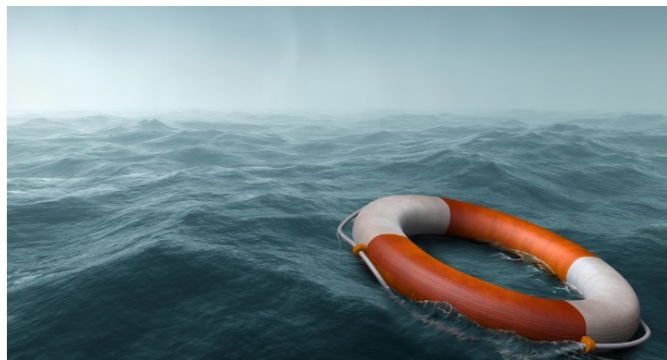


'Hold On, Help Is on the Way:' U.S. Senate Passes Second COVID-19 Relief Bill

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On March 18, 2020, the United States Senate passed a second round of relief legislation as a result of the Covid-19 pandemic, this time to provide relief to American employers.

The measure passed with 90 senators voting for and eight against. Late yesterday evening, President Trump signed the legislation, and it will be effective April 2, 2020. The Joint Committee on Taxation estimates the relief will cost in excess of \$100 billion.

Families First Coronavirus Response Act

The legislation, titled the Families First Coronavirus Response Act (H.R. 6201)(the "Act"), provides, in part, employers with tax write-offs in return for providing employees with paid time off during the pandemic if necessitated by sickness caused by COVID-19. The text of the Act can be found [here](#).

Emergency Family & Medical Leave Expansion Act

One piece of the Act is the Emergency Family & Medical Leave Expansion Act. This provision of the Act amends Title I of the Family Medical Leave Act of 1993 ("FMLA"), expanding FMLA on a temporary basis, and requires that private employers **with fewer than 500 employees** (instead of employers with 50 or more employees) provide up to 12 weeks of job-protected public health emergency leave, ten weeks of which must be **paid leave**, to their employees through December 31, 2020. Another significant change broadens the number of employees who will qualify for such leave by reducing the amount of time the employee had to be employed with the employer prior to becoming eligible for leave. With this new change, any employee **employed for 30 or more days** is eligible for such paid job-protected leave if they have a qualifying need related to a public health emergency. As written, the only "qualifying need" is if the employee is unable to work (or telework) because he or she is caring for their minor child if the child's school is closed or the child's regular childcare provider is unavailable due to the public health emergency.

The first ten days of leave is unpaid, but an employee may choose to apply any accrued but unused PTO they already have earned during this time. Thereafter, the employer must provide paid leave. Paid leave for full-time employees is calculated using no less than 2/3 of the employee's regular rate of pay. Daily pay cannot exceed \$200 per day, and in the aggregate, paid leave under this Section is not to exceed \$10,000.00 per employee. Part-time employees are also eligible for paid leave, but it is calculated based on the average number of hours worked during the previous six months before taking leave, or if the employee has not worked during the prior six months, based on the reasonable expectation that the employee had at the time of hire regarding his or her expected hours of work.

The Secretary of Labor is authorized to issue regulations for good cause that exempt businesses with fewer than 50 employees from paid family leave under the Act if providing it would jeopardize the viability of the business as a going concern. At this time, there are no proposed regulations.

Emergency Paid Sick Leave Act

Similarly, for private employers with fewer than 500 employees and public employers of any size, the Act also provides that employees be provided with paid sick leave to the extent an employee is unable to work (or telework) due to:

- being subject to a federal, state, or local quarantine order related to COVID-19;
- having been advised by a health care provider to self-quarantine;
- experiencing symptoms of COVID-19 and is seeking a diagnosis;
- caring for an individual that is subject to an order for quarantine; or,
- caring for the employee's son or daughter because the child's school is closed and/or their regular caregiver is unavailable.

Until December 31, 2020, all full-time employees (regardless of the length of employment) are entitled to 80 hours of paid sick time. Part-time employees are entitled to paid sick leave in a number of hours equal to the number of hours that such part-time employee works on average every two weeks. Paid sick leave wages are capped at \$511.00 per day up to a total of \$5,110.00 per employee for their own use. If, instead, the employee's absence is necessitated by caring for others, the cap is \$200.00 per day, up to \$2,000.00 total. Such paid time off is immediately accessible, but cannot be carried over to the next calendar year.

It should be noted that the employer of an employee who is a healthcare provider or an emergency responder may elect to exclude such employee from application of this section of the Act.

The Secretary of Labor is authorized to issue regulations for good cause that exempt businesses with fewer than 50 employees from paid sick leave under the Act if providing it would jeopardize the viability of the business as a going concern. At this time, there are no proposed regulations.

Emergency Unemployment Insurance Stabilization and Access Act of 2020

Another Section of the Act, the Emergency Unemployment Insurance Stabilization and Access Act of 2020, makes changes to the unemployment benefit process to benefit employees. The Act provides emergency funding to states for increasing access to unemployment benefits, including the following changes:

- Individuals may apply for unemployment benefits online or via telephone;
- There is no longer a one-week waiting period;

- Employees do not have to be actively searching for other employment to receive unemployment benefits;
- Employers impacted by COVID-19 will not be responsible for benefits paid resulting from these changes.

Tax Credits for Paid Sick and Paid Family and Medical Leave

Presumably, to help offset the expense of these sweeping changes, which are being placed on smaller employers (*i.e.*, those employing less than 500 employees), the Act also expands tax credits available to employers who are required to provide Emergency Paid FMLA leave, and Emergency Paid Sick Leave under the Act. Employers who are required to provide paid leave under the Act will receive a credit against their quarterly payroll taxes, in an amount equal to 100% of the paid FMLA leave and paid sick leave wages paid by the employer.

As if this isn't enough news for one week, some states have passed additional leave protections:

Yesterday, the State of New York enacted legislation providing paid sick leave for New York employees affected by COVID-19. Colorado previously enacted a similar law for employees in certain industries. These laws are described below. Although Kentucky has a proposed emergency paid sick leave bill pending (SB 282), it has not seen any legislative movement since March 6th.

Colorado

Colorado's Department of Labor and Employment issued the Colorado Health Emergency Leave with Pay ("Colorado HELP") Rules effective March 11, 2020. The Rule provides paid leave only to employees of **certain employers**: those engaged in leisure and hospitality, food services, child care, education (including related services such as cafeterias and transportation), and home health care, in addition to employers operating a nursing home or community living facility.

Covered employers must provide up to four (4) days of paid sick leave for employees with flu-like symptoms who are being tested for COVID-19. If the employee has already exhausted other employer-provided paid leave, this emergency paid sick leave must still be provided. The paid leave ends if an employee receives a negative COVID-19 test result.

Colorado HELP Rules suggest that employers use FMLA procedures to pursue this emergency paid sick leave, but no employer may terminate an employee who cannot provide documentation for this particular type of leave. Colorado HELP expires when the State of Disaster Emergency declared by the Colorado Governor ends or July 9, 2020, whichever occurs later. Colorado HELP Rules are available [here](#).

New York

Yesterday, March 18, 2020, New York Governor Cuomo signed Senate Bill 8091, which is effective immediately. New York's COVID-19 paid sick leave applies to employees subject to a precautionary or mandatory order of quarantine or isolation issued by the state of New York, the Department of Health, local board of health, or any governmental entity authorized to issue such an order due to COVID-19. Required COVID-19 paid sick leave is based upon employer size as follows:

- Employers with ten or fewer employees and
 - net income less than \$1 million in the previous tax year must provide job-protected leave for the duration of the quarantine order, or
 - net income greater than \$1 million in the previous tax year must provide at least five days of paid sick leave and thereafter unpaid job-protected leave until termination of the quarantine order.
- Employers with 11-99 employees must provide at least five days of paid sick leave and job protection for the duration of the quarantine order.
- Employers with 100 or more employees, as well as all public employers (regardless of the number of employees), will provide at least 14 days of paid sick leave and guaranteed job protection for the duration of the quarantine order.

Employer size is determined by the number of employees as of January 1, 2020.

After any Covid-related paid sick leave is exhausted, the employee is still eligible to apply for New York paid family leave and temporary disability benefits. Employees will be eligible for New York paid family leave to care for a minor dependent child who is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19.

However, note the following limitations:

- An employee is not eligible for COVID-19 paid sick leave if deemed asymptomatic or has not yet been diagnosed with any medical condition and is physically able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other means.
- An employee is not eligible for COVID-19 paid sick leave if the employee is quarantined due to (1) traveling to a Level 2 or Level 3 country as determined by the CDC; (2) the travel was not in the scope of employment, and (3) the employee had notice of the travel health notice, and this limitation in the COVID-19 paid sick leave. However, the employee may use other paid leave provided by the employer or otherwise is entitled to unpaid leave.

The COVID-19 paid sick leave is provided in addition to an employee's accrued sick leave, if any, provided by the employer. The text and status of this new law are available [here](#).

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