

What the COVID-19 Paid Leave Bill Means for Employers and Employees

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On March 18, 2020, Congress passed, and the President signed into law the Families First Coronavirus Response Act, H.R. 6201, which – among other things – requires many employers to provide paid leave for employees who are dealing with the ongoing outbreak of COVID-19. The new law provides two different types of paid leave: sick leave and leave under Family and Medical Leave Act (“FMLA”). To help offset the cost of such leave for employers, the new law also allows for employers to claim a payroll tax credit in an amount equal to the amount of the paid leave. **The law applies to employers with fewer than 500 employees, and the paid leave requirements go into effect on April 2, 2020.** The paid leave requirements do not apply to employers with 500 or more employees.

Emergency Paid Sick Leave

Under the new law, applicable employers are required to provide paid sick leave to employees who are unable to work or telework due to any of the following reasons:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- The employee is caring for an individual who has been instructed to isolate or self-quarantine related to COVID-19;
- The employee is caring for their child whose school or place of care has closed, or because the child’s childcare provider is unavailable, due to COVID-19 precautions; or
- The employee is experiencing any other substantially similar condition specified by the Department of Health and Human Services (“HHS”) in consultation with the Department of Treasury and the Department of Labor (“DOL”).

Full-time employees of covered employers are entitled to **eighty (80) hours** of paid sick leave for any of the reasons set out above. Part time employees are entitled to a number of hours equal to the number of hours that a part-time employee works on average over a two-week period. Under the new law, the paid sick leave must be made available for immediate use, regardless of how long the employee has been employed by the employer. An employer **cannot require an employee to use other paid leave already provided by the employer before using this paid sick leave.** Additionally, employers of health care providers and emergency responders may elect to exclude such employees from the paid leave requirements.

The amount an employee must be paid is the **employee’s regular rate of pay, when the employee is taking the sick leave to quarantine or isolate or because the employee is experiencing symptoms of COVID-19.** The law caps the amount of daily paid sick leave for employees taking leave for these reasons **at \$511.00 per day.** For employees taking paid sick leave to care for an individual who has been instructed to isolate or self-quarantine or to care for their child due to their school or place of care being closed, **the amount that must be paid is two-thirds (2/3) of the employee’s regular rate of pay.** The law caps the amount of daily paid sick leave for these reasons **at \$200.00 per day** for each employee.

Emergency Paid FMLA Leave

The law also provides paid FMLA leave for employees who are forced to take time off from work to care for their children because of school or child care provider closures. Unlike the paid sick leave required under the bill – which can be taken for self-quarantine or caring for other family members under quarantine – the **paid FMLA leave can only be taken by employees who are unable to work or telework “due to a need for leave to care for the [their] son or daughter under 18 years of age”** where the child’s school or place of care has been closed due to the COVID-19 public health emergency.

Under the law, eligible employees can take up to twelve (12) weeks of FMLA leave, although the first two weeks are unpaid. The law, however, does allow employees to elect to substitute any other accrued vacation leave, personal leave, medical, or sick leave to fill in for this unpaid period. Employees taking the paid-FMLA leave are to be **paid at two-thirds (2/3) of their regular rate of pay**. However, this amount is capped at **\$200 a day**, up to a total of \$10,000.00 per employee.

Additionally, the **Department of Labor has the authority to issue regulations to exempt small business with fewer than fifty (50) employees from the paid FMLA requirements when those requirements “would jeopardize the viability of the business as a going concern” and to “exclude certain health care providers and emergency responders.”** We will be monitoring the Department of Labor’s issuance of those guidelines to provide additional guidance to our clients once they are published.

Tax Credits for Paid Sick Leave and Paid Family and Medical Leave

To help employers deal with the unexpected costs of providing additional paid leave to employees dealing with the COVID-19 outbreak, the law also allows employers to claim tax credits against their quarterly payroll taxes in an “amount equal to 100 percent of qualified sick leave wages” and “qualified family leave wages.” The payroll tax credits are capped at the same amounts as the daily pay caps – \$511 or \$200 each day per individual for paid sick leave wages and \$200 each day per individual for paid family leave wages.

The paid leave bill is a dramatic new law designed to combat the outbreak of COVID-19. If you have questions about implementing the new requirements in your business or organization, contact Nathan Duggins at nduggins@tuggleduggins.com or (336) 271-5246, Denis Jacobson at djacobson@tuggleduggins.com or (336) 271-5242, Ross Hamilton at atrhilton@tuggleduggins.com or (336) 271-5279, or Daniel Stratton at dstratton@tuggleduggins.com or (336) 271-5240. Please also follow our Twitter account – @TuggleDuggins – at <https://twitter.com/TuggleDuggins> for continuing, up-to-date information related to navigating the law during the COVID-19 outbreak.

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