

# Emergency Coronavirus Bill: What Employers Need to Know

The recently passed [house legislation](#) has HUGE changes for employers.

There's still a lot we don't know, but we do know: **Employers with under 500 employees are going to be providing 2 weeks of paid sick leave at the employee's regular rate and up to 10 additional weeks of paid family medical leave at 2/3 the employee's regular rate.**

Politicians are promising small businesses will not bear the costs of this legislation. There are tax credits to offset the costs of paid leave, but the limitations on reimbursements in the bill make me question whether that will be enough to cover the costs of this paid leave.

Congress and the President have indicated there are more bills to come. Hopefully, that includes additional relief for the medium-sized companies who are bearing the burden of this bill. The Senate may tweak some of this as well, but here's what we know about the bill that has already passed the house:

## Paid Sick Leave – Employers with Less than 500 Employees

The bill establishes a new paid sick leave program that calls for employers to **immediately grant 14 days of paid sick leave** that can be used by infected people, caretakers and parents of whom children's schools have closed.

For employers who already provide paid sick leave, the additional leave made available under the House bill should still be provided in addition to the leave they already provide, and employers are not allowed to make changes to their existing policies to avoid offering additional paid leave.

### Details of Paid Sick Leave

- ALL EMPLOYERS with under 500 Employees\* will be required to provide PAID Sick Leave
  - Full-time employees to receive 80 hours
  - Part-time employees to receive an amount of sick leave equal to their average hours worked in a two-week period
- Applies for self-isolating, obtaining medical treatment, caring for family members who have coronavirus or to care for a child if their school or place of care has closed.
  - This paid time off is in ADDITION to all other paid time off options offered by the Employer.
- Compensation must be the greater of the following:
  - Employees regular rate; or
  - Federal or State Minimum Wage (\$7.25/hour in KS and \$9.45/hour in MO)
    - Additional calculation methods for varying schedule employees (more guidelines are promised to be issued to help with these calculations)
- There will be a required notice that you'll need to post for all employees (to come out within 7 days of enactment).

\* There's an exemption for employers with under 50 employees if the Labor Department determines that providing paid leave "would jeopardize the viability of the business." However, there is no guidance on how to qualify for this exemption at this time.

In addition to two weeks paid sick leave, the bill also provides major expansions to FMLA.

## Extending FMLA – Including PAID LEAVE

The House bill expands the existing family and medical leave program – providing paid leave for employers with less than 500 employees.

Under current law, employers with 50 employees are required to give up to 12 weeks of job-protected medical leave, meaning they cannot be fired, but employers are not required to provide any pay during that time.

**The House bill, however, provides paid leave for workers of all companies with less than 500 employees** if they have been diagnosed with the coronavirus, if they are caring for a family member who has it, or if they are caring for a child or another dependent due to a school or care facility closing.

The bill would provide those who qualify with two-thirds of their average monthly earnings, for up to 10 weeks (the benefit is 12 weeks, but the first 14 days do not need to be paid under this bill – assumedly because of the two weeks paid sick leave requirement discussed above). The benefits can be paid **retroactively** and will be available for those who had to leave work starting January 19, 2020 (the first date of a confirmed Covid-19 case in the USA).

### Details of Increased FMLA:

- Employers with less than 500 employees will be required to provide PAID Family Medical Leave Time.
  - All employees who have worked at least 30 days are eligible for this benefit
  - Again, there is a caveat for employers with under 50 employees if the Secretary of Labor decides imposition would jeopardize the viability of the business
- First 14 days of Emergency FMLA can be unpaid (because the required Paid Sick Leave)
- After 14 days, paid leave shall be calculated based on:
  - An amount not less than 2/3 the employee's regular rate, and
  - The number of hours the employee would otherwise normally be scheduled to work
    - Varied hour employees = average number of hours employee was scheduled per day over the previous 6 months (including all leave taken). Or, if the employee has not worked 6 months, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work
- Employer to receive payroll credit for 100% of wages paid under this leave with limitations of \$200 per day and \$10,000 in aggregate for each employee.
- Employer's with more than 25 employees must restore the employee to the same or equivalent position as they had before the leave.

## Tax Relief:

IN GENERAL—any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages for purposes of *section 20 3111(a) of the Internal Revenue Code of 1986*.

There is a payroll tax reimbursement maximum of \$511 per day of paid sick leave provided for each employee; and 100% of paid FMLA time, but with a cap of \$200/day or \$10,000 in aggregate per individual.