



COVID-19 Payroll Provisions

With the passage of the Families First Coronavirus Response Act, two new refundable payroll tax credits are available to employers with fewer than 500 employees. These refundable credits are designed to fully reimburse them, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees.

The Act allows two paid leaves for the employee's own health needs or the care of family members. This will enable employers to keep their employees on payroll and ensure that employees are not forced to choose between their paycheck and the public wellbeing.

The following pages will provide guidance as well as an FAQ on each of the two provisions;

- [Emergency Paid Sick Leave](#)
- [Emergency Family and Medical Leave Act \(FMLA\) Expansion](#)

For the full text of the Act, here is a link to it on [Congress.gov](https://www.congress.gov)

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Emergency Paid Sick Leave

Companies with fewer than 500 employees, up to 2 weeks (10 days/80 hours) of paid family and sick leave to deal with coronavirus-related issues, including staying home to care for children whose schools are closed. The employee must be unable to work, or telework, due to a need for leave under one of the following six reasons;

1. The employee is subject to a COVID-19-related federal/state/local quarantine or isolation order.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis.
4. The employee is caring for an individual who is subject to a federal/state/local quarantine order, or the individual has been advised to self-quarantine due to COVID-19 related concerns.
5. The employee is caring for the employee's son or daughter, if the child's school (elementary or secondary) or child care facility has been closed or the child's care provider is unavailable due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by Health and Human Services in consultation with the Department of the Treasury and the U.S. DOL.

Employers will receive a refundable payroll tax credit based on the employee's regular rate of pay, but is limited to \$511 per day and \$5,110 total for employees based on their own condition. (Items 1-3 above.)

Employers will receive a refundable payroll tax credit based on two-thirds employee's regular rate of pay, but is limited to \$200 per day and \$2,000 total for employees acting as a caregiver. (Items 4-6 above.)

Payroll tax credit includes employer health insurance and taxes related to wages paid under the Act.

Variable-hour employees will receive paid leave based on the average number of hours worked over the previous 6 month period ending on the date on which the employee takes the paid leave.

Part-time employees will receive paid leave in an amount of the average number of hours they work over a two-week period.

Exceptions exist for healthcare providers or emergency responders where the employer may exclude the employee from the Emergency Paid Sick Leave requirement.

Employers with less than 50 employees can file for exemption if the viability of their business would be in jeopardy. Form to file for exemption is not yet available. Failure to pay Emergency Paid Sick Leave will be found in violation of paying minimum wages under Section 6 of the FLSA.

This credit will remain in effect for Emergency Paid Sick Leave wages paid until December 31st, 2020.

Emergency Family Medical Leave

This is an expansion of the existing FMLA on a temporary basis. Currently, FMLA only applies to companies with 50 or more employees, but this Act will change those employers covered to fewer than 500 employees. Meaning if you have one employee, Emergency FMLA now applies to you. It also lowers the eligibility requirement where employees just need to have worked for at least 30 days prior to the designated leave.

Employees may take up to 12 weeks of job-protected leave if they are unable to work or telework, or to care for the employee's child (under 18) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency.

The first 10 days of Emergency FMLA may be unpaid, but the employee may elect to substitute any accrued-paid leave the company offers. After the 10 day period, the employer must pay full-time employees at two-thirds the employee's regular rate for the number of hours the employee would otherwise be normally scheduled.

If the employee has a variable schedule and the employer is unable to determine the number of hours the employee would have worked, the employee would use the following calculation to determine the hours:

- Average number of hours the employee was scheduled over the 6-month period ending on the date on which the employee takes the leave (including any leave hours the employee took during that period).
- If the employee did not work over the 6-month period, the employer should use the number of hours the employer reasonably expected the employee to work per day when they were hired.

Pay is limited to \$200 per day and \$10,000 in the aggregate per employee.

Employers will receive a refundable payroll tax credit based on the employer costs for providing the Emergency Family Medical Leave as well as the employer's contributions for health insurance premiums and employer payroll taxes for the period of leave related to wages paid under the Act, uncapped.

Employers with fewer than 50 employees can be exempt from the requirements when the imposition of such requirements would jeopardize the viability of the business as a going concern.

Under the Act, an employee should receive a restoration of their position. However, if the employer has fewer than 25 employees the employer is not required to restore the employee's position if the following conditions are met:

- The employee takes leave under the Act
- The position held by the employee when the leave commenced does not exist due to economic conditions or changes in operating conditions that affect employment and are caused by the Public Health Emergency
- The employer makes reasonable efforts to restore the employee to an equivalent position with equivalent pay, benefits, etc.
- The employer makes a reasonable effort to contact the employee if an equivalent position becomes available for a period of one year commencing the earlier of (1) the date the qualifying need concludes or (2) the date that is 12 weeks after the date of which the employee's leave commences.

The Emergency FMLA will remain in effect until December 31st, 2020.

Emergency Paid Sick Leave – FAQ

- Is there a labor poster that will be required to be posted? – YES. The Secretary of Labor is expected to make this new poster available soon and will be available on the DOL website.
- I only have 2 employees; does this apply to me? – YES, unless exemption is made based on the survivability of the business.
- I have tipped employees who work in Florida. Can I pay them the tipped minimum wage rate of \$5.54 per hour? – NO. They must be paid \$8.56 as they are not receiving tips while out.
- I have an employee who earns \$10 per hour, which totals \$800 for 80 hours worked. Since it is less than the \$5,110 limit for Emergency Paid Sick Leave, can I continue to pay the employee under this leave? – YES, but only \$800 is eligible for payroll tax credit. Eligible and ineligible wages should be paid using separate earning codes to easily track.
- Can I pay my employees more than the amount for which I will receive a tax credit for? – YES, but again track it with a separate earning code.
- Can I force my employee to utilize their PTO (or other paid time off) as provided by my company policy? NO. This is prohibited by the Act
- I already have a Sick or PTO policy; can I stop my policy and just have this new Emergency Paid Sick Leave Act? – NO. Changes to a company’s existing time off policy is prohibited by the Act.
- Can an employee elect to substitute unpaid leave for Emergency Paid Sick Leave? – YES
- If I terminate an employee, are they to be paid for unused Emergency Paid Sick Leave? – NO
- Can I require the employee to find a replacement for their shift while out on leave? - NO
- Do I have to wait until my 941 quarterly tax return is filed to get a refund (if credits exceed the amount of tax due)? – NO. A form will be available to file for an advance credit in the next week or two. The IRS will send the refund as quickly as possible.
- Do I deduct the employees share of health insurance as normal from their leave checks? – YES, deduct as normal. The amount eligible for the payroll tax credit is the prorated employer’s share based on the hours of leave paid.
- Will I have to pay employer taxes on the wages paid? – YES, but employer taxes are also eligible towards the payroll tax credit.
- Do I have to start this today? – YES, but there is a 30-day non-enforcement period.