



FMLA & Sick Leave Expansion

(current as of 3/24/2020)

On March 18, 2020, the [COVID-19 Response Act](#) was signed by the President. The recently passed Act includes separate sections that directly affect employers and employees. Three of the COVID-19 Response Act sections are:

Emergency Family And Medical Leave Expansion Act

- Covers employers with fewer than 500 employees, including small employers who are not covered by the FMLA (Family and Medical Leave Act).
- Employees need only to have been employed for 30 days to be eligible for the new leave.
- An eligible employee is allowed 12 weeks of FMLA leave.
- Paid leave must be provided for each day of leave after the first 10 days of leave and is subject to a cap of \$200 per day or \$10,000 total.
- The Secretary of Labor has authority to issue regulations for certain reasons to exclude workers in certain essential industries and exempt certain small businesses.
- Effective date: No later than April 2, 2020 through December 31, 2020.

Emergency Paid Sick Leave Act

- Imposes requirements to provide two weeks of sick pay. This covers the 10-day gap of the FMLA Expansion Act.
- Covers any employer with under 500 employees.
- All employees are covered without a minimum time of employment.
- Employers must pay sick leave to any employee unable to work (including teleworking) who is affected by the COVID-19 virus. Included are individuals who have the virus, are quarantined, are seeking a medical diagnosis, are caring for an infected family member, and other related issues to the virus.
- Employers must pay full-time employees for 80 hours.
- Part-time employees are paid for two weeks based on hours historically averaged over a six-month period.
- Under the new regulations, employees who are on sick leave because they are sick can receive their full pay, up to \$511 per day or \$5110 total.
- Leave taken to care for children whose school or daycare has closed is paid at two-thirds the employee's regular rate of pay, with a maximum of \$200 per day or \$10,000 total.
- Employers cannot force you to use up your vacation or other sick time before receiving this benefit. There is a ten-day waiting period before this benefit applies. Employees can use existing sick or vacation time to cover these days.



Employer Tax Credits for Paid Sick and Paid Family Leave

The Act provides a series of refundable tax credits for employers paying paid sick leave or family medical leave including tax relief for self-employed individuals. These tax credits will apply against the employer portion of Social Security taxes.

- Employers receive tax credits for 100 percent of what they pay out to employees, with the above-noted limits.
- Businesses with 50 or fewer employees can be exempted from these requirements by the Secretary of Labor.
- Employers with fewer than 25 employees do not have to restore employees to their previous positions.
- The imposed pay limits may impact the amount of the tax credit. However, employers will receive a refund if their costs for qualified sick leave or qualified family leave wages exceed the taxes they would owe.

What this Means

- *Small Businesses*

You must provide paid sick leave and/or family/medical leave for any of your payroll workers (not contractors). The Federal Government will pick up the cost of this paid leave—by applying a credit for your 6.2% payroll social security taxes. If the credit is insufficient to cover those costs, the Federal Government will pay you directly. You or your workers do not have to be sick to qualify! Anyone told to quarantine, who is exposed to the virus, showing symptoms, or needs to get tests or preventive care qualifies. Family leave is easier—up to 3 months of paid leave to adhere to quarantine, take care of a sick family member or a child who is home because of their school being closed.

- *Gig Worker/Independent Contractor*

If you are paid by another company (e.g., a ride share company, a caterer, a worker platform like Upwork, another contracting company), you're eligible for a tax credit of up to 2 weeks sick leave at your average pay and 12 weeks of family/medical leave at 2/3 your average pay. The same caps apply--\$511/\$200 per day. You must show you had to comply with self-isolation or care for family members, including children whose schools had been closed due to the coronavirus. Tax credits will be applied against your tax payments, or you will get a rebate if your tax is lower than the credit.