

New Federal Legislation Provides Relief for Some Employees Affected by COVID-19



The outbreak of the respiratory disease (COVID-19) caused by the new coronavirus continues to present many issues for employers. The U.S. Centers for Disease Control and Prevention expects the disease to continue to spread throughout the country for the next several months. Meanwhile, Congress has passed new federal legislation that provides relief for some employees affected by COVID-19.

The Families First Coronavirus Response Act (FFCRA), or H.R. 6201, passed the Senate by a vote of 90 to 8 and was signed by President Trump on March 18, 2020. The new law includes the following provisions:

Employers with 500 or Fewer Workers are Required to Provide Paid Sick Leave

Small and midsize companies must provide two weeks (80 hours) of paid sick leave to all employees affected by the coronavirus, regardless of their tenure with the company. Specifically, employees are eligible for paid sick leave if they are being tested or treated for coronavirus or have been diagnosed with it. Also eligible are those employees who have been told by a doctor or government official to stay home and self-quarantine due to COVID-19, who have symptoms of the disease, and those who are trying to get a test or preventive care. Paid sick leave is also available at two-thirds (67%) of the employee's regular rate of pay if they are caring for an individual who is subject to a quarantine or for

children whose schools have been closed due to COVID-19. Individual sick leave must be paid at the employee's usual pay rate, but it is capped at \$511 per day and \$5,110 in the aggregate. Caregiver sick leave (two-thirds pay) is capped at \$200 per day and \$2,000 in the aggregate. In other words, individual paid sick leave would fully compensate employees earning up to about \$130,000 per year for the two-week period. Employees earning more than \$130,000 per year will receive only the capped amount. Employees who have accrued PTO can elect to use the new paid sick leave first, and employers cannot require that an employee first use other accrued PTO.

Employers with 500 or Fewer Workers are Required to Provide Paid Family Leave

Small and midsize companies must provide up to 12 weeks of paid family leave for all employees who have worked at the company for at least 30 days and who are caring for children whose schools have closed due to the coronavirus and who do not have other childcare options. This new family leave does not apply to employees who have COVID-19 or symptoms of the disease, or employees who are caring for family members who have the disease or symptoms of the disease. The first ten days of this new family leave are unpaid, but the employee may use other leave benefits during this period (i.e., paid time off or vacation time). After ten days, paid family leave must be paid at two-thirds (67%) of the employee's usual pay rate, but it is capped at \$200 per day and \$10,000 in the aggregate. Paid family leave would fully compensate employees earning up to about \$75,000 per year with two-thirds of their pay for the three-month period. Employees earning more than \$75,000 will receive only the capped amount.

Reimbursement to Employers Through Tax Credits

The bill provides a tax credit to employers to cover the costs of paid sick leave and family leave. The credit will be applied to the tax that the company or nonprofit normally pays for each employee's Social Security, which is the 6.2% tax that employers pay on each employee's salary. If the paid sick leave or family leave exceeds the employer's Social Security bill, the U.S. Government will send the employer a check to cover the remaining costs. The Treasury and the Internal Revenue Service will make this determination.

Loophole for Small Businesses with Less than 50 Employees and Health Care Providers

The U.S. Labor Department can exempt employers with less than 50 employees from having to pay these benefits if it "would jeopardize the viability of the business." The Department can also exempt health care providers like hospitals and nursing homes. It is not clear how lenient the Trump administration will be with exemptions under this loophole.

Government Employers are Required to Provide Paid Sick and Family Leave

All government employers must provide these benefits to their employees. The same is also true for any union workers who are part of a "multi-employer" agreement.

Gig Workers and Self-Employed Workers will also Receive Benefits

People who are self-employed but work for another employer (e.g., Uber and Lyft drivers, caterers, or planners for major events) are eligible for a tax credit of up to two weeks of sick pay at their average pay and 12 weeks of family leave pay at two-thirds (67%) of their average pay. These workers must show they had to comply with a self-isolation recommendation or that they had to care for a child whose

school closed due to the coronavirus. Their benefit is also capped at \$511 per day for paid sick leave and \$200 per day for paid family leave.

Both the paid sick leave and paid family leave provisions will expire at the end of this year and unused paid leave will not carryover to next year. Part-time workers will also be entitled to paid sick leave equivalent to the number of hours they typically work during a two-week period. For example, a person who usually works 20 hours per week would be eligible for up to 40 hours of paid sick leave if they otherwise qualify for the leave.

In addition to the paid sick leave and family leave provisions, the FFCRA provides funding to states for enhanced unemployment benefits, increased funding for food assistance programs, and free coronavirus testing. It also contains an anti-retaliation provision that protects employees from retaliation if they use the paid sick leave and family leave benefits.

The new law will become effective 15 days after it was signed by President Trump, or April 2, 2020. The law does not apply to any actions taken by employers prior to the effective date.

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