



LEGISLATIVE UPDATE:
New Law Provides Emergency
Paid Sick and Family Leave
March 19, 2020

Families First Coronavirus Response Act: Detailed Analysis

On March 18, 2020, the Senate [passed](#) 90-8-2 [H.R. 6201](#), the “Families First Coronavirus Response Act.” The President immediately signed the bill into law, which is effective no later than 15 days of enactment.

The Families First Act requires employers with fewer than 500 employees to provide 14 days paid sick leave and 12 weeks of unpaid/paid family leave under certain, limited circumstances. Specifically, paid sick and family leave benefits may not payable if the employee is able to work remotely. The Labor Department is also authorized to issue regulations to exempt employers with less than 50 employees from the paid sick and family leave provisions. The paid leave provisions sunset on December 31, 2020.

Many member companies are rightfully concerned about how they will fund these benefits and about the impact on their employees. **The new law provides tax credits and refunds to cover the full amount of benefits paid up to the statutory limits.** The Treasury Department will issue regulations or guidance to address compliance, record-keeping, penalty waivers, and other matters. For example, the new law provides regulatory flexibility to waive penalties if businesses do not submit payroll taxes in anticipation of receiving a refund. Employers that already planned to pay employees paid sick and/or family leave may be better off with the federal government reimbursement. If members are forced to furlough employees, those furloughed employees would be able to immediately access state-based emergency unemployment.

The Families First Act is the second of what is promised to be several emergency legislative actions to address the COVID-19 pandemic and the impact on individuals, businesses, and the economy. After passing this legislation, the Senate began consideration of a trillion-dollar stimulus package expected to include money going directly to individuals plus provisions to support small businesses.

TechServe Alliance’s Government Affairs Team will continue to monitor developments and keep members informed. The legislation is complex and leaves a number of question unanswered. Please let us know if you have any questions or feedback related to ongoing congressional action.

Below is a brief summary of the key provisions of the Families First Act.

Emergency Paid Sick Leave

The Act requires covered employers to provide 14 days of paid emergency sick leave in certain circumstances when the employee is unable to work (or telework): the employee is sick or may be sick with COVID-19; is caring for an individual who is sick with COVID-19; and/or whose child’s school is closed or caregiver is not available. The amount of emergency paid sick leave is based on an employee’s full-time/part-time status and wages with per day and maximum benefit caps.

Emergency Paid Family Leave

The Act requires covered employers to provide a total of 12 weeks emergency family leave to most employees. Employers would be required to provide paid family leave for 10 weeks; the first 10 days of emergency family leave would be unpaid, but the employee could use accrued benefits or emergency paid sick leave. The amount of emergency paid family leave is based on an employee’s full-time/part-time status and wages with per day and maximum benefit caps. This Emergency Paid Family Leave provision

was significantly cut back in the final bill and only covers circumstances where the employee is unable to work (or telework) when a child's school is closed, or caregiver is unavailable.

Tax Credits and Refunds for Covered Employers

Covered employers would receive payroll tax credits and refunds for wages and health care plan expenses paid under these emergency paid leave provisions.

Other Provisions

The Families First Act provides emergency unemployment compensation provisions, funding for economic assistance, and requires that COVID-19 testing is provided at no charge.

In addition to these new emergency federal benefits, your company should monitor state and local government action; these federal programs do not supersede more generous state and local laws.

TechServe Alliance Summary of H.R. 6201, Families First Coronavirus Response Act

I. Division G: Tax Credits for Paid Sick and Paid Family [and Medical] Leave

Employers will receive tax credits and refunds up to the statutorily authorized amounts expended for emergency paid sick leave benefits, emergency paid family leave benefits, and health care plan expenses related to employee emergency paid leave.

The credit is applied against employer social security payroll taxes. If the employer-paid emergency benefits exceed the value of the payroll tax credit, the employer will receive a tax refund for the balance as follows:

- Paid Sick Leave: for employees' own health conditions the amount of qualified sick leave wages for each employee; the maximum for each employee is \$511 per day with a \$5,110 cap.
- Paid Sick Leave: for employees caring for a covered individual or for a child whose school or place of care has been closed; the maximum amount for each employee is \$200 per day with a \$2,000 cap.
- Paid Emergency Family Leave: for employees caring for a child under 18 whose school has been closed or caregiver is not available; the maximum amount per employee is \$200 per day with a \$10,000 cap.

In addition, employers can also seek tax credits/reimbursement for employee health care plan expenses while employees are out on emergency paid sick or family leave.

Wages required to be paid as emergency paid sick and/or family leave will not be considered wages or compensation subject to social security payroll taxes and for half of the Hospital Insurance Tax. For the other half of the Hospital Insurance Tax, the tax credit is increased to cover the cost.

TechServe Alliance recommends that members seek professional accounting advice for further guidance or questions regarding accounting and tax payments.

II. Section E: Emergency Paid Sick Leave Act

Covered Employer: private entity or individual involved in commerce or any industry affecting commerce and employs fewer than 500 employees.

Covered Employee: uses FLSA definition.

Paid Leave Requirement:

Employer shall provide to each covered employee paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

- (1) Employee is subject to a government quarantine order;
- (2) Employee has been advised by health care provider to self-quarantine;
- (3) Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

- (4) Employee is caring for an individual who is subject to a government-imposed quarantine order or has been advised self-quarantine by a health care provider;
- (5) Employee is caring for a son or daughter whose school has closed or whose childcare provider is not available due to COVID-19 precautions; and
- (6) Employee is experiencing any other substantially similar conditions.

Qualifying Period for New Employees: None, this leave provision covers all employees regardless of how long employed.

Covered Employers shall provide paid sick leave for:

Full-Time Employees: 80 hours of leave

Part-Time Employees: the number of hours equal to the number of hours that this employee works on average over a two-week period.

Paid Leave Amounts

Employee's Own Health: is based on the employee's required compensation and the number of hours the employee would normally work at the regular rate for full-time employees or as calculated for part-time employees if they are out of work for their own illness or pending diagnosis 1-3 and 6, above), with a cap of \$511 per day and \$5,100 in aggregate.

Other's Health or Family Needs: is based at 2/3 regular rate for time taken to care for someone impacted by COVID-19 (4 above) or because of childcare needs (5 above), with a cap of \$200 per day or \$2000 in aggregate.

Sequencing with Employer Provided Sick Leave

First: use 80 hours emergency sick leave or amount calculated for part-time employees as noted above.

Second: use accrued sick leave provided by the employer.

The emergency paid sick leave is in addition to paid sick leave already offered by the employer (including to state and local requirements). The employer cannot require the employee to use other paid leave before using this emergency sick paid leave. See Division E, Emergency Paid Sick Leave Acct, Section 5102(e)(2).

Exemptions for Small Business: Available for small businesses with fewer than 50 employees if the imposition of this requirement would jeopardize the viability of the business (added in "technical corrections").

Notices: Employer must post notices provided by the Secretary of Labor about the availability of this benefit within seven days of enactment.

Priority: This Act does not supersede any rights or benefits that the employee is entitled to under other federal, state, or local laws, a collective bargaining agreement, or existing employer policy.

Enforcement: Failure to comply with this Act would be treated as a violation of the FLSA and subject to penalties.

Self-Employed: Independent Contractors utilized by firms would also receive a similar tax-credit against their own self-employment taxes as if they would have otherwise qualified for paid sick leave as an employee of a covered employer.

III. Section C: Emergency Family and Medical Leave Expansion Act

Amends Family Medical Leave Act to add emergency family leave benefits that sunset December 31, 2020.

Covered Employers: private entity or individual involved in commerce or any industry affecting commerce and employs fewer than 500 employees (this provision was changed from "50 or more employees").

Eligible Employees: must have worked for the employer for at least 30 calendar days prior to requesting the leave.

Exemptions for Small Business: Subject to action by the Secretary of Labor, available for small businesses with fewer than 50 employees if the imposition of this requirement would jeopardize the viability of the business (added in "technical corrections").

Qualifying Need Related to a Public Emergency: the covered employee is unable to work (or telework) due to the need for leave to care for son or daughter under 18 if school is closed or if the childcare provider is unable due to this health emergency. (This provision was significantly cut back to only cover care for children under 18.)

Amount of Leave Available: A total of 12 weeks

Sequence:

- (1) First 10 days may consist of unpaid leave. The employee may elect to substitute vacation, personal leave, medical or sick leave, or the new emergency paid sick leave for the first 10 days of unpaid leave.
- (2) After the first 10 days, the employer shall provide paid leave for each day of leave that the employee takes up to 10 weeks.

Amount of Pay:

Based on an amount not less than 2/3 of the employee's regular rate and the number of hours the employee is normally scheduled to work. A specific calculation would be used for employees who have varying schedules. Paid leave shall not exceed \$200 per day or \$10,000 in aggregate.

Notice to Employer: If foreseeable, the employee shall provide employer with notice for need for the leave as is practicable.

Restoration of Position: Will not apply to employers with less than 25 employees if certain conditions are met as described in this emergency Act.

Self-Employed: Independent Contractors utilized by firms would also receive a similar tax-credit against their own self-employment taxes as if they would have otherwise qualified for paid family leave as an employee of a covered employer.

IV. Section D: Emergency Unemployment Insurance Stabilization and Access Act of 2020

The bill requires states to take steps to ease eligibility requirements to access unemployment compensation for claimants, including waiving work search, the waiting week, and good cause requirements.

Covered situations where employees would access emergency unemployment insurance include furloughs during a business slowdown as a result of COVID-19 with the intent to bring the worker back, closure of the business for economic reasons related to COVID-19, or closure of the business by public health authorities. In contrast, individual workers who are forced to stay home due to their COVID-19-related health issues would qualify for emergency paid sick leave.