



The following details the provisions regarding paid sick leave and paid family leave as required by the Families First Coronavirus Response Act (HR 6201).

**Please note: This document doesn't constitute legal or tax advice, but is for informational purposes only. Please contact an attorney or tax specialist for specifics on how these provisions will impact your company.**

### ***Paid Sick Leave***

The legislation requires companies with fewer than 500 employees must provide employees with two-weeks of paid sick leave (80 hours for full-time employees and typical number of hours over two-weeks for part-time employees).

**Effective Date:** The provision takes effect not later than 15 days after enactment of the bill and expires on December 31, 2020.

**Eligibility:** The paid sick leave is available to any employee without regard to duration of employment if unable to work or telework because they are:

- Subject to a government quarantine or isolation order related to COVID-19,
- Have been advised by health provider to self-quarantine due to COVID-19,
- Experiencing symptoms of COVID-19 and seeking medical diagnosis,
- Caring for an individual subject to quarantine order or self-quarantine,
- Caring for children if schools are closed or their caregiver is unavailable because of a public health emergency, or
- Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.

**Rate of Pay:** Employees are compensated at the higher of their regular rate, the federal minimum wage, or the local minimum wage, but not to exceed \$511 per day and \$5,110 in the aggregate. However, if the employee is absent to care for a sick family member or a child unable to attend school, or because they meet the criteria for similar conditions they are compensated at 2/3 of the rate they would otherwise receive, but not to exceed \$200 per day and \$2,000 in the aggregate.

**Tax Credits:** Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100 percent 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.

**Small Business and Other Exemptions:** The Secretary of Labor is authorized to issue regulations to exempt health care providers and emergency responders from the definition of employer. In addition, the Secretary of Labor may exempt small businesses with fewer than 50 employees from the requirement to offer leave to care for a child when a school is closed when the imposition of paid sick leave would jeopardize the business' viability.

**Relationship to Existing Programs:** The paid sick leave in the legislation is in addition to whatever sick leave is already offered by the employer (including subject to state or local requirements).

**Additional Credit for Health Plan Expenses:** The amount of the tax credit is further increased by the amount of the expenses of the employer's health care plan allocable to the qualified sick leave. This allows the employer to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.

**Tax on Employers:** Paid sick leave is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax, for the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax.

### ***Paid Family Leave***

With certain exceptions, the legislation requires private sector employers with fewer than 500 employees and government employers to provide employees with up to 12 weeks of paid family and medical leave.

**Eligibility:** The paid family and medical leave is available to any employee who has been employed for at least 30 days if they are out in order to care for children if schools are closed or their daycare is unavailable because of a public health emergency, and they are unable to work or telework.

**Rate of Pay:** After 10 days, during which time the employee can take unpaid or paid leave (if available), employees are compensated at 2/3 of their regular rate. Paid leave under this requirement shall not exceed \$200 per day and \$10,000 in the aggregate.

**Tax Credits:** Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100 percent of the qualified 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 on failing to deposit payroll taxes in anticipation of the credit.

**Small Business and Other Exemptions:** The Secretary of Labor is authorized to exempt health care providers and emergency responders and small businesses with fewer than 50 employees if the requirement would jeopardize the business as an ongoing concern. The requirements to restore the employee to their position after the paid leave is taken do not apply to businesses with fewer than 25 employees if the position no longer exists because of the public health emergency (provided the employer takes certain actions to try and assist the employee). Employers with less than 50 employees are exempt from civil actions brought by employees for violations of this section. Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid FMLA.

**Effective Dates:** The provision takes effect not later than 15 days after enactment of the bill and sunsets on December 31, 2020.

**Additional Credit for Health Plan Expenses:** The amount of the tax credit is further increased by the amount of the expenses of the employer's health care plan allocable to the qualified sick leave. This allows the employer to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.

**Tax on Employers:** Paid FMLA is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax, for the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax.