

Family First Coronavirus Response Act

H.R. 6201 – Revision 4/2/2020

The COVID-19 epidemic has created situations where employees are not able to work because they tested positive for the virus or have been quarantined after coming in contact with someone who has tested positive. It has also caused parents to miss work because their children's school has closed due to the outbreak and there is no one to watch the kids.

As a result, Congress passed H.R. 6201, the Families First Coronavirus Response Act which become effective April 2, 2020, and the provisions of the legislation will continue through December 31, 2020. This legislation makes significant changes to the Family Medical Leave Act (FMLA) and to Emergency Paid Sick Leave.

The legislation provides sick leave benefits and childcare leave benefits to affected taxpayers whose employers have fewer than 500 employees. The way this is being handled is the employer will pay the benefits to the employee and then will be reimbursed by the government (more on this later in this article).

Emergency Paid Sick Leave

For employers with fewer than 500 employees the legislation makes the employees eligible for paid sick leave without regard to the duration of their employment with the company. Thus, if an employee is unable to work, or work from home, for any of the following reasons they qualify for paid sick leave.

1. Is subject to federal, state, or local isolation or quarantine order related to COVID-19
2. Has had a health care provider advise them that they should self-quarantine as a result of concerns related to COVID-19 (self-quarantining does not qualify).
3. Is seeking medical diagnosis as a result of having symptoms of COVID-19.
4. Is caring for somebody (not necessarily a family member) who is subject to a federal, state, or local isolation or quarantine due to COVID-19; or who has been advised to self-quarantine by a health care provider as a result of COVID-19.
5. If the employee's child's school or care facility has been closed or is unavailable as a result of COVID-19 and the employee needs to care for the child.

The Act also includes a provision that an employee qualifies if the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

- Hours of Sick Leave Time:
 - **Full-Time Employee:** 80 Hours
 - **Part-Time Employee (regularly scheduled hours):** Same number of hours they would normally work during a two-week period.
 - **Part-Time Employee (sporadic hours):** Special calculation method.
- Sick Pay Benefit:
 - **For reasons 1 through 3, above:** Normal rate of pay but limited to a maximum of \$511 per day and a total of \$5,110.
 - **For reasons 4 and 5:** Two-thirds of their normal rate of pay but limited to \$200 per day and a maximum of \$2,000.
- Employee Accrued Paid Leave – The Act specifically prohibits employers from requiring employees to use other accrued paid leave before using the emergency leave.
- Existing Paid Sick Leave or Paid Time Off - Any existing paid sick leave or paid time off is separate from Emergency Paid Sick Leave and remains with the employee.
- Notice - Employees are not required to provide advance notice before the first day that they take paid sick leave.

Child Care Leave (Paid Family Leave)

Under the Act employers with fewer than 500 employees are required to pay up to 12 weeks of employer-paid childcare leave for any employee who has employed by the employer more than 30 days.

- Employee Qualifications - To qualify the employee must be unable to work, or work from home, because the employee must care for their child under 18 years of age, due to school or childcare closures related to a COVID-19 emergency.
- Duration of the Leave – The maximum duration of the leave is 12 weeks.
- Family Leave Benefit – Two-thirds of their normal rate of pay but limited to \$200 per day and a maximum of \$10,000.
- Notice: Where the need for childcare is anticipated an employee should provide their employer with as much advance notice as possible. However, advance notice is not required.

- Employee Retention:
 - **25 Employees or More:** Employers with 25 or more employees must allow their employees to return to work after the leave.
 - **Less Than 25 Employees:** Employers with fewer than 25 employees must allow their employees to return to work after the leave unless the position no longer exists as a result of changes in economic or operating conditions related to/resulting from COVID-19 and the public health emergency. Even so, the act requires employers to do their best to return an employee to an equivalent position if available for up to a period of one year.
- State Family Leave Programs – Some states provide family leave benefits and it will take time to see if there is nexus between the federal emergency benefits and state benefits. For example, CA has a paid family leave program compensated by the state.

SOCIAL SECURITY PAYROLL TAX CREDIT

Employers who provide Emergency Paid Sick Leave benefits and Emergency Child Care Leave benefits will be given refundable tax credits against their Social Security taxes that will refund them fully for qualified sick leave and family leave wages under the Act. A similar credit is available for self-employed individuals against their self-employment tax.

Procedure for Claiming this Credit ([IR2020-57](#)) - Under guidance that will be later released, eligible 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 sick and child care leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include:

- Withheld federal income taxes,
- Employee share of Social Security and Medicare taxes, and
- Employer share of Social Security and Medicare taxes with respect to all employees.

Accelerated Payment - If there are not sufficient payroll taxes to cover the cost of qualified sick and childcare leave paid, employers will be able file a request for an accelerated payment from the IRS using [Form 7200](#). The IRS expects to process these requests in two weeks or less. For details see the [instructions for Form 7200](#).

Example - If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The

employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

Example – *If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes the employer could use the entire \$8,000 of taxes in order to make qualified payments and file and file a request for an accelerated credit on form 7200 for the remaining \$2,000.*

Self-Employed Individuals - Equivalent childcare leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments.

Small Business Exemption - Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or childcare unavailability where the requirements would jeopardize the ability of the business to continue. The exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern. The Department of Labor will provide emergency guidance and rulemaking to clearly articulate this standard.

Non-Enforcement Period - The Labor Department will be issuing a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the Act. Under this policy, the Labor Department will not bring an enforcement action against any employer for violations of the Act so long as the employer has acted reasonably and in good faith to comply with the Act. The Labor Department instead will focus on compliance assistance during the 30-day period.