

MEMO RE FFCRA AND PAYROLL TAXES

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The purpose of this memo is to provide information to Arizona School Risk Retention Trust (“Trust”) members on how the Emergency Family and Medical Leave Expansion Act (EFMLA) and Emergency Paid Sick Leave Act (EPSLA) provisions in the Families First Coronavirus Response Act (FFCRA) may impact payroll taxes.

The Trust appreciates Udall Shumway peer reviewing this document. Please contact the Trust or local counsel if your District requires legal advice.

Issue: Must Districts withhold and pay either or both the employer and/or the employee payroll taxes on eligible payments made by the District to its employees under the Families First Coronavirus Response Act (FFCRA) and specifically under the Emergency Family and Medical Leave Expansion Act (EFMLA) and the Emergency Paid Sick Leave Act (EPSLA) that were passed as part of the FFCRA?

Generally, when an employer pays wages to an employee, the employer is required to pay its share of FICA taxes (both social security 6.2% and Medicare 1.45%) on the wages paid to that employee and also withhold the FICA taxes and income taxes from the employee’s wages.

The FFCRA requires government employers, including the District, to pay its employees for sick leave or family and medical leave under certain circumstances as outlined and as specified under the EPSLA and the EFMLA, respectively. Section 7005(a) of the FFCRA provides that “any wages required to be paid by reason of the [EPSLA] and the [EFMLA] shall not be considered wages for purposes of section 3111(a) of the Internal Revenue Code of 1986....” Section 3111(a) refers to the tax levied on employers for the social security portion (6.2%) of FICA taxes. Section 3111(b) refers to the tax levied on employers for the Medicare portion (1.45%) of FICA taxes.

In other words, if the District is required to make qualified sick leave or family leave payments to an employee pursuant to the EPSLA or the EFMLA, the District is not required to pay the employer’s portion of FICA taxes applicable to social security taxes (the 6.2%) on those wages only. The District is required to pay the employer’s portion of FICA taxes applicable to Medicare taxes (the 1.45%) on the qualified sick leave and family leave wages paid pursuant to the EPSLA and the EFMLA. The District must also withhold the employee’s portion of all FICA taxes (6.2% and 1.45%) and the employee’s normal income tax withholding (federal and state) on the qualified sick leave and family leave wages paid pursuant to the EPSLA and the EFMLA.

The District should continue to make all other deductions that the District would otherwise make from the payments if such payments were normal sick leave or family medical leave payments.

The FFCRA also provides for a payroll tax credit for certain eligible employers. Unfortunately, the District is not eligible to receive the payroll tax credit because it is not an eligible employer under FFCRA.

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