

**UPDATE: U.S. House of Representatives
Revises Paid Family Leave and Sick Time Provisions
in COVID-19 Emergency Aid Bill**

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As we previously [reported](#), on March 14, 2020, the U.S. House of Representatives passed the Families First Coronavirus Response Act ([H.R.6201](#)) (“Original Bill”), which, among other measures, would provide (i) paid family leave and paid sick leave for certain employees affected by the 2019 novel coronavirus (“coronavirus” or “COVID-19”); (ii) refundable tax credits, up to a cap, for covered employers; and (iii) easier access to unemployment insurance for employees affected by the pandemic. On the evening of March 16, however, prior to sending the Original Bill to the Senate for its consideration, the House amended and narrowed the scope of the Original Bill ([“Revised Bill”](#)), particularly with respect to the paid family leave provisions. The Senate is expected to vote on the Revised Bill later today.

Purposes for Which Paid Family Leave May Be Taken Are Scaled Back, and New Caps on Benefits Are Added

Under the Original Bill, employees would have been entitled to take paid family leave under the Family and Medical Leave Act (“FMLA”) “because of a qualifying need related to a public health emergency,” which was broadly defined and included, among other reasons, the employee’s or a family member’s exposure to COVID-19. The Revised Bill significantly narrows the definition of a “qualifying need related to a public health emergency” to **only** those situations where an employee is unable to work because the employee must care for his or her son or daughter (as defined under the FMLA) whose school is closed or whose childcare provider is unavailable due to a public health emergency. Under the Revised Bill, this family leave is only available when the individual cannot work onsite or through telework. Further, the Revised Bill, for the first time, places a cap on paid family leave benefits, expressly mandating that “[i]n no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate.” This matches the Original Bill’s cap on the allowable tax credit for paid family leave benefits.

Additionally, the Revised Bill reduces the number of mandated *unpaid* family leave days at the outset of an employee’s leave, from 14 to 10. The Revised Bill does not, however,

affect an employee's right to opt to use any paid leave benefits (to which the employee may otherwise be entitled) during the unpaid portion of the leave, although employers may not require that employees do so.

Finally, as we initially reported, employers with fewer than 50 employees, and certain health care providers and emergency responders, would be able to apply to the U.S. Department of Labor ("DOL") for an exemption from the paid family leave mandate. The Revised Bill modifies this provision to also allow an employer of an employee who is a health care provider or an emergency responder "to exclude such employee" from the paid family leave entitlement, ostensibly without prior approval from the DOL.

The Revised Bill also retains the provision that appears to exempt employers with fewer than 50 employees from civil damages in a lawsuit brought by an employee alleging a violation of the paid family leave mandate.

Paid Sick Leave Benefits

The Revised Bill provides paid sick leave benefits for any of the following reasons:

- (1) the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- (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 the symptoms of coronavirus and needs to obtain a medical diagnosis or care;
- (4) the employee is caring for or assisting an individual who is subject to an order described in (1) above or has been advised to self-quarantine, as described in (2) above;
- (5) the employee is caring for a son or daughter (as defined under the FMLA) because such son or daughter's school or place of care has been closed, or such son or daughter's care provider is unavailable due to coronavirus; or
- (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

However, an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from receiving those paid sick leave benefits.

The first five reasons above are similar, but slightly different from the Original Bill, including removing the broad definition of a "family member." Notably, as with paid family leave, the Revised Bill requires that the sick employee is not able to telework.

Further, similar to matching the cap of family leave benefits to the maximum of the allowable tax credit for such benefits, the Revised Bill sets the same type of limits on paid sick leave benefits. Accordingly, the caps on paid sick leave are as follows:

- \$511 per day and \$5,110 in the aggregate when paid sick leave is taken for reason (1), (2), or (3), described above, and
- \$200 per day and \$2,000 in the aggregate when paid sick leave is used for reason (4), (5), or (6), described above.

The Revised Bill states that “[a]n 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 under” this legislation. This modifies the original provision that mandated that paid sick leave be paid in addition to any other paid sick leave benefits, including those provided by the government, the employer, or through a collective bargaining agreement.

Additionally, under the Revised Bill, employers are not prohibited from changing their existing paid sick leave policies as of the date of the Revised Bill’s enactment.

Finally, the Revised Bill allows employers with fewer than 50 employees (as well as certain health care providers and emergency responders) to seek an exemption from the paid sick leave mandate from the DOL.

Tax Credits

The Revised Bill expands the tax credits available to employers to offset the costs of the paid sick leave program to include health insurance contributions for employees who take such leave.

What Employers Should Do Now

As of this writing, the Revised Bill is now in the hands of the Senate. We will continue to monitor developments and keep you informed. You may wish to regularly check Epstein Becker Green’s [Coronavirus Resource Center](#) for updates. The Revised Bill’s mandates would take effect within 15 days after enactment.

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