

EMERGENCY PAID LEAVE FOR EMPLOYERS

Congress has passed several rounds of financial assistance and relief in response to the COVID-19 pandemic, including most recently the *American Rescue Plan*. The *American Rescue Plan* includes the following emergency paid leave assistance for employees.

*** WHAT IS NEW IN THE AMERICAN RESCUE PLAN ***

The *American Rescue Plan* gives employers the option to extend emergency paid leave for employees through September 30, 2021. In addition, employees eligible for emergency leave may now take such leave if they are obtaining an immunization related to COVID-19 or are recovering from any injury, illness, disability, or condition related to vaccination.

The plan also now provides that if an employer provides such leave, they may not discriminate against highly compensated employees, full-time employees, or employees on the basis of tenure with the employer.

In addition to the *American Rescue Plan*, you may be eligible for ongoing relief provided by the *Families First Coronavirus Response Act* (“Families First”), and the *Coronavirus Response and Relief Supplemental Appropriations Act of 2021* (COVID relief law).

These laws allow businesses to provide two new types of paid leave to their employees who are directly affected by the COVID-19 outbreak.

- The first type, **emergency paid sick leave**, allows people to take time off if they are sick, if they are caring for a sick person, if they cannot work because of a government order to isolate, if they are receiving or recovering from a COVID-19 immunization, or if they need to take care of a child whose school or childcare is closed.
- The second type, **emergency family and medical leave**, provides another option for people who need to care for a child whose school or childcare provider has closed due to the outbreak.

These types of leave will ensure that employers are able to provide workers with the option to stay home from work when sick and take care of their family members without economic hardship.

Are my employees eligible for these paid leave programs?

Only employees who have been employed for at least 30 calendar days are eligible for paid family leave.

My business will provide leave to employees. What are my employees entitled to?***Emergency Paid Sick Leave***

- Use: Employees may use sick leave because:
 1. They are subject to a federal, state, or local quarantine, or isolation order related to COVID-19;
 2. They have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 3. They are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 4. They are caring for an individual who is subject to an order as described in paragraph (1) or has been advised as described in paragraph (2);
 5. They are caring for a son or daughter because the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions;
 6. They are obtaining an immunization related to COVID-19;
 7. They are recovering from any injury, disability, illness, or condition related to a COVID-19 vaccine; or
 8. They are experiencing any other substantially similar condition specified by the secretary of Health and Human Services.
- Pay:
 - Full-time employees will receive their full regular rate of pay, capped at a total of \$511 per day, for leave taken pursuant to reasons (1), (2), and (3) above.
 - Full-time employees will receive two-thirds their full regular rate of pay, capped at a total of \$200 per day, for leave taken pursuant to reasons (4), (5), and (6) above.
 - For part-time employees or those with irregular hours, leave pay will be calculated based on the number of hours the employee works on average over a 2-week period in the past year.
- Duration:
 - If eligible for paid sick leave, full time employees will be granted 80 hours (10 days) of paid sick leave.
 - Part-time employees will be granted a pro-rated amount based on their average number of hours.

Emergency Paid Family and Medical Leave

- Use: Employees may use family and medical leave to:
 - Care for a child under 18 years of age whose school or childcare provider has been closed due to reasons related to COVID-19.
- Pay:
 - The first 10 days of this leave is unpaid, although employees may use paid time off or sick time to cover some, or all, of the initial unpaid period.
 - After the initial 10 days, full time employees will receive two-thirds of their regular rate of pay, capped at a total of \$200 a day.
- Duration:
 - If eligible for paid family and medical leave, full-time employees may take such leave for up to 12 weeks total.

- Part-time employees or those with irregular schedules will be paid at 2/3 of their regular rate for the average number of hours worked over the prior 6 months of employment.

I already provide my employees with paid sick leave, can I change my policy because of these requirements?

No, please be aware that this emergency paid sick leave does not diminish your employee's existing rights to paid leave under a collective bargaining agreement or existing employer policy.

Will I receive any help in paying for this leave?

Yes, this law provides for a refundable tax credit to offset the costs of any paid leave wages.

How will these tax credits work, and does this help me immediately?

Eligible employers who pay qualifying sick or family and medical leave will be able to keep an amount of the payroll taxes equal to the amount of qualifying sick and family and medical leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and family and medical leave paid, employers will be able to file a request for an accelerated payment from the IRS for the difference. The IRS expects to process these requests in two weeks or less.

Can I claim a tax credit for paid sick leave I already provide to my employees?

No, only new leave required under Families First and COVID relief law, and granted starting April 1, 2020, is eligible for a tax credit.

More Information

For more information on resources for small businesses, please visit <https://www.schatz.senate.gov/coronavirus/small-businesses>.

For more information on implementing emergency paid leave, please visit <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>, or call the Department of Labor's Wage and Hour Division at 1-866-4US-WAGE.

For more information on employer tax credits related to emergency paid leave, please visit <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>.