

Documentation That Employers Need to Get from Their Employees if They Want to Claim the Tax Credits for Providing E-PSL and E-FMLA Leave

By Susan Stahlfeld

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Private-sector employers with fewer than 500 employees¹ that are required to provide E-PSL and E-FMLA leave to qualifying employees now have a better idea as to what documentation they need to obtain and retain if they want to claim the refundable federal employment tax credit.

On April 1, 2020, the U.S. Department of Labor (USDOL) clarified that employers are allowed to ask only for specified information to support the request for leave, and may not ask employees to provide any other information. Fortunately, USDOL included a provision that allows employers to also ask for any documentation required by the IRS to obtain the tax credit, because the IRS is requiring some unexpected information to substantiate eligibility for the tax credits.

The “documentation” in this case is only written information from the employee, and not documentation from third parties or other sources.

For any of the reasons for which an employee may get E-PSL leave, the employee must provide a written statement that includes (1) the employee’s name; (2) dates for which leave is requested; (3) the COVID-19 qualifying reason for leave; and (4) a statement that the employee is unable to work or telework due to the COVID-19-related reason.

If the employee is seeking E-PSL leave because the employee is the subject of a federal, state, or local government order to quarantine, the employee must provide the name of the government entity that issued the order. Likewise, if the employee is seeking E-PSL leave because a health care provider has advised that the employee self-isolate, the employee must provide the name of the health care provider.

If the employee is seeking E-PSL leave to care for an individual under quarantine or isolation order, then the employee must provide the name of the government agency or health care provider that issued the order or advisement (as applicable). Additionally, the IRS requires that the employee also provide the name of the individual for whom the employee is providing care and that person’s relationship to the employee. Per the USDOL, the individual for whom the employee is providing care must be the employee’s immediate family member, a person who regularly resides in the employee’s home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for that person if they were quarantined or self-quarantined.

If the employee is seeking to use either E-PSL or E-FMLA leave to care for one or more children whose school or daycare is closed, or whose care provider is unavailable, the employee must also, for each child: (a) provide the child’s name and age; (b) provide the name of the school, day care, or child care provider; (c) confirm that no other person will be providing care for the child during the period for which the employee is receiving leave; and (d) if the child is 15 years of age or older, confirm that the employee cannot telework during daylight hours because special circumstances require the employee to provide care to the child.

Disclaimer: This article is not legal advice. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps business must take under applicable laws.

The IRS advises that employers should keep these records, and all other records related to obtaining the tax credit (including, for example, documents showing how the employer determined the amount of qualified leave wages paid, and records of work, telework, and amounts of qualified leave), for four years after the taxes become due or are paid, whichever is later.

Please contact us if you would like assistance in preparing forms to request the necessary information from your employees.

For more information about ongoing developments related to COVID-19, visit [Miller Nash Graham & Dunn's resource library](#).

¹ The tax credit is not available to public-sector employers or employers with 500 or more employees.

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