employers with less than 25 employees, on the other hand, are excluded from that requirement if the employee's position no longer exists following the emergency leave due to economic conditions or other changes in operating conditions of the employer that affect employment and are caused by a

public health emergency during the period of leave. The employer is required to make reasonable efforts to return the employee to an equivalent position and must continue those efforts for a year after the employee's leave.

Q18: Do the provisions of the FFCRA apply to employees under a collective bargaining agreement?

Yes, depending on the language of the collective bargaining agreement at issue. The FFCRA does not exempt collectively bargained employees from coverage. However, the Act specifically states that its provisions may not operate to diminish benefits contained in collective bargaining agreements, which is consistent with how collective bargaining agreements function in conjunction with other employment laws.

Collective bargaining agreements can provide greater benefits and protections than those available under the FFCRA but cannot provide less, so if there are greater benefits for sick or childcare leave in the collective bargaining agreement than in the FFCRA, the collective bargaining agreement would trump the FFCRA's protections.

The FFCRA also contains specific provisions for multiemployer bargaining agreements. The Act permits employers signatory to multiemployer bargaining agreements, consistent with their bargaining obligations and their collective bargaining agreement, to fulfill their obligations under the Act by making contributions to a multiemployer fund, plan, or program based on the hours of paid sick time each of their employees is entitled to under the Act while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure paid sick leave and paid family leave on at least the same terms as the FFCRA provides from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement and for the uses specified.

An employer may satisfy its obligations under the Act by means other than contributions to a multiemployer fund, plan, or program, provided such means are consistent with existing bargaining obligations and any applicable collective bargaining agreements. The regulations are not clear as to what these alternative measures may be.

Q19: If an in-office employee tests positive for COVID-19, should the employer notify the employees with whom the positive tested employee worked that they were exposed to the virus? Are the exposed employees entitled to medical leave under the FFCRA?

Due to the nature of the virus, guidance from the CDC and other federal, state and local agencies continue to evolve. Employers should take steps to stay aware of the most recent guidance.

According to the CDC and OSHA, prompt identification and isolation of potentially infectious individuals is a critical step in protecting workers, customers, visitors, and others at a worksite. Employers should inform and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure. Employers should develop policies and procedures for employees to report when they are sick or experiencing symptoms of COVID-19. Where appropriate, employers should develop policies and procedures for immediately isolating people who have signs and/or symptoms of COVID-19, and train workers to implement them.

If an employee tests positive, the employer should notify the employees who worked in close proximity to the employee (for the definition of "close proximity," employers should consult up-to-date guidance from the CDC as this is a rapidly-changing situation) that they may have been exposed. The employer should not identify the infected employee, particularly by name, to anyone to avoid violating confidentiality requirements. The exposed employees should then self-monitor for symptoms.

According to the CDC, if the employer is located in an office building with other tenants, building management should be informed that an (unidentified) employee was diagnosed with COVID-19 so that precautions can be taken and the area can be decontaminated.

The CDC provides guidance on its website on how to disinfect a workplace in which an employee tests positive for COVID-19: https://www.cdc.gov/coronavirus/2019-ncov/prepare/disinfecting-building-facility.html

Employees who test positive or are showing symptoms should be sent home for quarantine purposes. They should be permitted to telework if possible.

If exposed employees without symptoms are sent home by the employer for quarantine purposes, they should be permitted to telework, if possible. If employees are sent home by the employer and cannot telework or cannot telework and are: (1) subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) have been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; or (3) are experiencing symptoms of COVID-19 and are seeking a medical diagnosis, they should be entitled to their regular rate of pay for up to 80 hours under the Emergency Paid Sick Leave Act.

Q20: What if an employee is advised by his or her physician not to work because of his or her underlying health conditions which places him or her at a greater risk of contracting COVID-19?

Because one of the qualifying reasons for Emergency Paid Sick Leave entitlement is "the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19," Emergency Paid Sick Leave entitlement is triggered

Q21: If an employee is granted leave to take care of his or her minor child due to school being closed, how does the employer verify whether there is another parent who is taking care of the child? Will employers of both parents get the tax credit for providing leave to take care of a minor child?

An employer should require an employee to provide sufficient documentation to confirm the reason for leave and all the information necessary to substantiate eligibility for tax credits. Please see Question 12 for more information on the required documentation.

The required documentation by the employee includes a representation that no other suitable person will be caring for the son or daughter during the leave. While there is no guidance yet on this point, if each employer obtains the information identified by the IRS to confirm the reason for requested leave, it is more likely than not that each employer would receive the tax credit.

In the event a fraud of any sort is discovered later, it may be appropriate to take remedial action against the employee, depending on the circumstances.

Q22: Is the tax credit for Emergency Paid Sick Leave and Emergency Family Medical Leave applicable to fringe benefits in addition to wages?

The tax credits can be taken for wages and qualified health plan expenses allocable to, and the eligible employer's share of Medicare tax on, the qualified leave wages. The tax credits are not available for any other fringe benefits available to an employee under any employment agreement or collective bargaining agreement.

The eligible employer may claim a fully refundable tax credit equal to 100 percent of the qualified leave wages (and allocable qualified health plan expenses and the eligible employer's share of Medicare tax on the qualified sick leave wages) it pays.

Q23: Do the pay limits for Emergency Paid Sick Leave and Emergency Family Medical Leave include employee wages only or do they include wages and fringe benefit payments?

The limits include employee wages only. The FFCRA sick leave and family medical leave payment limits apply only to the employee's regular rate of pay as calculated under the FLSA, which does not include fringe benefit payments.

Q24: What is the current IRS guidance regarding tax credits under the FFCRA?

The IRS provided guidance and information regarding the tax credits provided to employers under the FFCRA.

Pursuant to that guidance, eligible employers are entitled to receive a credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and the employer's share of Medicare tax, paid for leave during the period beginning April 1, 2020, and ending December 31, 2020. The credit is allowed against the taxes imposed on employers by section 3111(a) of the Internal Revenue Code (the "Code") (the Old-Age, Survivors, and Disability Insurance tax (Social Security tax)) and section 3221(a) of the Code (the Railroad Retirement Tax Act Tier 1 rate) on all wages and compensation paid to all employees. If the amount of the credit exceeds the employer portion of these federal employment taxes, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) or 6413(a) of the Code. The qualified sick leave wages and qualified family leave wages are not subject to the taxes imposed on employers by sections 3111(a) and 3221(a) of the Code and employers (other than those that are subject to the Railroad Retirement Tax Act) are entitled to an additional credit for the taxes on employers imposed by section 3111(b) of the Code (Hospital Insurance (Medicare tax)) on such wages.

Eligible employers that pay qualified leave wages will be able to retain an amount of all federal employment taxes equal to the amount of the qualified leave wages paid, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages,

rather than depositing them with the IRS. The federal employment taxes that are available for retention by eligible employers include federal income taxes withheld from employees, the employees' share of social security and Medicare taxes, and the employer's share of Social Security and Medicare taxes with respect to all employees.

If the federal employment taxes yet to be deposited are not sufficient to cover the eligible employer's cost of qualified leave wages, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, the employer will be able to file a request for an advance payment from the IRS. The IRS expects to begin processing these requests in April 2020.

Eligible employers claiming the credits for qualified leave wages, plus allocable qualified health plan expenses and the eligible employer's share of Medicare taxes must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, as well retaining the Forms 941, Employer's Quarterly Federal Tax Return, and 7200, Advance of Employer Credits Due To COVID-19, and any other applicable filings made to the IRS requesting the credit.

General information and more specific Frequently Asked Question responses can be found here: https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs