



Legislative Update & FFCRA Paid Leaves Refresher



Legislative Update

Stimulus???

Families First Coronavirus Response Act (FFCRA)

Paid Leaves Refresher

FFCRA Paid Leaves

Eligible employees of companies with < 500 employees are entitled by law to paid leaves through 12/31/20

Distribute/Post the Model Notice if you haven't already

- Available on our website – dominionpayroll.com
- Available to all FT, PT and temporary employees through 12/31/20
- Some small businesses may be exempt. More on this shortly!

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

► PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at $\frac{2}{3}$ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

► ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

► QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

► ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



WH1422 REV 03/20

FFCRA Paid Leaves

Note:

The law states that you may NOT ask an employee to use existing PTO before they use FFCRA paid leaves.

FFCRA paid leaves are offset by real time tax credits, so employer is NOT paying for those wages.

FFCRA Paid Leaves – available through 12/31/20

Two types of leave:

1. Emergency Paid Sick Leave (EPSL)

- Up to 80 hours, taken concurrently
- No waiting period for new hires or rehired former employees
- 6 qualifying conditions, including childcare
- 100% or 2/3 rate of pay depending on qualifier (max \$511/day and \$200/day)

FFCRA Paid Leaves – available through 12/31/20

Qualifying Reasons and Rates of Pay for Emergency Paid Sick Leave:

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave for the following reasons (NOTE: 100% pay includes average OT calculation):

1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 (100% pay)
2. Has been advised by a health care provider to self-quarantine related to COVID-19 (100% pay)
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis (100% pay)
4. Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2) (2/3 pay)
5. Is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19 (2/3 pay)
6. Is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury. (2/3 pay)

FFCRA Paid Leaves – available through 12/31/20

Second type of leave:

2. Expanded FMLA

- 30 day waiting period -- “You are considered to have been employed by your employer for at least 30 calendar days if your employer had you on its payroll for the 30 calendar days immediately prior to the day your leave would begin.”
- Up to 12 weeks, taken concurrently or intermittently
- One qualifying condition → **Childcare (2/3 rate of pay; max \$200/day)**

FFCRA Paid Leaves – available through 12/31/20

If an employee requests leave:

- Ask them to submit a request form (available on our website)
- Work with them on a plan.
- Put this plan in writing. Give employee a copy. Place your copy in their personnel file. Keep for six years.
- Honor the leave!
- Email customerservice@dominionpayroll.com to request separate earnings codes so we can track that leave and apply real time, dollar for dollar tax credits. **The government will pay those wages.**

Notes:

- Benefits should continue during leave.
- The extra 1/3 can be made up through use of PTO, unemployment benefits, or you can choose to pay that 1/3.
- Apply all decisions about these leaves consistently and fairly.

The revisions follow a ruling from the U.S. District Court for the Southern District of New York that invalidated portions of the DOL's April 1 temporary rule. According to the agency, the revisions, which are now in effect, do the following:

- Reaffirm that employees may take FFCRA leave only when work is actually available to them.
- Reaffirm that employees must have their employer's approval to take intermittent FFCRA leave, but the definition of intermittent is not what you think!
- Revise the definition of "health care provider" to include "only employees who meet the definition of that term under the Family and Medical Leave Act regulations or who are employed to provide diagnostic services, preventative services, treatment services or other services that are integrated with and necessary to the provision of patient care which, if not provided, would adversely impact patient care."
- Clarify that employees must provide employers with documentation as soon as practicable supporting their need for FFCRA leave. They do not HAVE to provide it BEFORE taking leave.



What if an employee exhausts EFMLA leave and still cannot return to work because childcare is unavailable due to Covid-19?

You aren't *obligated* to allow further time off, but you have a few options:

- Allow the employee to use Emergency Paid Sick Leave if they haven't already
- Allow the employee to use any available PTO
- Allow the employee to request an unpaid Personal Leave of absence, following existing policy if applicable.
- Require the employee to return. If the employee cannot return, their option will be to resign, or they can terminate for failure to return from leave.

What if an employee exhausts EFMLA leave and still cannot return to work because childcare is unavailable due to Covid-19?

Consider what you “have” to do versus what the “right” thing is to do. In other words, terminating an employee because they need an extra week or two to return might not be a great morale booster for their remaining employees and/or their community. Plus you’ll have to hire someone else.

Things like this spread quickly in the court of public opinion and could affect your reputation as a company. Keep more than just what the law requires in mind while making this decision and apply your policies consistently!

How do FFCRA paid leaves work with PPP loan funds and forgiveness?

- FFCRA leaves are paid for via dollar-for-dollar, real time tax credits.
- You CAN offer FFCRA leave if you are using PPP loan funds.

You CANNOT claim FFCRA hours toward PPP loan forgiveness.

OPTIONS:

1. Employee takes FFCRA; employer takes tax credits. Hours are tracked separately. Expenses are not factored into PPP forgiveness.
2. Employee takes FFCRA; employer pays salary with PPP funds. Once PPP funds are spent, if employee still needs FFCRA leave, employer takes tax credits.

*Remember: FFCRA leaves are federally-mandated employee rights, which means you have to grant them if the employee qualifies (and you have <500 employees). Read US DOL FAQs for more info.

But I have < 50 EEs, so I don't have to grant EFLMA leave, right?

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing EFMLA **when doing so would jeopardize the viability of the small business as a going concern.**

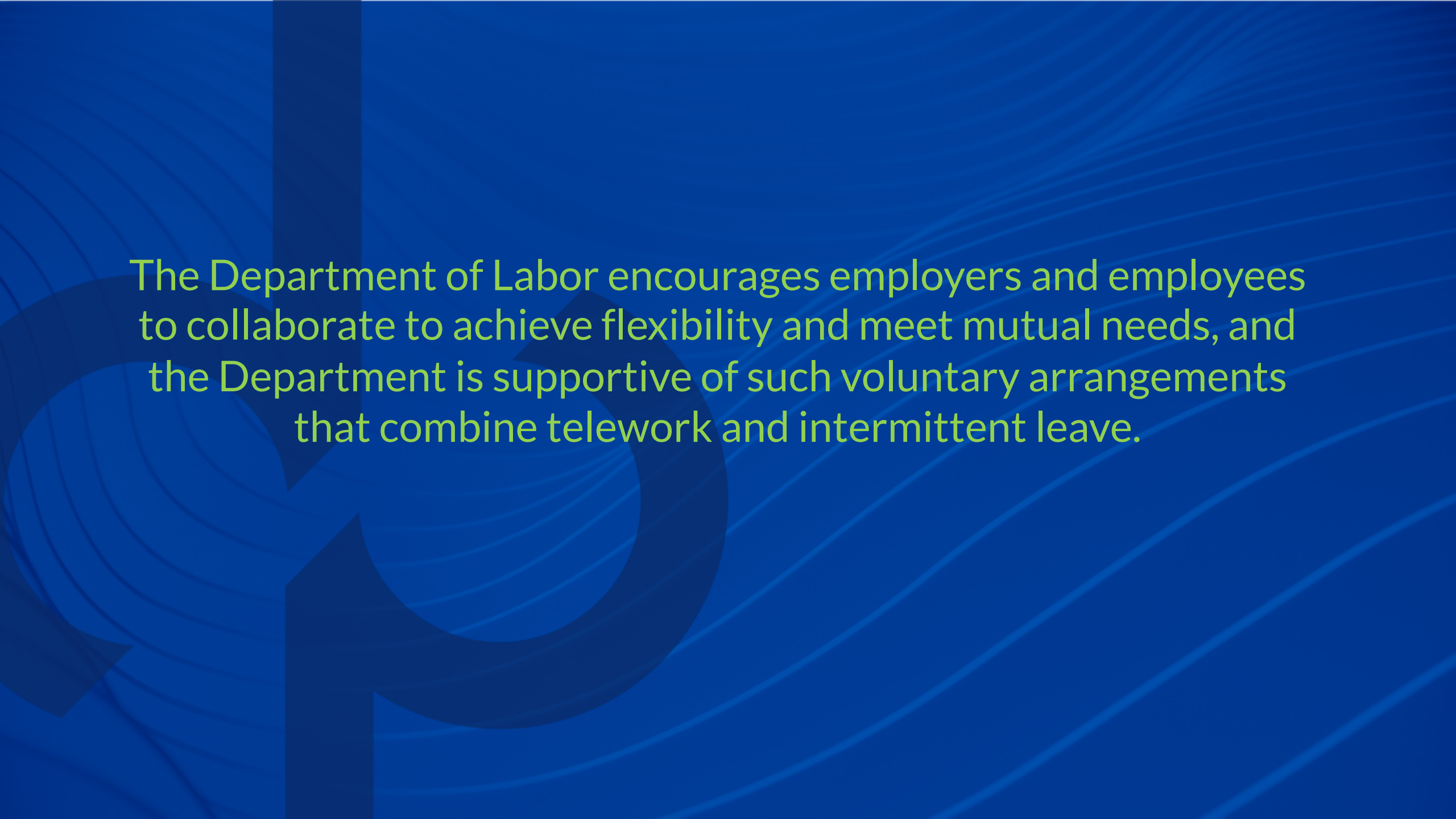
A small business may claim this exemption if an authorized officer of the business has determined that:

1. The provision of EMFLA would result in the business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting EFMLA 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 are not sufficient 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 EFMLA, and these labor or services are needed for the business to operate at a minimal capacity.

Small business exemption documentation

So, in short, the exemption is self-determined and self-defended.

There is no place to submit this documentation. The US DOL recommends you document your rationale and keep it on file for up to 6 years in the event that you must defend your decision not to grant EFMLA leave.

The background is a solid blue color with abstract, light blue wavy lines and concentric circles. A large, dark blue circle is partially visible on the left side, and a vertical dark blue bar is on the far left.

The Department of Labor encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

iSolved Reports for FFCRA Leaves

iSolved Reports for FFCRA Leaves

Client Reports

Report Category: All

Search: FF

Filter

Output Name	Report Type
ACA Plan Renewal - Affordability Projection Tool	As Of Date
ACA Safe Harbor Affordability-FPL	Date Range
ACA Safe Harbor Affordability-Rate of Pay	Date Range
ACA Safe Harbor Affordability-W-2 Wages	As Of Date
FFCR Act Business Credits	Date Range
FFCRA Average Hours and Wage Report	Date Range
Leave Time Off and Accrual History	Date Range
Paid Time Off Report	By Payroll Run

[Generate Report](#) [Go To My Reports Queue](#)

Once your report request has been submitted you can do any of the following: Run another report Reports Queue for 72 hours.

FFCRA Average Hours and Wage Report

Average Hours and Wage report for FFCRA – Only includes full pay periods for new employees. This report will only include a new employee's first check if their hire date is the first day of the pay period.

Filtering

From Date:

To Date:

Date Type: Pay Date

This report is available to run at the client level. If the Legal Company is left blank the report will be run for ALL Companies.

Legal Company:

Pay Groups:

Employee Status:

Employment Categories: ☒ Employment Categories

Organization Level: ☐ Office ☐ Department

Employee:

Sorting

Sort Field 1:

Sort Field 2:

Sort Field 3:

Options

Format: Excel

iSolved Reports for FFCRA Leaves

Client Reports

Report Category:

Search:

Output Name	Report Type
ACA Plan Renewal - Affordability Projection Tool	As Of Date
ACA Safe Harbor Affordability-FPL	Date Range
ACA Safe Harbor Affordability-Rate of Pay	Date Range
ACA Safe Harbor Affordability-W-2 Wages	As Of Date
FFCR Act Business Credits	Date Range
FFCRA Average Hours and Wage Report	Date Range
Leave Time Off and Accrual History	Date Range
Paid Time Off Report	By Payroll Run

[Generate Report](#) [Go To My Reports Queue](#)

Once your report request has been submitted you can do any of the following: Run another report, go to Reports Queue for 72 hours.

FFCR Act Business Credits

Export FFCRA Act Business Credits detailing tax credit amounts by company by payroll run

Filtering

From Date:

To Date:

This report is available to run at the client level. If the Legal Company is left blank the report will be run for ALL Companies.

Legal Company:

Options

Format:

iSolved Reports for FFCRA Leaves

Search the menu

EMPLOYEE MANAGEMENT

PAYROLL PROCESSING

REPORTING

CLIENT MANAGEMENT

Executive Dashboard

ACA Executive Dashboard

Client Landing Page

Client Summary

Mass Email Utility

Client Maintenance >

Billing >

Payroll >

Taxes <

Tax Maintenance

Business Credits

Add State Taxes

Add Local Taxes

Add Historical Tax Groups

Delete Taxes

Work Locations >

Tables >

Labor & GL >

Business Credits

Credit Type	Amount	Balance
FFCR Act - SickPay	1506.23	0.00

Detail

Transaction History

+ Add New

Edit

Delete

Refresh

Save

Cancel

Credit Details

Other Details

* Credit Type: FFCR Act - SickPay

* Total Credit Amount: 1506.23

Credit Previously Utilized: 0

Remaining Balance: 0

Date Entered: 9/10/2020

Notes:

Qualified Employee Sick Payments: 1484.70

Employer Medicare Credit on Payments: 21.53

Qualified Employer Health Plan Expenses: 0

Request of Advance payment of Employer Credit: 0

* Filing Type: Form 941

* Pay Date: 9/15/2020

We are answering your questions live on the air right now.

Please submit questions through the **Q&A function**,
not the chat option at the bottom of your screen.



Questions?

For legislative and regulatory questions, please email:

questions@dominionpayroll.com

Visit our Covid-19 Resources page at dominionpayroll.com.





Don't forget to wash your hands!

