

Paid Sick Days and Paid Family and Medical Leave in the Families First Coronavirus Act (H.R. 6201)

As passed in the House, March 14, 2020

The Families First Coronavirus Act includes provisions to ensure approximately 61 million workers have up to two work-weeks of job-protected, immediately available paid sick days for coronavirus-related health and caregiving reasons, and to up to three months of job-protected, paid family and medical leave in cases where additional time is required.¹ The time can be used for quarantine, diagnosis or care of oneself or a family member, or to care for a child whose school or usual source of care is closed. The bill also includes tax credits to reimburse employers for the cost of wages paid for the emergency paid sick days and paid leave.

This significant and rapid expansion of access to paid sick days and paid leave to many of the worker who will need it most in coming weeks and months is a critical step toward mitigating the spread of the virus. In a public health emergency, every day counts: While this bill has significant limitations, ensuring that tens of millions of workers can stay home without facing an economic shock will help “flatten the curve” and save lives.

SHORT SUMMARY:

- Two weeks (or 10 work days) of **emergency paid sick leave** for employees of employers with 500 employees or fewer
 - Sick leave is paid by the employer at full wage replacement for personal care if one is ill with coronavirus, to quarantine, or to seek a diagnosis or preventive care for coronavirus
 - Leave is paid at 2/3 wage replacement to care for a family member for the same purposes as above, or to care for a child whose school has closed or whose child care provider is unavailable due to coronavirus
 - Part time workers are entitled to paid sick leave for the amount of hours that they typically work over a 2 week period
- 12 weeks of job-protected **emergency paid family and medical leave** for employees of employers with 500 employees or fewer and government employers, who have been on the job for at least 30 days, paid at 2/3 wage replacement, to:
 - ~~Adhere to a requirement or recommendation to quarantine due to exposure or symptoms of coronavirus~~
 - ~~Care for an at-risk family member under the same circumstances~~
 - Care for a child whose school or place of care has been closed, or whose child care provider is unavailable, due to coronavirus
 - *Note that the first 14 days are unpaid (so as not to duplicate paid sick leave)

Both forms of leave can be immediately taken and paid for by the employer. Employers (other than government employers) can seek reimbursement via tax credit from the federal government, up to a cap.

[only highlighted provision remains in this section, first two deleted by House before bill sent to Senate]

- These provisions go into effect by 15 days after enactment and sunset on Dec. 31, 2020.

Section by Section Detailed Summaries

Division C - Emergency Family and Medical Leave Expansion Act

- Until December 31, 2020, adds “a qualifying need related to a public health emergency” to the list of FMLA leave purposes. This means leave that an employee needs in order to:
 - Comply with a recommendation or order by a public official or health care provider on the basis that the employee’s physical presence at work would jeopardize others due to the employee’s exposure to or exhibition of symptoms of coronavirus, and the employee cannot both perform the functions of their position and comply with the recommendation or order;
 - To care for a family member whose presence in the community a public official or health care provider determines would jeopardize the health of others due to the family member’s exposure to or exhibition of symptoms of coronavirus; or
 - To care for the employee’s child if the child’s school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency.
- Up to 12 weeks of leave.
 - First 14 days of leave may be unpaid; for subsequent days of leave, employer must provide paid leave at a rate of **2/3 of the employee’s regular pay**.
- Covers employers with **fewer than 500 employees**.
 - U.S. Department of Labor has discretion to exempt small businesses with fewer than 50 employees if providing leave would jeopardize the viability of the business as a going concern.
- Employees are eligible if they have worked for their employer for **at least 30 calendar days**.
 - U.S. Department of Labor has discretion to exclude certain health care providers and first responders from eligibility.
- Family members for whom leave can be taken:
 - Parent
 - Spouse
 - Minor child
 - An individual who is pregnant, senior citizen, individual with a disability, or has access or functional needs and is the employee’s:
 - Child (of any age)
 - Next of kin
 - Grandparent
 - Grandchild

Division E - Emergency Paid Sick Leave Act

- Workers whose place of business has **500 or fewer employees** are able to take up to 10 days of paid sick leave

- Sick leave is paid by the employer at full wage replacement for personal care if one is ill with coronavirus, to quarantine, or to seek a diagnosis or preventive care for coronavirus
- Act expires on December 31, 2020
- **Paid sick leave can be taken:**
 - To self-isolate because the employee is diagnosed with coronavirus
 - To obtain a medical diagnosis or care if employee is experiencing symptoms of coronavirus
 - To comply with a recommendation or order from a public official that the physical presence of the employee would jeopardize the health of others
 - To care for or assist a family who is
 - Self-isolating because the family has been diagnosed with the coronavirus, or
 - Is experiencing symptoms of coronavirus and needs to obtain a medical diagnosis
 - **When sick leave is taken for these purposes, the rate of pay is reduced to $\frac{2}{3}$ of the employee's usual rate.**
 - To care for a child if the child's school or place of care has been closed due to coronavirus
 - **When sick leave is taken for school closures, the rate of pay is reduced to $\frac{2}{3}$ of the employee's usual rate.**
- **Amount of Paid Sick Time:**
 - Full time employees are entitled to 80 hours (10 days) of paid sick time
 - Part-time employees are entitled to a number of paid sick time hours equal to the number of hours they work, on average, over a 2-week period
- **Employer Policies:**
 - For employers with existing policies, the paid sick time afforded under the bill must be made available to workers in addition to any employer provided leave.
 - An employer cannot require that a worker use accrued paid sick time before being allowed to use the paid sick time provided by the bill
 - Employers may not require workers to find replacement workers to cover those hours they will be on leave.
 - Employers may not discharge, discriminate or discipline workers who take leave in accordance with the Act and have filed a complaint
- **Family Definition:**
 - Child: includes biological, adopted, foster, stepchild, child of domestic partner, legal ward, and a child under 18 years of age for whom person is standing in loco parentis
 - Domestic partner
 - Parent
 - Biological, foster, adoptive parent; step-parent, parent-in-law, parent of domestic partner, legal guardian or other person who stood in loco parentis to employee
 - Spouse

- An individual who is a pregnant woman, senior citizen, individual with a disability or who has access or functional needs who is a sibling, grandparent, grandchild or next of kin

Division G - Tax Credits for Paid Sick and Paid Family and Medical Leave

- Refundable tax credit against payroll taxes to employers for 100% of wages paid for emergency sick leave required under this Act, for up to 10 days per employee. Maximum amount of wages taken into account when calculating the credit:
 - For one's own care, \$511 per employee per day;
 - For care for a family member, \$200 per employee per day.
- Refundable tax credit against income taxes for self-employed individuals for 100% of income lost due to emergency sick leave under this Act, for up to 10 days. Maximum amount of lost income taken into account when calculating the credit:
 - For one's own care, \$511 per day;
 - For care for a family member, \$200 per day.
- Refundable tax credit against payroll taxes to employers for 100% of wages paid for emergency family leave required under this Act. Maximum amount of wages taken into account when calculating the credit:
 - \$200 per employee per day, and
 - In the aggregate with respect to all calendar quarters, \$10,000.
- Refundable tax credit against income taxes for self-employed individuals for 100% of income lost due to emergency family leave under this Act, for up to 50 days. Maximum amount of income taken into account when calculating the credit: \$200 per day.
- Government employers are not eligible for these tax credits.
- Any wages required to be paid for emergency sick leave or emergency family leave are not considered wages for the purposes of employer social security taxes.
- Appropriates money to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in amounts equal to the reduction in revenues caused by the emergency sick leave and emergency family leave tax credits.

¹ U.S. Bureau of Labor Statistics. (n.d.) *National Business Employment Dynamics Data by Firm Size Class* (Table F. Distribution of private sector employment by firm size class: 1993/Q1 through 2019/Q1, not seasonally adjusted). Retrieved 15 March 2020, from https://www.bls.gov/web/cewbd/table_f.txt. Number of people employed by private sector firms with fewer than 500 employees in 2019.