

HENDERSON BROTHERS UPDATE

FFCRA Tax Credit for Qualified Health Plan Expenses

Date: April 22, 2020

The Families First Coronavirus Response Act (“FFCRA”) requires most employers with less than 500 employees to provide Paid Sick and Paid Family leave benefits for employees on leave due to COVID-19 issues. To help employers pay for these benefits, the legislation includes refundable tax credits to cover the wages and healthcare expenses incurred during mandated COVID-19 paid leave time. HBI has provided this overview to help employers determine what health plan expenses are considered “qualified health plan expenses” for tax credit purposes.

DOL Guidance

The Department of Labor (DOL) has provided some direction in its guidance on how the FFCRA defines “group health plan”, and “costs associated with” for purposes of the tax credit. It makes perfect sense that the FFCRA relies upon the definition of group health plan in the Family and Medical Leave Act (FMLA) regulations (see 29 CFR 825.102) which is: *“any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer’s employees, former employees, or the families of such employees or former employees”*.

Qualified Health Plan Expenses

Relying upon the definition above, existing FMLA guidance, and the new [IRS COVID-19 Related Tax Credit FAQs](#), we anticipate that Qualified Health Plan Expenses will include employer and employee pre-tax contributions for:

- Medical
- Prescription drug
- Most group dental & vision coverage

Employer stand alone EAPs and onsite medical clinics should be evaluated as well.

Excluded Expenses

For purposes of FMLA the term group health plan shall not include any insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

- (1) No contributions are made by the employer;
- (2) Participation in the program is completely voluntary for employees;
- (3) The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

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(4) The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Determining Health Plan Expense Value – [IRS FAQs #31, #32](#)

As mentioned previously, the IRS FAQs address the amount of expenses employers may report for the tax credit which generally includes the portion of the cost paid by the employer, as well as the portion paid by the employee with pre-tax contributions. Plan sponsors that offer more than one plan will need to determine the qualified expenses separately for each plan and allocate those expenses among the employees who participate in that plan.

Self-insured Group Health Plans – [IRS FAQ #34](#)

Self-insured group health plans are permitted to use any reasonable method of determining and allocating expenses, including:

- (1) the COBRA applicable premium for the employee, or
- (2) any reasonable actuarial method to determine the estimated annual expenses of the plan.

For employers using an actuarial method, Q/A-34 provides allocation instructions similar to those for insured plans.

The information provided in this overview is not meant to be exhaustive or construed as legal or tax advice. Consult with legal counsel or a tax consultant before use.