

# Congress Expected to Pass Coronavirus Response Act Requiring Employer-Paid Sick and Medical Leave

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By NAHB Now

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On Saturday, the House passed H.R. 6201, the Family First Coronavirus Response Act, which would guarantee free coronavirus testing, establish paid leave for all employees, enhance unemployment insurance, expand food security initiatives and increase federal Medicaid funding.

The bill passed the House by a vote of 363 to 40. The Senate is expected to pass the bill in the coming days, and President Trump has indicated his support for the legislation.

The three major components of this bill that will affect businesses of all sizes include: paid family and medical leave; paid sick leave; and new tax credits. Further details about each of these components are listed below.



If this bill is enacted into law, over the coming days and weeks, the U.S. Department of Labor (DOL) and Treasury Department will be releasing additional guidance and regulations to implement these new requirements.

## Emergency Paid Sick Leave

The bill would require employers to provide each employee with employer-paid sick time to:

- Self-isolate due to a diagnosis of coronavirus.
- Obtain a medical diagnosis or receive care if an employee is experiencing symptoms of coronavirus.
- Obtain preventative care for coronavirus.
- Comply with the recommendation or order by a public health official with jurisdiction or a health care provider on the basis that the physical presence of the employee on the job would jeopardize the health of others because the employee was exposed to coronavirus or exhibits symptoms.
- Care for or assist a family member of the employee who falls under any of the above categories.
- Care for the child of the employee if the school or place of care has been closed or childcare is unavailable due to coronavirus.

Full-time employees would be eligible for 80 hours of paid sick time. Part-time employees are eligible for a number of hours equal to the average number of hours the employee works over a two-week period. The paid sick time is available to employees for immediate use, regardless of hire date, and covers 100% of typical wages. Employers do not have to pay out unused emergency sick leave days if the employee is separated.

For employers with existing policies, this emergency sick leave is **in addition to** paid leave the employee already receives. The bill would also prohibit employers from altering their policies to avoid these new requirements. Employers also may not require an employee to use other paid leave provided by the employer before using paid leave under the emergency bill.

The bill also requires employers to post notices of the paid sick leave. Notices must be prepared or approved by DOL, which will make a model notice available to employers within seven days after the bill is enacted.

Employers are prohibited from discharging, disciplining or discriminating against employees who use sick time under this new act or file a complaint with regard to the act. The bill provides monetary penalties for employers that do not comply. This would take effect 15 days after the date of enactment and will remain in effect until Dec. 31, 2020.

### **Emergency Family and Medical Leave**

The provision expands the existing Family and Medical Leave Act (FMLA) requirements until Dec. 31, 2020. This generally applies to all employers with fewer than 500 employees, and applies to employees who have been employed at least 30 calendar days.

Qualifying events for triggering this are:

- To comply with a recommendation or order by a public official having jurisdiction or a health care provider that the physical presence of the employee on the job would jeopardize the health of others because of exposure to coronavirus or showing symptoms. And if the employee is unable to perform the functions of the position and comply with the order.
- To care for a family member of an eligible employee who is complying with a recommendation or order by a public official having jurisdiction or a health care provider that the physical presence of the employee on the job would jeopardize the health of others because of exposure to coronavirus or showing symptoms.
- To care for the employee's child under 18 years of age if the school or place of care has been closed or the childcare provider is unavailable due to the coronavirus.

The Secretary of Labor will be granted the authority to issue regulations to exempt small businesses with fewer than 50 employees from these requirements "when the imposition of such requirements would jeopardize the viability of the business as a going concern."

Leave cannot be taken intermittently or on a reduced work schedule **unless** the reason for the leave is to care for a child due to school closings or lack of childcare and no one has been exposed to coronavirus.

The first 14 days for which an employee takes leave under this section may consist of unpaid leave. Employees elect to substitute any other available leave for the unpaid leave, but the employer may not require that.

After 14 days, the employer shall provide paid leave. Paid leave is calculated based on no less than two-thirds of an employee's regular rate of pay and the number of hours the employee would otherwise normally be scheduled to work.

### **Tax Credits for Paid Sick Leave and Paid Family and Medical Leave**

Employers will be allowed to claim a credit against their payroll taxes (specifically section 3111(a) of the Internal Revenue Code, the Old-Age and Survivors Insurance Trust Fund, commonly known as social security) an amount equal to 100% of the qualified sick leave wages paid by the employer, subject to the limits below.

Self-employed individuals also may qualify for tax credits. Under the bill, an eligible self-employed individual means an individual who regularly carries on a trade or business within the meaning of section 1402 of the Internal Revenue Code and would be eligible to receive either paid sick leave or FMLA leave if the individual were an employee of an employer (other than himself or herself).

### **Credit for Paid Sick Leave**

Credit based on employees: For purposes of determining the credit for sick leave, the amount of qualifying sick leave wages may not exceed \$511 per day for a maximum of 10 days. However, if the paid sick leave is used to care for a family member or for a child whose school has closed or where childcare is unavailable, the amount of qualified sick leave wages eligible for the credit is capped at \$200 per day.

If the credit exceeds the amount owed under section 3111(a) for any calendar quarter, the excess is refundable.

For self-employed individuals: The bill provides a credit equal to 100% of the qualified sick leave amount for eligible self-employed individuals who must self-isolate, obtain a diagnosis or comply with a recommendation to self-isolate due to coronavirus. Under these circumstances, the credit amount is capped at the lesser of \$511 per day or the average daily self-employment income for a maximum of 10 days. The credit is reduced to 67% when caring for a family-member or for a child whose school or childcare is closed. Under these circumstances, the credit is capped at the lesser of \$200 per day or the average daily self-employment income.

The credit is claimed against income taxes and is refundable.

### **Credit for Family and Medical Leave**

- Credit based on employees: The amount of qualified family leave wage taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters. If the credit exceeds the amount owed under section 3111(a) for any calendar quarter, the excess is refundable.
- For self-employed individuals: The qualified family leave equivalent amount is capped at the lesser of \$200 per day or the average daily self-employment income. The maximum number of days is 50.

Lastly, the bill creates a special rule such as any wages required to be paid for emergency family and medical leave or sick leave shall not be subject to payroll taxes under section 3111(a). That saves employers the 6.2% social security tax on eligible wages.

For more information, contact J.P. Delmore at 800-368-5242 x8412. Additional resources regarding the coronavirus are available on [nahb.org](http://nahb.org).

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