

## Phase Two of Federal Government's Coronavirus Response: Emergency Paid Leave Mandates with Employer Tax Credits

### Overview

On March 18, 2020, the *Families First Coronavirus Response Act* (H.R. 6201) was signed into law. The Senate passed the legislation on March 18 after the House made technical corrections on March 16. The law becomes effective no later than 15 days after its enactment. The bill includes two new paid leave mandates on employers with less than 500 employees. Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified sick leave wages paid by the employer. The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified sick leave exceed the taxes they would owe. The U.S. Treasury Secretary will have regulatory authority to help with cash flow issues, including waiving penalties for failing to deposit payroll taxes in anticipation of the credit.

- 1) **Emergency Family and Medical Leave Expansion Act:** Businesses with *less than 500 employees* will be required to offer Family Medical Leave Act (FMLA) leave benefits to all employees. The first two weeks of leave may be unpaid leave, but thereafter employers must continue to offer FMLA paid leave for ten weeks compensated at two-thirds of the employee's regular rate of pay, capped at \$200 per day and \$10,000 for all calendar quarters. This leave can be utilized only for 1) an employee's coronavirus quarantine or treatment or 2) care for a child due to school closings or child care disruption. As with traditional FMLA, this leave is job-protected.
  - Employers will receive a 100% tax credit for all wages that are paid.
  - Eligible employees must have been on the employer's payroll for 30 calendar days.
  - **Regulatory Authority or Exemption:** The U.S. Secretary of Labor has authority to exempt a small business with fewer than 50 employees from this section "when the imposition of such requirements would jeopardize the viability of a business as a going concern."
  - The benefit expires on December 31, 2020.
- 2) **Emergency Paid Sick Leave Act:** Businesses with *less than 500 employees* will be required to offer full-time employees 10 days (80 hours) and part-time employees a two-week hourly average of paid sick leave, on top of any other existing paid leave program, to quarantine or seek a diagnosis or preventive care for COVID-19. If the employee is absent to care for a sick family member, a child unable to attend school, they are compensated at two-thirds of the rate they would otherwise receive. The law limits an employer's requirement of paid leave to \$511 per day (\$5,110 total) where leave is taken for an employee's own illness/quarantine and \$200 per day (\$2,000 total) where leave is taken for care for others or school closures.
  - Employers will receive a 100% tax credit for all wages that are paid.
  - Unlike the emergency FMLA requirements, an employee is immediately eligible for this leave (there is no 30-day-on-payroll requirement).
  - **Regulatory Authority or Exemption:** The U.S. Secretary of Labor has authority to exempt a small business with fewer than 50 employees from this section "when the imposition of such requirements would jeopardize the viability of a business as a going concern."
  - The benefit expires on December 31, 2020.

**Further Analysis:** [SHRM](#), [Littler](#), [www.Restaurant.org/COVID19](http://www.Restaurant.org/COVID19)

### Our Position:

Restaurants are committed to serving our employees and our customers during this crisis. But the downturn in our industry has many restaurants struggling to stay open.

The House bill admirably provides federal support to allow employers to offer leave to employees suffering from coronavirus.

However, the mechanism to do so, with small businesses paying for it, and then having to wait to be reimbursed in the form of tax credits, creates challenges for restaurants that are already struggling to maintain cash-flow. In fact, many restaurants are being forced to curtail operations or completely close.

Congress and the Administration must immediately rework the emergency paid leave mandate to administer it within the federal government and not place it on restaurant owners.

The National Restaurant Association is the leading business association for the restaurant and foodservice industry, representing:

**15.1 million**

employees, nearly 10% of the nation's workforce



**1 million**

locations across the country



**\$825 billion**

in sales – making up 4% of the U.S. GDP

