



## FAQs: The Families First Coronavirus Response Act (HR 6201)

On March 16, the House passed by voice vote a technical corrections bill to [HR 6201, the Emergency Families First Coronavirus Response Act](#), which originally passed the House on Saturday, March 14.

On March 18, the Senate passed H.R. 6201 by a vote of 90-8. Shortly thereafter, the President signed the legislation into law. The law requires employers with 500 or fewer employees to provide emergency paid sick leave under the Fair Labor Standards Act (FLSA) and emergency paid leave under the Family and Medical Leave Act (FMLA).

The paid leave requirements will go into effect 15 days after enactment. Between now and then, the Secretary of Labor will play an instrumental role providing employers guidance about which organizations need to provide the leave. The Secretary has broad authority to exempt healthcare and emergency responders as well as small businesses (50 or fewer employees) that may be jeopardized by implementing the benefits. Additionally, the Secretary will need to clarify the 500 or fewer threshold under both FLSA and FMLA.

The safety of workplaces remains top of mind as we continue to manage through COVID-19. SHRM is your partner and guide through these unprecedented times, and you can access our regularly updated resources on [SHRM.org](#). Until the Department of Labor issues guidance, we hope the following FAQs will address any immediate needs within your organization.

### **Q: Who is required to provide paid leave under the new law?**

A: Employers with fewer than 500 employees. The emergency paid FMLA benefits apply to any employee of a covered employer who has worked for a minimum of 30 calendar days. The emergency paid sick leave benefits apply regardless of tenure.

### **Q: What kind of leave is covered under the new law?**

A: Paid family and medical leave, as well as paid sick leave.

### **Q: Are there any exceptions regarding who is required to provide paid leave under the new law?**

A: Regarding both family and medical leave and emergency paid sick leave, employers that are health care providers or emergency responders may elect to exclude employees from this leave.

The Secretary of Labor has authority to issue regulations on paid family, medical and sick leave to:

- 1) Exclude certain health care providers and emergency responders from the definition of eligible employee; and
- 2) Exempt small businesses with fewer than 50 employees if the above requirements would jeopardize the viability of the business going forward.

**Q: Who does the paid family and medical leave benefits cover and what does it offer?**

A: Employers with 500 or fewer employees are required to provide FMLA leave for employees who are unable to work (or telework) because the employee is caring for their child (18 years or younger) because the school is closed or childcare provider is unavailable due to a public health emergency.

The bill states that employers may provide the first 10 days of this emergency FMLA leave unpaid. Employees may choose to substitute any accrued paid time off during this otherwise unpaid portion of leave, but employers may not force employees to do so. After the first 10 days, the employee receives two-thirds of their regular rate of pay.

In addition, like the existing provisions of the FMLA, this leave is "job-protected." Upon an employee's return from the leave, employers must restore the employee to their previous position or an equivalent position. Employers of fewer than 25 employees may not be required to comply with the job-restoration provisions under certain circumstances. In such circumstances, employers need not restore an employee to his or her position after such leave if:

- 1) the position held by the employee when the leave began does not exist "due to economic conditions or other changes in operating conditions of the employer" that are caused by the public health emergency and affect employment;
- 2) employers make "reasonable efforts" to restore the employee to an equivalent position; and
- 3) if such reasonable efforts fail, employers must make further "reasonable efforts" to contact the employee if an equivalent position becomes available during the one-year period commencing on the either the date the emergency FMLA leave concludes or 12-weeks after the employee's emergency FMLA leave begins, whichever is earlier.

**Q: When are the paid family and medical leave benefits effective?**

A: Leave will take effect 15 days after enactment of the act and sunset on December 31, 2020.

**Q: Are tax credits available to help offset the cost of providing the paid FMLA?**

A: Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified paid FMLA wages paid by the employer. Qualified paid FMLA wages are capped at \$200 per day and \$10,000 overall. The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified paid FMLA exceed the taxes they would owe. The Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties or failing to deposit payroll taxes in anticipation of the credit.

**Q: Who does the paid sick leave benefits cover and what does it offer?**

A: Employers with 500 or fewer employees are required to provide 80 hours of fully paid sick leave to full-time employees (pro-rata rules would apply to part-time employees) on top of any other existing paid leave program of the employer.

Covered employees eligible for paid sick leave include:

- 1) Employee subject to a Federal, State, or local quarantine or isolation order related to coronavirus;
- 2) Employee has been advised by health care provider to self-quarantine due to coronavirus;
- 3) Employee is experiencing symptoms of coronavirus;
- 4) Employee is caring for an individual who is subject to an order described in (1) or has been advised as described in (2);
- 5) Employee is care for their child because the school is closed or childcare provider is unavailable due to coronavirus; or
- 6) Employee is experiencing a similar condition specified by Secretary of HHS.

**Q: When are the paid sick leave benefits effective?**

A: Leave will take effect 15 days after enactment of the act and sunset on December 31, 2020.

**Q: Are tax credits available to help offset the cost of providing the paid sick leave?**

A: Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified sick leave wages paid by the employer. Qualified sick leave wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member) and 10 days. The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified sick leave exceed the taxes they would owe. The Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties on failing to deposit payroll taxes in anticipation of the credit.