

Paid Leave Provisions in Recent Federal COVID-19 Response Legislation

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Background on Paid Leave in the U.S.

The United States is the only industrialized country without a national program guaranteeing workers some form of paid sick or paid family leave. The Family and Medical Leave Act (FMLA) provides many U.S. workers with access to *unpaid*, job-protected time off to provide or receive care. Under this law, a worker is eligible for 12 weeks of unpaid leave in the event of the birth, adoption, or foster placement of a child; the serious health condition of a close family member; a worker's own serious health condition; or the military deployment of a worker's spouse, child, or parent. Eight states and the District of Columbia have implemented paid leave policies. The [Federal Employee Paid Leave Act](#), which takes effect in October 2020, will provide paid parental leave to federal employees.

Before the COVID-19 legislation, the Family and Medical Leave Act (FMLA) was the only national leave policy in place, and only guaranteed unpaid leave to a slim majority of workers, with [40% of workers](#) ineligible for benefits. Unpaid leave is not accessible for many workers, especially low-income workers, who cannot afford to lose income if they get sick or need to take care of a loved one. During this time of crisis, millions of Americans will need to take time off to care for a child while schools are closed or for a sick or self-quarantining loved one or to recover from their own illness or self-quarantine.

Overview of COVID-19 Response Legislation

To-date, in response to the COVID-19 pandemic, three pieces of legislation have been passed and signed into law, two of which include provisions to provide paid leave for workers during this crisis.

[The Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020](#) was signed into law on March 6, 2020 and provides \$8.3 billion in emergency funding to various federal agencies.

[The Families First Coronavirus Response Act](#) was signed into law on March 18, 2020. This Act includes many provisions to address the outbreak of COVID-19 in the United States, including additional funding for nutritional programs, additional coverage of COVID-19 testing related visits, expansion of emergency paid sick days and paid leave, additional funding for unemployment insurance programs, and an increased federal matching rate for state Medicaid programs.

[The Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) was signed into law on March 27, 2020. This \$2.2 trillion stimulus package aims to mitigate the current economic decline due to the COVID-19 pandemic and includes provisions to expand the unemployment insurance programs, ‘recovery rebates’ to low- and middle-income families, and a \$150 billion Coronavirus Relief Fund to address emerging budget holes in states and localities. It also includes updates to the paid leave provisions of the Families First Coronavirus Response Act.

The Families First Coronavirus Response Act

The bill includes three main sections on paid leave provisions:

- The Emergency Family and Medical Leave Expansion Act
- The Emergency Paid Sick Leave Act
- Tax Credits for Paid Sick and Paid Family and Medical Leave

The provisions of these acts are effective no later than 15 days after the bill was signed into law on March 18, 2020 and end on December 31, 2020. Under the bill, a ‘public health emergency’ is defined as an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

Emergency Family and Medical Leave Expansion Act:

The Emergency Family and Medical Leave Expansion Act builds upon provisions in the FMLA. Under this Act, employees are eligible to receive paid leave due to a public health emergency if they are unable

to work in order to provide care for their child due to school or place of care closures, as well as if the normal child care provider of their child is unavailable due to COVID-19 precautions. Eligible employees will receive no less than two-thirds of their regular pay, up to \$200 a day and \$10,000 for each employee over the benefit period.

The duration of leave may be up to 12 weeks as required by the FMLA. The first two weeks may be provided unpaid, or an employee can use the paid leave provided in other portions of the bill or additional paid leave the employee has available. Employees are eligible if they have worked for their current employer for at least 30 calendar days. Private businesses with fewer than 500 employees and all public employers are subject to these provisions. The Secretary of Labor has the ability to exclude certain health care providers or emergency responders, as well as small business with fewer than 50 employees from the provisions of this act, if compliance with this Act would jeopardize the viability of the business.

The Emergency Paid Sick Leave Act:

Under the Emergency Paid Sick Leave Act, employees who are unable to work or telework are eligible for emergency paid sick time if they are subject to a Federal, State, or local quarantine or isolation order, have been advised by a health care professional to self-quarantine due to concerns related to COVID-19, or are experiencing symptoms of COVID-19 and seeking medical diagnosis. Under any one of these conditions, employees are eligible for leave that replaces their regular pay for up to \$511 a day and \$5,110 for each employee over the benefit period.

Employees may also receive paid sick time for caregiving responsibilities. These include: 1) caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or who has been advised by a health care professional to self-quarantine due to concerns related to COVID-19; or 2) caring for a child whose school, place of care, or child care provider is unavailable due to COVID-19 precautions. Additionally, employees may also receive paid sick time if they are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of the Treasury and Labor. Under either of these conditions, employees are eligible for leaves that substitute two-thirds of their regular pay, up to \$200 a day and \$2,000 for each employee over the benefit period.

Full time employees are entitled to 80 hours of paid sick time, while part-time employees are entitled to a paid sick leave equal to the number of hours that such employee works, on average, over a two-week period. Paid sick time under this Act is available for immediate use by the employee, regardless of how long the employee has been employed by an employer and is not subject to a waiting period or accrual. Paid sick time benefits are not retroactive and cannot carry over from one year to the next.

Private businesses with fewer than 500 employees and all public employers are subject to the provisions in this Act. After the first workday that an employee receives leave benefits, employers may require that employees follow reasonable notice procedures to continue receiving paid sick time. Employers are not allowed to require employees to search or find a replacement employee as a condition of receiving their paid sick time benefits. They are required to post and keep a notice of these requirements and are not allowed to discharge, discipline, or discriminate against an employee who utilizes paid sick time, has filed any complaint or instituted any proceeding related to this Act, or has testified or is about to testify in any such proceeding. Employers that violate the provisions in this law will be considered in violation of sections of the Fair Labor Standards Act of 1938 and subject to those penalties.

If compliance with these provisions would jeopardize the viability of a business, the Secretary of Labor has the ability to exclude certain health care providers or emergency responders as well as small business with fewer than 50 employees from providing emergency paid sick leave.

Tax Credits for Paid Sick and Paid Family and Medical Leave:

Under the Tax Credits for Paid Sick and Paid Family and Medical Leave provisions, private employers are eligible for payroll tax credits for the qualified sick leave and family leave wages paid for each calendar quarter over the permitted duration (amounts specified in Division C and E). Self-employed individuals are eligible for an individual tax credit of \$511 a day for their own quarantine or medical diagnosis or two-thirds of their regular wages (up to \$200 a day) for caring for their child due to quarantine or closure of schools/day cares, or for an individual who is self-quarantining or seeking medical diagnosis.

Additional appropriations from general revenues are made to the Social Security Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Fund in the amount equal to the reduction in revenues from the payroll tax credits under this Act.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

The CARES Act included a number of important changes to the provisions of the Families First Coronavirus Response Act.

- 1) Under the Emergency Family and Medical Leave Expansion Act, employees are only eligible for paid leave if they have worked for their employer at least 30 calendar days. The CARES Act

expands eligibility to include employees who were laid off after March 1, 2020, were rehired by their employer, and had previously worked for that employer for at least 30 of the last 60 days.

- 2) It expands Tax Credits for Paid Sick and Paid Family and Medical Leave by providing for an advance of the payroll tax credit from the Treasury.
- 3) It provides funds for federal agencies to reimburse federal contractors for paid leave and paid sick leave that they provided to specific employees or subcontractors that are unable to work due to the public health emergency and whose jobs cannot be done via telework.

Discussion

Under the Families First Coronavirus Response Act, workers are eligible for up to 12 weeks of paid family and medical leave during the public health emergency if they are unable to work because they must provide care for their child due to school or place of care closures. Additionally, workers are eligible for two weeks of emergency paid sick leave to care for a child while schools are closed, care for a sick or self-quarantining loved one, or to recover from their own illness or self-quarantine. Providing paid leave during this public health emergency reduces the spread of illness, improves overall public health, and is invaluable for the health and financial well-being of workers and their families.

The new legislation guarantees paid family and medical leave for millions of workers during the COVID-19 crisis, but coverage under these provisions is not universal. Employees at private employers with over 500 employees are not covered under the legislation. The rationale is that employees at larger firms are more likely to already have paid sick leave benefits. However, even at firms with over 500 employees, [only 25%](#) of workers have access to paid family leave to care for sick relatives or children. This varies significantly by wage level with [part-time and low-income](#) workers having less access to these benefits. Although many of these firms may allow employees to telework, not all employees – especially low-income workers – may be able to telework, and employees may not be able to balance caregiving with teleworking responsibilities during the COVID-19 crisis.

An emergency paid leave program is an essential piece of the U.S. response to the COVID-19 pandemic, but even outside of a global pandemic, workers get sick and need time to recover or need time off to provide care for loved ones. The COVID-19 emergency pieces of legislation will provide relief for millions of Americans during this time of crisis, but for workers across the country, the challenge of balancing work, health, and family responsibilities will continue after the current pandemic.