

New Law Requires Many Employers to Provide Job-Protected Leave and Paid Benefits for Absences Related to COVID-19



Natalie K. Sanders

March 18, 2020

Subscribe to News and Insights

 Via RSS

 Via Email



Update: President Trump signed these Acts into law on March 18. They are expected to take effect no later than April 2.

Today the U.S. Senate voted to adopt House Bill 6201 with some corrections and clarifications. These changes make the bill much narrower than the earlier version. The President is expected to sign the bill into law. Additional legislation is in the works to address concerns about how employers are to meet the immediate cash flow obligation of paying for leave under this bill.

The main provisions of the adopted bill are summarized below, but one of the most important items to note is **that paid or job-protected leave is provided under this bill unless an employee is unable to work or telework.**

Emergency Family and Medical Leave Expansion Act:

The Act applies to employers with fewer than 500 employees, but the Department of Labor may exempt certain healthcare providers and employers with fewer than 50 employees.

It provides job-protected leave for only one reason: employees are unable to work or telework because they have to care for a child whose school or daycare has closed (or regular paid childcare provider is unavailable) due to the COVID-19 emergency.

NEW LAW REQUIRES MANY EMPLOYERS TO PROVIDE JOB-PROTECTED LEAVE AND PAID BENEFITS FOR ABSENCES RELATED TO COVID-19

All employees who have been employed for at least 30 calendar days are eligible for this leave, including part-time employees. (Health care providers and emergency responders may be excluded from this leave by their employers.)

Up to 12 weeks of job-protected leave is provided.

The first 10 days of the leave is unpaid, but employees may still get paid for those days by using their sick leave, either under existing employer-provided sick leave or the 2 weeks of sick leave that must be provided under another portion of the new law (see below). Employees would have the choice, however, of whether to use their sick leave to cover the first 2 weeks or save it for later.

After the first 10 days, the leave is to be paid at an amount that is at least 2/3 the employee's usual rate of pay up to a maximum of \$200/day and no more than \$10,000 in the aggregate.

The bill calls for [refundable tax credits](#) against employer portions of social security taxes (up to certain limits).

This bill will become effective no later than 15 days after it becomes law.

Note that the FMLA still requires employers to provide job-protected leave for 12 weeks for individuals suffering from or caring for a family member suffering from a serious health condition, such as COVID-19, but such leave is not required to be paid under the corrected bill (except for the 2 weeks of emergency paid sick leave described below).

Emergency Paid Sick Leave Act:

The Act applies to most employers. All public employers are covered regardless of how many employees they have. With regard to private entities, it is limited to those who employ fewer than 500 employees, but the Department of Labor may exempt certain healthcare providers and employers with fewer than 50 employees.

This emergency paid sick leave is in addition to any paid leave an employer already provides, and employees cannot be required to use other employer-provided paid leave before using emergency paid sick leave.

All employees are entitled to emergency paid sick leave, regardless of how long they have been employed by the employer.

Full-time employees get 80 hours of paid leave. Part-time employees get something equivalent to what they would have worked on average over a 2-week period.

The rate at which an employee is paid for the leave and the maximum amounts an employee is entitled to receive vary depending on the reason the leave is taken. A summary chart is provided below.

The bill calls for [refundable tax credits](#) against employer portions of social security taxes (up to certain limits) to help pay for the cost of the leave.

The Act takes effect no later than 15 days after enactment.

An employee may take emergency paid sick leave if the employee is unable to work or telework for one of the following reasons:

| | Reason | Rate | Maximum |
|---|---|-------------|--|
| 1 | Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19 | Regular pay | \$511/day with an aggregate max of \$5,110 |
| 2 | Employee has been advised by a health provider to self-quarantine due to concerns related to COVID-19 | Regular pay | \$511/day with an aggregate max of \$5,110 |
| 3 | Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis | Regular pay | \$511/day with an aggregate max of \$5,110 |
| | Employee is caring for an individual who is under quarantine, | | \$200/day with an |

NEW LAW REQUIRES MANY EMPLOYERS TO PROVIDE JOB-PROTECTED LEAVE AND PAID BENEFITS FOR ABSENCES RELATED TO COVID-19

| | | | |
|---|---|--------------------|--|
| 4 | isolation or self-quarantine as described in 1 and 2 above | 2/3 of regular pay | aggregate max of \$2,000 |
| 5 | Employee is caring for a child whose school or daycare has closed (or regular paid childcare provider is unavailable) due to COVID-19 | 2/3 of regular pay | \$200/day with an aggregate max of \$2,000 |
| 6 | Employee is experiencing a substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor | 2/3 of regular pay | \$200/day with an aggregate max of \$2,000 |

Emergency Unemployment Insurance Stabilization and Access Act:

This Act clears the way for federal funds to get to states to be used for unemployment claims.

A state must do a few things, including demonstrate that it has taken or will take steps to ease eligibility requirements and access to unemployment compensation for people directly impacted by COVID-19.

[In Executive Order 118](#), North Carolina Governor Cooper took [these steps](#).

Brooks Pierce is dedicated to keeping our clients fully informed during the COVID-19 crisis. For more information, please visit our [COVID-19 Response Resources](#) page.