



The Importance of Documenting Employee Paid Leave Applications

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The outbreak of the novel coronavirus (or COVID-19) has resulted in sudden, sweeping changes to the way our society operates. One such change is illustrated by the Families First Coronavirus Response Act, which went into effect on April 1, 2020. The Act establishes an unprecedented obligation for small and midsize employers to provide eligible employees impacted by COVID-19 with a certain amount of paid leave benefits through December 31, 2020 (when the law expires). Covered employers who pay eligible employees as required under the Act may be reimbursed dollar-for-dollar via tax credits or will be able to retain an amount of owing federal employment taxes up to the cost of the leave wages paid (rather than depositing them with the IRS).

In order for a dealership to be reimbursed for its costs under the Act (i.e., the full amount of the paid sick leave and/or qualified family leave wages, the allocable qualified health plan expenses, and the employer's share of Medicare tax) dealerships must appropriately document the qualifying reason for the leave. The IRS has published instructions and Forms for employers to use for reimbursement purposes: Form 941 (The Employer's Quarterly Federal Tax Return) and Form 7200 (the Advance of Employer Credits Due to COVID-19). These forms and the instructions on completing them are available on the official IRS website. Documentation will also be required by the Department of Labor if you deny a request for paid leave under the Act and the employee later challenges that decision with the Department of Labor or in litigation.

What kind of documentation should dealerships retain?

The IRS will require the employer to substantiate a claim for reimbursement with proof of the employee's written request for the paid leave benefit. That written request should include the following:

- The employee's name;
- The date(s) for which leave is requested;
- A statement of the COVID-19 related reason the employee is requesting leave and, if it exists, written support for such reason (e.g., a quarantine or self-isolation order from a governmental authority or healthcare provider, or documentation regarding a school closure); and
- A statement that the employee is unable to work or telework as a result of the reason the employee is seeking leave.

Additionally, dealerships should maintain completed versions of the IRS forms referenced above and records that illustrate:

- How they determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including work records, telework and qualified sick leave and qualified family leave; and
- Documentation showing how the employer determined the amount of qualified health plan expenses that the employer allocated wages.

Under IRS regulations, it is important to keep all records noted above for at least four years after the date the tax becomes due or is paid, whichever comes later. Such documents should be readily available for IRS review.

As of April 3, 2020, the Department of Labor has not issued a model "request for leave" form for use by employers. Until an official form is issued by the Department of Labor, Fisher Phillips has developed an "Employee Paid Leave Request Form" for use by MADA members. This Form is designed to track the information and documentation that is required under both Department of Labor and IRS regulations. Questions that a dealership may have regarding the Form should be directed to your Fisher Phillips attorney.

The Department of Labor estimates that six million employers are covered under the Families First Coronavirus Response Act and over sixty million employees may be eligible if they otherwise qualify. The estimated total cost for employers to comply with this Act from April 1 to December 31 will be \$553 million. If a dealership doesn't retain

the proper documentation, they risk losing out on thousands of dollars of credits or reimbursements for the 2020 tax year.

In sum, document, document, document!

This article contains general information and is not intended as legal advice. Specific questions regarding anything contained in this article should be directed to your Fisher Phillips attorney or other legal counsel.