



FEDERAL COVID-19 RESPONSE: FEDERAL FAMILY MEDICAL LEAVE EXPANSION; PAID SICK LEAVE

Yesterday, the U.S. Senate approved and the President signed the bill passed by the House last Friday to provide expanded protection under the Family Medical Leave Act as well as paid sick leave related to the COVID-19 pandemic. Below is a summary of these laws, which take effect no later than April 1.

EMERGENCY FAMILIES FIRST CORONAVIRUS RESPONSE ACT (H.R. 6201)

Emergency Paid Family and Medical Leave Expansion

- Employers with fewer than 500 employees must provide 12 weeks of Family and Medical Leave Act (FMLA) leave for all employees who have been employed for 30 days for a “qualifying need related to a public health emergency.”
- A “qualifying need” means the employee is unable to work (or telework) due to a need for leave to care for a child whose school or place of care has been closed or childcare provider is unavailable due to a public health emergency.
- The first 10 days may be unpaid. Employees may use accrued leave (vacation, sick, PTO) during the 10 days but cannot be required to do so.
- After 10 days, employers must continue paid FMLA leave at a rate of no less than 2/3 of the employee’s regular rate of pay with a cap of \$200 per day and \$10,000 total.
- Employers of an employee who is a health care provider or emergency responder may elect to exclude such employees from this leave entitlement.
- The Secretary of Labor may issue regulations to exempt small businesses with fewer than 50 employees where the imposition of these requirements would threaten the viability of the business.

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Emergency Paid Sick Leave

- Employers with fewer than 500 employees are required to provide full-time employees 2 weeks (80 hours) of paid sick leave for circumstances related to COVID-19, including self-quarantine (subject to a federal, state, or local quarantine or isolation order, or per the advice of a health care provider); obtaining a medical diagnosis or care for COVID-19; providing care for a family member who has been diagnosed or is in quarantine; or caring for a child whose school or day care has closed due to coronavirus.
- “Full pay” compensation up to 80 hours is capped at \$511 per day per employee and \$5,110 in the aggregate for personal sick leave and \$200 per day and \$2,000 in the aggregate.
- Part-time employees receive paid sick time for the number of hours equal to the average number of hours they work over a 2-week period.
- Employees shall be paid at their normal rate, except that they are paid at 2/3 their regular rate for providing caregiving to a family member or to care for a child whose school has closed or childcare provider is unavailable due to COVID-19.
- Employers with similar existing paid leave policies are required to provide workers with the emergency paid sick time. An employer cannot require a worker to use any other available paid leave before using the sick time.
- The bill does not preempt existing state or local paid sick leave entitlements.
- Emergency paid leave does not carry over and expires on December 31, 2020.
- Employers who are health care providers or emergency responders are not required to comply.
- Government employers and union workers who are part of a ‘multi-employer’ agreement.
- An employer may not require employees to find a replacement employee to cover the hours during which the employee is using paid sick time, and may not discriminate against employees who take leave under this act.
- Paid sick time is available immediately, regardless of how long the employee has been employed.
- Employers are required to post a notice prepared or approved by the Secretary of Labor, which will be publicly available within 7 days of enactment of this Act.

In addition to family and sick leave, the COVID-19 pandemic has created numerous other issues and questions. Here are some guidelines to help navigate through this crisis.

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GENERAL GUIDANCE FOR EMPLOYERS:

- Employers should follow - on a daily basis - federal, state, and local guidance and regulations relating to business travel, limits on conferences, business events, and working from home requirements.
- Employers may require employees to practice precautions, such as regular hand-washing, sanitizing work stations, and social distancing.
- Employers may ask employees if they are experiencing symptoms, such as fever, coughing, chills, or shortness of breath, as well as whether they have had exposure to others with COVID-19 symptoms, or have traveled for business or personal travel in the last 14 days.
- Employers may require employees who are displaying symptoms, have traveled to affected areas, or were otherwise potentially exposed to stay home from work.
- Employers should establish a procedure for employees affected or exposed to COVID-19 or exhibiting symptoms to report that information. Similarly, employers should establish a process to notify employees who might have been exposed, to a confirmed case of COVID-19 in the workplace without disclosing personal health information. *Follow guidance from health authorities in doing this*

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