

COVID-19 CORONAVIRUS RESPONSE ACT- NEW MANDATES FOR PAID SICK LEAVE AND LONG-TERM LEAVE IN RESPONSE TO THE COVID-19 PANDEMIC

The world has been moving quickly the past few weeks and we now hardly remember a time when the economy was not at a standstill with many businesses and industries in peril.

On March 18, 2020, a bill was passed at the federal level to address the novel coronavirus (COVID-19) pandemic, the Families First Coronavirus Response Act, or H.R. 6201 (the “Act”), imposing a mandate on employers to provide paid time off to employees who need leave for reasons connected to the public health emergency. Employers will receive a **tax credit** for the money spent on the paid leave.

In summary, the Act provides:

- Short-term Paid Sick Leave – 10 days for full-time employees. Note – the original bill provided that this was to be coordinated with a company’s current paid leave. This version does not – which means it is an additional paid leave. The next bill may or may not correct this.
- Long Term Paid Leave – 12-weeks of job-protected leave, partially paid for the last 10 weeks of the leave, to care for a child whose school is closed or whose childcare provider is unavailable due to the public health emergency.

The specifics of the law¹ are set forth below:

EFFECTIVE AND EXPIRATION DATES OF THE ACT

All employers with fewer than 500 employees, (and all federal and state employers) must offer an amount of paid time off to their employees, for qualifying reasons, within 15 days after enactment of the law (April 2, 2020.) The law is set to expire on December 31, 2020, unless extended or modified prior to that time.

ELIGIBLE EMPLOYEES

All employees, full-time and part-time, are eligible for the short-term paid sick leave. Employees are eligible regardless of when the employee started working for the employer.

All employees, full-time and part-time, are eligible for the long-term paid leave. However, to be eligible for the long-term leave, the employee must have been employed for at least 30 days

¹ While the Act contains additional provisions to increase funding for existing federal benefit programs, like WIC (Special Supplemental Nutrition Program for Women, Infants, and Children) and SNAP (Supplemental Nutrition Assistance Program), as well as paid testing for COVID-19, this article summarizes the key portions of the Act which impact and provide additional obligations upon employers.

and the long-term paid leave is only available to employees whose children's school or childcare is unavailable.

USES OF THE PAID LEAVE

The short-term paid sick leave may be used if the employee cannot work (or telework) because 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 seeking a medical diagnosis because the employee is experiencing the symptoms of COVID-19;
- The employee is caring for an individual (not limited to a family member) who is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; or
- The employee needs to care for a son or daughter if the child's school or childcare location has been closed, or if the childcare provider of the child is unavailable due to COVID-19.

For the long-term paid leave, the *only qualifying reason* for that leave is if the employee is unable to work or telework because he or she must care for a child (under 18 years of age) if, due to a declared public health emergency related to COVID-19.

AMOUNT OF PAID LEAVE REQUIRED

Short-term Paid Sick Leave- Full-time employees must be provided with 80 hours (10 days) of short-term sick leave. Part-time workers are entitled to the number of hours they work on average over a two-week period.

The revised bill requires that the 10 days of paid sick time be provided in addition to whatever paid sick time or PTO the employer already provides to its employees. In addition, employers may not require that an employee use any other paid time program offered by the employer before using this sick leave.

The paid sick time does not carry over to the following year. Employers are also not required to reimburse employees for paid sick time not used by the employee when the employee leaves the job.

Long-term Paid Leave- Employees are entitled to 12 weeks of job-protected leave. The first two weeks (10 days) of such leave are unpaid, while the following 10 weeks must be paid – see the amounts below. For the first ten days, the employee may, but is not required to, use the 10 days of paid sick leave provided by the Act or use any other paid leave otherwise available from the employer.

AMOUNT OF WAGE REPLACEMENT

For short-term paid sick leave, if an employee needs leave for the employee's own illness, the need to self-quarantine, or the need to get medical treatment, the employer must pay the employee's full regular wage for the 10 days of the short-term paid sick leave, up to \$511 per day and \$5,110 in the aggregate. If the employee needs leave to care for someone else, the employer must pay the employee two-thirds of those wages for the 10 days of paid sick leave, up to \$200 per day and \$2,000 in the aggregate.

For the 10 weeks of long-term paid leave, the employer must an amount not less than two-thirds of an employee's regular rate of pay, up to \$200 per day and \$10,000 in the aggregate.

The amount of wages that employers must pay for either the short-term sick leave or the long-term paid leave will never exceed the tax credit that the employer will be permitted to apply against certain taxes. (See description of the tax credit below.)

JOB PROTECTION

While the Act provides that an employee who takes covered leave must be restored to his or her position, it contains an exception for employees of businesses with fewer than 25 employees, if the employee's position no longer exists due to economic conditions or changes in the employer's operations caused by the public health emergency. However, the employer must make reasonable efforts to restore the employee to a position equivalent to that which the employee held when leave commenced, with equivalent pay, benefits, and related terms and conditions of employment Emergency Paid Sick Leave Act.

INTERACTION WITH EMPLOYER'S EXISTING PAID SICK LEAVE/PAID TIME OFF POLICIES

Employers may not require eligible employees to first use other paid leave provided by the employer before using paid sick leave under the Act, so this leave is *in addition* to any paid sick leave or PTO currently provided by employers.

TAX CREDIT

The Act authorizes a refundable tax credit for qualified sick leave wages and qualified family medical leave wages against the employer/taxpayer portion of Social Security taxes.

The credit to the employer is limited to \$511/day per employee if qualified sick leave was taken by the employee for his or her own needs or \$200/day per employee if qualified sick leave was taken to provide care for others. In either case, the credit is limited to 10 days of leave per qualifying employee.

The credit is limited to \$200/day per employee, with an aggregate \$10,000 cap per employee, if taken for qualified family medical leave.

REQUIRED NOTICES AND PROCEDURES

An employer must post a notice for employees about the requirements of the law. Within seven days of the enactment of the Act, the Secretary of Labor will provide a model notice for use by employers.

After the first workday that an employee receives paid sick time, the employer may require the employee to follow “reasonable notice” procedures in order to continue receiving the paid sick time. “Reasonable notice” is not defined in the Act.

The employer may not require that the employee find or search for a replacement to cover the hours the employee will be on sick leave.

NONDISCRIMINATION AND ANTI-RETALIATION

The Act prohibits an employer from discriminating against an employee for using paid sick leave, long-term family leave, filing a complaint, or testifying in an action under the law.

POSSIBLE EXEMPTIONS FOR HEALTHCARE EMPLOYERS AND EMPLOYERS WITH FEWER THAN 50 EMPLOYEES

The Act gives the Secretary of Labor the authority to exclude healthcare providers and emergency responders from the definition of employee under the act. (The Act allows each such employer to decide whether to opt out from the Act. But the Secretary has the authority to exclude all such employers in the first place.)

The Act also gives the Secretary of Labor the authority to exempt businesses with fewer than 50 employees when “the imposition of the requirements would jeopardize the viability of the business as a going concern.”

Additional legislation will likely be considered at the federal, state, and local level, so please seek legal advice prior to implementing any new employment policies.

This material is for informational purposes only and does not constitute legal advice. If you have any questions regarding these new laws and applicability to your business, please contact:

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