



Summary of Employment Provisions in the *Families First Coronavirus Response Act*

On March 18, President Trump signed into law [H.R. 6201](#), the *Families First Coronavirus Response Act*. The law is aimed at addressing the impacts of the COVID-19 pandemic and includes provisions to expand unemployment insurance benefits, increase federal funding for Medicaid, increase funding for nutritional assistance, and require private health insurers to cover testing for COVID-19.

The bill also creates additional paid leave requirements for employers with fewer than 500 employees, through the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act. These provisions go into effect no later than 15 days after enactment and will expire on December 31, 2020.

EMERGENCY PAID SICK LEAVE ACT (EPSLA)

Under the EPSLA, all public employers and any private employer that has fewer than 500 employees are required to provide two-weeks (80 hours) of paid sick leave for full-time employees or the equivalent of two-weeks for part-time employees.

If the employee uses sick leave to care for themselves, the employer must provide their full rate of pay or applicable minimum wage, whichever is greater. For this case, the sick leave pay is limited to \$511 per day and \$5,110 in aggregate. This applies to the following situations:

- A government quarantine or isolation order related to COVID-19
- Self-quarantine on the advice of a health care provider related to COVID-19
- To obtain medical diagnosis after experiencing symptoms related to COVID-19

If the employee uses sick leave to act as a caregiver, the employer must provide at least two-thirds of their regular rate of pay or applicable minimum wage, whichever is greater. For this case, the sick leave pay is limited to \$200 per day and \$2,000 in aggregate. This applies to the following situations:

- To care for an individual who is subject to government quarantine or has been advised to self-quarantine
- To care for a child if their school or childcare facility has been closed due to COVID-19
- If employee is experiencing any other substantially similar condition specified by U.S. Dept of HHS, in consultation with U.S. Dept. of the Treasury and U.S. Dept. of Labor

Employers must provide the paid leave, regardless of the length of employment.

Employers are prohibited from requiring employees to use other types of leave before using the emergency paid sick leave.

Employers must post notice of the requirements in a conspicuous place. The Secretary of Labor will make a model notice available.

The Secretary of Labor has the authority to exclude certain healthcare providers, emergency responders, or employers with fewer than 50 employees if imposing such requirements would jeopardize the viability of the employer's business.

FAMILY AND MEDICAL LEAVE EXPANSION ACT (EFMLEA)

Under the EFMLEA, any public or private employer with fewer than 500 employees would be required to offer up to 12 weeks of family leave to employees who need to care for a child whose school or childcare facility is closed due to COVID-19.

The first 10 days of leave may be unpaid. (This is considered public health emergency leave or PHEL.) After that time, the employer must provide two-thirds of the employee's regular rate of pay for the number of hours he/she would otherwise be required to work. This is capped at \$200 per day or \$10,000 in the aggregate.

Employee must have been employed by the company for at least 30 calendar days.

The Secretary of Labor has the authority to exclude certain healthcare providers, emergency responders, or employers with fewer than 50 employees if imposing such requirements would jeopardize the viability of the employer's business.

Employers with fewer than 25 employees are generally excluded from the requirement to restore an employee to his/her position following leave (the same as traditional FMLA) if:

- The employee takes public health emergency leave (PHEL)
- The position no longer exists due to economic conditions caused by COVID-19
- The employer makes reasonable effort to restore employee to equivalent position
- The employer makes reasonable efforts to contact employee if equivalent position becomes available for a one-year period.

TAX CREDITS FOR PAID SICK LEAVE & PAID FAMILY AND MEDICAL LEAVE

The paid sick time tax credit can be claimed on a quarterly basis, equal to 100% of the amount of sick leave wages paid. The credit limited to \$511 per day and \$5,110 total if the employee is taking time off to care for themselves or \$200 per day and \$2,000 total if the sick leave is to be a caregiver. The credit is refundable if it exceeds the amount the employer owes in payroll tax.

The paid family leave tax credit can be claimed on a quarterly basis, equal to 100% against the employer's share of the payroll tax for each employee. The credit is limited to \$200 per day or a total of \$10,000 per employee. The credit is refundable if it exceeds the amount the employer owes in payroll tax.

Employers must increase their gross income for the taxable year by the amount of payroll credit received. Additionally, any wages considered in determining the payroll credit cannot be used in determining the amount of credit under the Internal Revenue Code Section 45S related to paid family and medical leave

TAX CREDITS FOR SICK & FAMILY LEAVE FOR CERTAIN SELF-EMPLOYED INDIVIDUALS

Self-employed workers, including independent contractors and gig economy workers, can also claim a credit against their regular income taxes related to sick or family leave. The credit covers 100 percent of self-employed individuals' daily self-employment income or two-thirds of their daily self-employment income if they are taking care of a child whose school is closed.

The per-day amount is limited to the lesser of an individual's average daily self-employment income or \$511 per day if caring for themselves or \$200 if caring for a minor child.

The number of eligible days is limited to 10 for sick leave and 50 for family leave.

The Act directs the Treasury Dept. to provide guidance on what documentation self-employed individuals must submit to claim the credit.

For more information, check out [Alston & Bird's FAQs](#) about the two types of paid leave in the *Families First Coronavirus Response Act*.