

GMS Flash Alert

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United States - President Signs Paid Leave and Benefits Relating to Coronavirus (COVID-19)

On March 18, 2020, U.S. President Donald Trump signed into law H.R. 6201, the "Families First Coronavirus Response Act" ("the Act"), to provide emergency supplemental appropriations to support Americans during the COVID-19 pandemic.¹ Sections of the Act provide for paid leave and enhanced unemployment benefits for workers affected by COVID-19, and temporary tax credits for certain employers and self-employed individuals in relation to the payment of those benefits.

WHY THIS MATTERS

The Act provides significant relief to businesses that otherwise may not be able to afford the costs associated with coronavirus-related paid leave and provides certain benefits to employees, e.g., up to 80 hours (or the equivalent for part-time employees) of paid sick time, that could help them meet the current health challenges they may be facing.

General Overview of the Act

The Act creates a new category of benefits and includes two new programs: the *Emergency Family and Medical Leave Expansion Act* and the *Emergency Paid Sick Leave Act*. These two programs take effect April 2, 2020, and remain in effect through December 31, 2020. In connection with these two programs, the Act includes several employer tax credits to cover the cost of wages paid to employees under the programs and provides similar credits against self-employment tax.

The Act applies to private businesses with fewer than 500 employees. (Special rules apply in the case of employment under certain multi-employer bargaining agreements.) The Secretary of Labor is authorized to provide exclusions for certain health-care providers and emergency responders and to exempt small businesses with fewer than 50 employees "when the imposition of such requirements would jeopardize the viability of the business as a going concern."

Benefits

Expanded Family and Medical Leave Expansion Act

- After an initial 10-day leave period (which may be unpaid), an “eligible employee” generally will be entitled to paid leave because of a “qualifying need” at two-thirds of the employee’s regular rate of pay for the number of hours the employee would otherwise be scheduled, or would normally be scheduled, to work.
- The paid-leave requirement for an employee is limited to \$200 per day and \$10,000 in the aggregate.
- An “eligible employee” means an employee who has been employed by the employer for at least 30 calendar days.
- A “qualifying need” means the employee is “unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child-care provider of such son or daughter is unavailable, due to a public health emergency.”
- An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave during the initial 10-day leave period.

Emergency Paid Sick Leave Act

- The Act generally will require certain employers to provide to employees up to 80 hours (or the equivalent for part-time employees) of paid sick time because the individual is unable to work due to a need for leave because the employee:
 - 1) is subject to a federal, state, or local quarantine or isolation order relating to COVID-19;
 - 2) has been advised by a health-care provider to self-quarantine due to concerns relating to COVID-19;
 - 3) is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
 - 4) is caring for an individual who is subject to an order described in the first category above or has been advised by a health-care provider as described in the second category above;
 - 5) is caring for a son or daughter of such employee if the school or place of care of the child is closed or the child’s care provider is due to COVID-19 precautions; or
 - 6) is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor.
- The required payment for sick leave will be limited to: (1) \$511 per day and \$5,110 in the aggregate in the case of the first three categories described above; or (2) \$200 per day and \$2,000 in the aggregate for the other categories.
- This sick leave will be in addition to any regularly-provided annual sick leave.
- An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time provided under the Act.

Tax Credits

Employer Tax Credits

- The credit for **required paid sick leave** generally will provide an employer payroll tax credit equal to 100 percent of the qualified sick-leave wages paid by the employer under the *Emergency Paid Sick Leave Act*, subject to certain limitations. The credit will apply against the employer portion of FICA taxes up to a limit of either \$511 or \$200 for each day an individual is paid qualified sick leave, depending upon the category in which the individual falls for purposes of determining the amount paid for sick leave. In addition, the total number of days taken into account in each calendar quarter cannot exceed 10 days and will be reduced by the number of days so taken into account in preceding calendar quarters.
- The credit for **required paid family leave** will provide an employer payroll tax credit for each calendar quarter generally equal to 100 percent of the qualified-family-leave wages paid by the employer to comply with the *Emergency Family and Medical Leave Expansion Act* with respect to such quarter. The credit will apply against the employer portion of FICA taxes up to a limit of \$200 for any day for which the individual is paid qualifying family-leave wages with a maximum of \$10,000 in wages per employee for all calendar quarters.
- The amount of the credits for any calendar quarter generally cannot exceed the FICA tax liability however, the Act includes refundability provisions for credits that exceed tax liability.
- Employers do not receive the credits if they are also receiving the credit for paid family and medical leave provided for under Internal Revenue Code section 45S.
- The amount of the sick-leave credit and the amount of the family-leave credit are increased by the portion of the employer's "qualified health plan expenses" that are properly allocable to qualified sick-leave wages. Qualified health-plan expenses means amounts paid or incurred by the employer to provide and maintain a group health plan to the extent that such amounts are excluded from the gross income of employees.
- If an employer claims a credit under the Act, the amount claimed is included in gross income (the credit is not taken into account for purposes of determining any amount allowable as a payroll tax deduction, deduction for qualified sick-leave wages, or deduction for health-plan expenses).

Credits for Certain Self-Employed Individuals

An eligible self-employed individual is allowed a similar refundable credit against the self-employment tax with respect to qualified sick leave and qualified family-leave-equivalent amounts. To qualify, an individual generally must regularly carry on a trade or business and must have met the criteria that would apply to receive paid leave pursuant to the *Emergency Paid Sick Leave Act* if the individual were an employee of an employer.

FICA Exclusion

The Act provides that any wages required to be paid by reason of the *Emergency Paid Sick Leave Act* and the *Emergency Family and Medical Leave Expansion Act* will not be considered wages for FICA purposes.

FOOTNOTE:

1 For the text of bill H.R. 6201 and its status, see www.Congress.gov website at: <https://www.congress.gov/bill/116th-congress/house-bill/6201> . (Congress.gov is the official website for U.S. federal legislative information.)

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