

Late yesterday (April 1,) the Internal Revenue Service took a hard line on an employee's need for emergency paid sick leave (EPSL) and emergency paid FMLA (FMLA+), taking the position that only one caretaker can take leave for a child whose school or childcare is closed. In addition, if the child is over 14 years old, the parent must explain the special circumstances requiring the employee to provide care.

Here is a summary of the IRS FAQ#44:

Employee Request for Paid Leave

The process for requesting EPSL or FMLA+ starts – as a leave request always does – with the employee. In its guidance, the IRS made clear that the employee must first submit a **written request for leave** that includes:

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.

If a Case of Quarantine, What Must the Employee Statement Provide?

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include:

1. The name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and,
2. If the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

If a Case a Child's School or Child Care is Closed, What Must the Statement Provide?

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include:

1. The name and age of the child (or children) to be cared for,
2. The name of the school that has closed or place of care that is unavailable, and
3. A representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and,
4. 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.

As highlighted in Nos. 3 and 4 directly above, the IRS takes the position that, if the employee wants to take EPSL and FMLA+, ***the employee alone*** must be providing care to the child, making clear that leave would otherwise be unavailable if both parents or another individual is present to care for the child. Also, in the case of a 15- to 17-year old child, the employee must identify "special circumstances" requiring the employee to provide care. If the employee cannot do so, they cannot take EPSL or FMLA+.

What Additional Records Must an Employer Retain to Substantiate EPSL or FMLA+ and to Obtain the Tax Credit?

To establish that an employee legitimately took EPSL or FMLA+ and the right to a tax credit, employers must 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 that are eligible for

the credit, including records of work, telework and qualified sick leave and qualified family leave.

2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. See FAQ 31 (“[Determining the Amount of Allocable Qualified Health Plan Expenses](#)”) for methods to compute this allocation.
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).

How Long Should an Employer Maintain these Records?

The IRS confirms in its FAQs that an Employer should keep all records of employment taxes for at least **four** years after the date the tax becomes due or is paid, whichever comes later. These should be available for IRS review.

Renay Winston|President
[People Management Solutions, LLC](#)
Phone: 678-520-5711
Renay.winston@people-1.net
www.people-1.net