

Families First Coronavirus Response Act (HR 6201) Guidelines

On March 18th, 2020, President Trump signed into law the Families First Coronavirus Response Act. This act has two parts: Paid Family Leave and Paid Sick Leave. This law is only applicable to private employers with 500 or fewer employees,¹ state and local government employees, and federal employees not covered by Title II of FMLA. However, each provision operates differently and is applicable in only certain circumstances. Here is what you need to know about this new law:

*All employees must be notified by their employer of this new law and the benefits it provides

UPDATE:

Both leave laws apply only in limited circumstances:

| | Families First Paid Family Leave | Families First Paid Sick Leave |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|---------------------------------------------------|
| Employer is shut down due to quarantine or government mandate | Not applicable | Not applicable |
| Employee is quarantined either through government mandate or order from health care provider and CANNOT work remotely, AND the employer remains open for business | Applicable if children’s school or daycare is closed due to public health emergency | Applicable if all other aspects apply (see below) |
| Employee is quarantined either through government mandate or order from health care provider and CAN work remotely | Not applicable | Not applicable |
| Employee is seeking medical treatment for symptoms of COVID-19 | Not applicable | Applicable |

1. Paid Family Leave:

This law requires that employers give 12 weeks of family leave to employees who must tend to their **children** whose school or daycare has closed, and those employees cannot work remotely or come into the office.

a. Who does it apply to?

- Employees with children whose school or childcare has closed due to a public health emergency.
- Employees who cannot work remotely or on-site due to a public health emergency/COVID-19.

¹ This is different than the FMLA’s standard requirement of 50 or more employees.



- Children include:
 - Biological child
 - Adopted or foster child
 - Stepchild
 - Legal ward
 - Child of a person who takes the place of a parent.
- Employees who have been on payroll for at least 30 calendar days are eligible for this leave.
- Employees must provide advanced notice of foreseeable leave as soon as practicable.

b. When does it apply?

- It takes effect April 2, 2020 and expires on December 31, 2020.

c. What does it offer?

- 12 weeks of job-protected family leave.
- The first 10 days may be unpaid.
 - Employees can choose to use accrued vacation or sick leave, but the employer may not force them to use that paid leave.
 - For the remaining time, the employer must pay 2/3s of the employee's regular rate of pay.
- This is capped at \$200/day for each employee and \$10,000 in total payments to each employee.
- For employees with variable hours each week, the paid leave is the average number of hours worked by the employee each day over the past six months.

d. Job Protections:

- Employers with 25 or more employees must restore employee to their same or similar position upon their return from Paid Family Leave.
- Employers with less than 25 employees are exempt if:
 - the position no longer exists due to economic conditions or operational changes that are made because of the public emergency.
 - the employer makes reasonable efforts to restore the employee to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
 - If reasonable efforts fail, the employee must make reasonable efforts to contact the employer about an equivalent position, if one becomes available, for one year following the conclusion of the public health emergency or the conclusion of the 12-weeks of the leave taken by the employee, whichever is earlier.

2. **Paid Sick Leave:**

a. When does it start?

- Paid sick leave benefits are available now to employees who must care for any individual or themselves due to COVID-19 or public health emergency.

b. Who does it apply to?

- All employees, unable to work or telework *regardless of tenure*, that:
 - i. Have been ordered by government to quarantine or isolate because of COVID-19.
 - ii. Have been advised by health care provider to self-quarantine because of COVID-19.
 - iii. Have symptoms of COVID-19 and are seeking medical diagnosis.
 - iv. Is caring for someone subject to a government quarantine, isolation order, or has been advised by a health care provider to quarantine or self-isolate.
 - v. Must care for a son or daughter whose school or childcare service is closed due to COVID-19 precautions.
 - vi. The employee is experiencing any other substantially similar conditions as specified by the secretary of health and human services,² in consultation with secretaries of labor and treasury.

c. What does it offer?

- If above sections i. through iii. apply, then:
 - The employer must offer 80 hours of paid sick leave at the employee's regular rate of pay, or minimum wage, whichever is greater.
- If **only** above sections iv. through vi. apply, then:
 - The employer must offer 80 hours of paid sick leave at 2/3 regular rate of pay, or minimum wage, whichever is greater.
- Part-time employees can take the number of hours they would normally work during a two-week period.

d. What limitations for the employee exist?

- Limited to \$511 per day and \$5,110 if the employee is taking care of themselves.
- Limited to \$200 per day and \$2,000 total when the employee is caring for someone else.
- No year-end carry-over
- No payout on termination or separation

e. What limitations for the employer exist?

- Employers cannot require an employee to use any sick or vacation pay before they use Paid Sick Leave.
- Employers cannot require an employee to find a replacement to cover their scheduled work hours.
- Employers cannot retaliate against any employee who takes leave in accordance with the act.
- Employers cannot retaliate against any employee who files a complaint or participates in a proceeding related to the act, including any proceeding that seeks to enforce the act.

² Currently, the Secretary of Health and Human Services' website only offers the CDC's website regarding information on COVID-19 symptoms: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>



f. Penalties:³

- Any employer not abiding by this act can be subject to penalties.
- Any employer not paying employees through the terms of the Sick Leave Act shall be considered to have violated minimum wage requirements under the FLSA and be subject to penalties under the FLSA as well.

g. Job Protections:

Paid Sick Leave does not provide the same job protections as the Paid Family Leave, but as this is a new and undeveloped law, please exercise caution when issuing employment decisions related to sick leave.

3. Applicable to both Paid Family Leave and Paid Sick Leave:

a. Exceptions:

- Does not apply to health care providers and emergency responders.
- Employers with less than 50 workers can ask the secretary of labor for an exemption from providing these leave benefits if it would jeopardize the viability of the business.

b. Tax Credits:

This information is still developing, so stay posted. Tax credit options do not apply to state or local government employers currently. Qualifying employers who pay qualifying sick or child-care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying leave that they paid, rather than deposit those amounts with the U.S. IRS.

Payroll taxes that are available for retention include withheld federal incomes taxes, employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not enough payroll taxes to cover the cost of qualified sick and child-care leave, employers are able to file a request for an accelerated payment from the IRS.

4. Final Note:

This new law was written and enacted in a short amount of time, and as such, there is a lot of questions and unexplored territory. As this is a new and undeveloped law, employers should be cautious in

³ The DOL will not bring an enforcement action against any employer for violations of the FFCRA so long as the employer has acted reasonably and in good faith to comply with the act.



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denying an employee or avoiding any of the above benefits. If you do not understand any provision, please reach out to us to assist you.

Stay posted as there is likely to be additional legislation in the coming weeks. As always, we are here to assist you along the way.