



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

Updated for Minor Changes to the Legislation through the CARES Act

Under the Families First Coronavirus Response Act, **effective April 1, 2020, and with updated provisions enacted through the CARES Act, employers are required to pay employees Paid Sick Leave Payments and Family Leave Payments.** Employers will be required to pay paid sick leave during a employee's first two weeks of work missed due to the coronavirus as a result of the six conditions listed below. Additional paid family leave kicks in for an additional 10 weeks after the employee has exhausted their paid sick leave.

Effective April 1, 2020, employers with less than 500 employees are required to provide **Qualified Sick Leave** and **Family Leave** payments to its employees under the following six conditions related to the coronavirus (Note: The Secretary of Labor may exempt businesses with less than 50 employees providing the paid leave would jeopardize the business. The process for this has not been established yet.)

- a. Government required quarantine
 - b. Advised self-quarantine
 - c. Have symptoms of the virus
 - d. Caring for an individual that is under government quarantine or is under advised self-quarantine (a or b above).
 - e. Caring for son or daughter where school or childcare is closed (child under age 18).
 - f. Other substantially similar condition as is specified by the Secretary of Health and Human Services
1. **Paid Sick Leave** – Employees that miss up to two weeks of work for one or more of the conditions listed above are required to be compensated for sick leave as follows. The Paid Sick Leave provision applies to any employee, regardless of how long the employee has worked for you.
 - A. Amount of paid leave required:
 - A. 80 hours of paid leave for full-time employees.
 - B. Paid leave equal to the number of hours a part-time individual works over a two-week period. Employer is required to take an average of the hours worked over the previous six-month period (or



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

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- period worked if less than six months) ending immediately before the sick leave begins times two weeks.
- C. The sick leave ends after 80 hours for full time employees, or after the end of the two-week calculated hours for part time employees, whichever comes first.
- B. **Paid Sick Leave – Employee:** If the employee is sick or deemed sick due to quarantine (a, b or c in item 1 above):
- A. Amount of Paid Sick Leave required:
- 1) Employees who are taking Paid Sick Leave (because the employee is deemed sick) are required to be paid at least their normal rate of pay (but not less than minimum wage) times the number of hours normally worked during a two-week period.
 - 2) However, the amount paid as sick leave is not **required** to exceed \$511 per day or any portion thereof.
 - 3) The aggregate amount of **required** sick leave for any one employee under this provision cannot exceed \$5,110 (\$511 per day x 10 days).
 - 4) Employers have the option to pay additional sick leave but are not required to do so.
- B. Employer Eligible Credit
- 1) The employer is eligible for a credit for Paid Sick Leave paid to a deemed sick employee based on the required payments listed above.
 - 2) The maximum amount of paid sick leave credit for any one employee deemed sick is \$5,110 during the 2020 calendar year.
 - 3) Employers who pay sick leave beyond the required minimum are not eligible for additional tax credits.
- C. **Paid Sick Leave – To Care for Someone Else:** An employee is granted paid sick leave to care for other individuals who are sick or in quarantine or to care of children who are not able to attend school and do not have childcare.
- 1) Amount of Paid Sick Leave required:



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

Updated for Minor Changes to the Legislation through the CARES Act

- a. Employees who are taking Paid Sick Leave to care for someone else are required to be paid the greater of:
 - I. 2/3 their normal rate of pay
 - OR**
 - II. 2/3 of the applicable minimum wage in effect for that employer/employeetimes the number of hours ***normally worked*** during a two week period.
 - b. However, the amount paid as sick leave is not **required to exceed \$200 per day** or any portion thereof.
 - c. The aggregate amount of **required** sick leave for an employee under this provision cannot exceed \$2,000 (\$200 per day x 10 days)
 - d. Employers who pay sick leave beyond the required minimum are not eligible for additional tax credits.
- 2) Employer Eligible Credit
- a. The employer is eligible for a credit for Paid Sick Leave paid to an employee to care for someone else based on the required payments listed above.
 - b. The maximum amount of paid sick leave credit for any one employee deemed sick is \$2,000 during the 2020 calendar year.
 - c. Employers who pay sick leave beyond the required minimum are not eligible for additional tax credits.
2. **Family Leave Payments** – Payments for family leave are required after the first 10 days of sick leave due to the coronavirus under the six conditions listed above.
- A. The employer must provide this coverage for any employee that it has employed for at least 30 days.



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

Updated for Minor Changes to the Legislation through the CARES Act

- B. Since employees are eligible for Paid Sick Leave for up to 10 days, Family Leave Payments would start the third week.
- C. Amount of paid family leave required:
 - A. 10 weeks following the first 10 days of sick leave.
 - B. Amount of Paid Sick Leave required:
 - 1) Employees who are taking Paid Sick Leave to care for someone else are required to be paid the greater of:
 - a. $\frac{2}{3}$ their normal rate of pay
 - OR**
 - b. $\frac{2}{3}$ of the applicable minimum wage in effect for that employer/employee
 - times the number of hours ***normally worked***.
 - 2) However, the amount paid as sick leave is not **required to exceed \$200 per day** or any portion thereof.
 - 3) The aggregate amount of **required** sick leave for an employee under this provision cannot exceed \$10,000 (\$200 per day x 10 weeks x 5 days).
 - 4) Employers who pay sick leave beyond the required minimum are not eligible for additional tax credits.
- C. For part-time workers whose hours vary, the employer is required to take an average of the number of hours worked per week for the prior six months. If the employee worked a lesser period, an average of the period worked must be used.
- D. Family leave ends after 10 weeks of paid family leave.
- D. Employer Eligible Credit
 - A. The employer is eligible for a credit for Paid Family Leave as a result of the coronavirus conditions listed above.
 - 1) The maximum amount of the credit for paid family leave for any one employee during the 2020 calendar year is \$10,000.



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

Updated for Minor Changes to the Legislation through the CARES Act

- 2) Employers who pay family leave beyond the required minimums are not eligible for additional tax credits.
3. Increased Credits for Company Paid Health Insurance.

If an employee is on Paid Sick Leave or paid Family Leave, the amount of the company's credit is increased for the corresponding health insurance premiums paid for the period the employee is on leave. Example: An employee is on leave for two weeks of a four-week month. 50% of the employee's company paid health insurance is eligible for the credit. Only amounts that are paid by the company on behalf of an employee under a qualifying group health insurance plan are eligible. Amounts paid by the employee are not eligible for the credit.

4. Paid Sick Leave and Family Leave Wages paid to employees under this legislation are not subject to employee or employer social security taxes. Employees pay social security and Medicare taxes on wages (FICA). The Social security percentage is 6.2%. Wages under this legislation are not subject to the 6.2% social security tax.

Wages under this legislation are subject to the 1.45% Medicare tax, however, employers can increase their credits by the amount of Medicare taxes paid.

5. When do the Paid Sick Leave requirements and the paid Family Leave requirements go into effect?

Answer: The consensus is any leave taken after March 31, 2020. However, the Department of Labor says it will not bring enforcement for non-compliance with the law for the first 30 days it is in effect as long as, the employer acted in good faith to comply with the law.

There is a slight discrepancy between the effective date written in the statute and the effective date published by the Department of Labor. The statute indicates an April 2nd date while the Department of Labor says April 1st.



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

Updated for Minor Changes to the Legislation through the CARES Act

6. What is a Tax Credit?

Answer: A tax credit is a reduction in the amount of tax you owe, dollar for dollar with an offsetting tax credit. A tax credit is treated like money you paid towards your tax liability. Some tax credits are considered refundable and some are considered non-refundable. A refundable tax credit allows the credit to reduce your tax liability as low as zero and then refunds you any amounts in excess of your tax liability. A non-refundable tax credit allows you to only reduce your tax liability to zero and does not refund the excess.

The paid leave credits under this statute are refundable. Because the government wants taxpayers and employers to have the benefit of cash in their hands today, they are allowing employers to apply for advance payment of these credits against **federal** payroll tax deposits being made currently vs. having to wait for reimbursements later.

7. How do employers get reimbursed for the tax credits applied to **Paid Sick Leave and Family Leave** payments?

Answer: Employers who are paying employees under these provisions will be able to reduce their **federal** payroll tax deposit amounts by the amount of their eligible credit.

- A. If the eligible credit is less than the total federal payroll tax deposit, then the payroll tax deposit will be reduced by the amount of the credit.
- B. If the eligible credit is more than the total federal payroll tax deposit, the employer can file **Form 7200 “Advance Payment of Employer Credits due to COVID-19”**.
 - 1) The IRS says the turnaround time on these accelerated payments is expected to be 2 weeks.
 - 2) An Employer can file multiple Form 7200 requests during a quarter for advance payments.
 - 3) Form 7200 can be filed prior to the end of the month following the end of a quarter to which the advance payment applied. Any additional amounts needed for a quarter will be refunded after the



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

Updated for Minor Changes to the Legislation through the CARES Act

quarterly 941, 943, or 944 return is filed and reconciled to advance payments previously paid.

- 4) Form 7200 cannot be amended. Once a form is filed corrections will need to be reported on the quarterly 941, 943 or 944 return.
- 5) Since the advance payments only apply to the period April 1, 2020 through December 31, 2020, a Form 7200 should not be filed after December 31, 2020.

8. Can I reduce my federal payroll tax deposits for the “anticipated” credits before the actual payroll has been paid?

Answer: Yes. You can reduce your required federal tax deposits to help cover the costs of payroll in advance of the actual payroll.

9. Are self-employed individuals eligible for the Paid Sick Leave credit?

Answer: Yes. Self-employed individuals (taxpayers that do not earn a W-2 wage and report and pay their self-employment earnings and self-employment tax directly on their personal tax return) are eligible for the Paid Sick Leave credit based on a “**Qualified Sick Leave Equivalent Amount**”

A. Qualified Sick Leave Equivalent Amount means:

- 1) The number of days during the tax year, but not more than 10 days, an individual is unable to perform services in their trade or business as a result of one of the six coronavirus conditions listed above.
- 2) The number of hours would be calculated by the lesser of:
 - a. \$511 per day for **Paid Sick Leave – Employee Sick (see above)**
 - b. \$200 per day for **Paid Sick Leave – To Care for Someone Else (see above)**

OR

- c. 100% of the “**Average Daily Self-Employment Income**”. This is calculated by taking the net earnings from self-



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

Updated for Minor Changes to the Legislation through the CARES Act

employment for the year and dividing by 260 to get an amount per day.

10. Are self-employed individuals eligible for the **Family Leave** credit?

Answer: Yes. If the self-employed individual would have been entitled to receive a “**Qualified Family Leave Equivalent Amount**” if they would have qualified for family leave had they been a W-2 employee.

- A. Qualified Family Leave Equivalent Amount means an amount equal to the number of days during the tax year, but not more than 50 (10 weeks) the individual was unable to perform services in their trade of business as a result of one of the six coronavirus conditions listed above, multiplied by:
- B. The lesser of
- 1) 67% of the Average Daily Self Employment Income for the taxable year
- OR**
- 2) \$200
- C. Average Daily Self-Employment Income is the net earnings from self-employment income divided by 260.

11. How does a self-employed individual receive the credit amounts?

Answer: The credit will be calculated on the self-employed individual’s income tax return for 2020. The credit will be applied against the calculated self-employment taxes on the return. If the amount of the credit exceeds the self-employment taxes, the amount is a refundable credit and can offset regular federal income tax and any excess will be refunded.

Note: There does not appear to be a mechanism for self-employed individuals to receive advance payments for these credits. However, self-employed taxpayers who are eligible for these credits may want to reduce their federal estimated tax



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

Updated for Minor Changes to the Legislation through the CARES Act

payments in anticipation of this credit. Please consult our firm if you have questions regarding this.

12. If an individual is both self-employed and a W-2 employee, can a self-employed individual take full advantage of the credits on their personal return if they have been paid for leave by their employer.

Answer: No. The IRS will not allow a double benefit. The self-employed individual's credit will be reduced for any payments received from their employer.

13. Can I require my employees to use their normal paid leave to supplement their paid time off?

Answer: No. Under terms of this legislation, employers cannot require employees to use their existing paid time off to supplement their wages, or prior to applying these regulations.

14. Can I pay my employees more than the required minimums?

Answer: Yes. However, only the required minimums are eligible for the related credits for wages paid, payroll taxes incurred and health insurance premiums paid.

15. Are the tax credits I am receiving as an employer from the government taxable income to me.

Answer: Essentially – No. However, you will have to report the credits as additional income, and show the offsetting expenses for payroll, payroll taxes and health insurance.

16. What documentation do I need to obtain and keep on file from my employee to substantiate their eligibility for paid leave?

Answer: The IRS will be issuing updates for forms and instructions in the coming weeks. In the meantime, we suggest you keep detail time sheet records of hours employees worked vs. hours taken as paid leave under these provisions. If your employee is taking paid leave because schools or childcare facilities are closed,



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

Updated for Minor Changes to the Legislation through the CARES Act

you should request documentation to support such closings. Appropriate documentation would include postings on the organization's applicable website, emails from the organization regarding their closing to the employee, published information in newspapers, etc.

17. What if I am sick and need more than two weeks of personal sick leave?

Answer: The Family Medical Leave Act still governs leave under these circumstances. If your health condition is considered serious and you need to take extended medical leave beyond the two weeks, you will need to provide the documentation as required under the existing certification requirements.

18. What effect does "Telework" (working from home or at a location that is not your normal workplace) have on paid leave?

Answer: If you can work from home, etc., your wages while working from home are not subject to paid leave rules and the employer will not receive credits for those wages.

If your employer has work you can do from home, but you are unable to complete the work due to one of the conditions outlined above, the paid leave policies apply to your situation.

If your employer agrees to allow you to work from home on a flex schedule or outside of normal business hours, the paid leave provisions will not apply, unless one of the conditions above applies.

19. Can I work some and take part paid leave?

Answer: **Yes and No.** You can take your paid leave in part day increments, if you are teleworking, and your leave is being taken for one of the conditions outlined above. If you are not teleworking, then your leave must be taken in full-day increments.

You may be in a situation where you can work some days in the office and need to be at home other days due to a school closing. You may be able to work four hours a day from home instead of your normal eight because of caring for a minor child.



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

Updated for Minor Changes to the Legislation through the CARES Act

Both situations would allow for partial paid leave payments and partial regular payroll wages.

20. What if my employer closed our offices because of the local or state mandate, do I qualify for the paid leave?

Answer: No. You are not entitled to the paid leave benefits if your office is closed regardless of any government mandates. Payments due to a lack of work are not allowed. However, you may be entitled to unemployment.

21. What if my employer reduces my hours, do I qualify for paid leave?

Answer: No. You are not able to take paid leave for hours you are not scheduled to work.

22. Are employees I previously laid off and subsequently rehired eligible for these credits?

Answer: Yes. An employee that was laid off after March 1, 2020, who is later rehired, is and eligible employee if they worked for at least 30 of the calendar days prior to the layoff.

23. Am I eligible for unemployment benefits while collecting paid leave?

Answer: No. If your employer is providing any type of paid leave compensation, then you are not eligible for unemployment. However, your state unemployment rules may allow for partial leave unemployment compensation because workers hours and pay have been reduced. We suggest consulting the following websites for more information:

<https://www.careeronestop.org/LocalHelp/service-locator.aspx>

The NC website for unemployment is:

<https://des.nc.gov/>

24. What other resources are available?



Families First Coronavirus Response Act (H.R. 6201)

Paid Sick Leave and Expanded Leave Under FMLA

Updated for Minor Changes to the Legislation through the CARES Act

Answer: The IRS has set up a specific webpage with information and resources related to the coronavirus.

<https://www.irs.gov/coronavirus>

The Department of Labor has this Question and Answer page:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

The Department of Labor has this page dedicated to resources:

<https://www.dol.gov/coronavirus>

25. Where Can I find the US Department of Labor workplace posters related to these statutes?

Answer: The required posters are available to be downloaded from the Department of Labor at the following address:

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

26. If many of my employees are working remotely, what good does displaying a poster do them?

Answer: The Department of Labor advises employers need to distribute this information electronically if their employees are working remotely.