

Prepared by the **U.S. CHAMBER OF COMMERCE**

# CORONAVIRUS PAID LEAVE PROGRAMS Employer Guide



The Families First Coronavirus Response Act created new temporary paid sick leave and paid Family and Medical Leave Act (FMLA) programs that are 100% reimbursable by the federal government. The effective date of both programs is April 1 and they expire on December 31.

Both programs are **in addition** to any leave you already offer.

The key numbers to remember with these paid leave programs are **500** and **50**.

- If you have *fewer than 500 employees*, your business is required to provide paid leave under both programs
- If you have *fewer than 50 employees*, though, you may be exempted from the requirement to provide leave under both programs (see p. 2)

The Department of Labor has issued clarifying guidance (available at [www.dol.gov/agencies/whd/pandemic](http://www.dol.gov/agencies/whd/pandemic)) and will continue to publish more information. In the meantime, here is the information you need to know now.

# PAID SICK LEAVE Program

## Which employees are eligible?

Eighty hours of paid sick leave is available to any employee without regard to duration of employment if they are unable to work or telework because they:

- are subject to a government quarantine or isolation order;
- have been advised to self-quarantine;
- are seeking a medical diagnosis; or
- are caring for someone with one of those three conditions.

Leave can also be taken if an individual cannot work or telework because of a need to care for a child whose school has closed or whose regular caregiver is unavailable because of Coronavirus.

## How much will employees receive?

While taking paid sick leave, employees will receive their regular rate of pay up to a maximum of \$511 per day or \$5,110 in the aggregate.

This is reduced to 2/3 their regular rate of pay if they are caring for a family member or child whose school is closed or caregiver is unavailable with a maximum of \$200 per day (or \$2,000 in aggregate).

# FAMILY and MEDICAL LEAVE ACT Program



## Which employees are eligible?

To be eligible for paid FMLA leave, an employee must have been on your payroll for 30 days prior to taking leave. In addition, paid FMLA leave is only available if an employee is unable to work or telework because of a need to take care of a child because of a school closure or their regular child care provider is unavailable due to Coronavirus.

## How much will employees receive?

Eligible employees may take up to 12 weeks of leave.

- The first two weeks of that can be unpaid (presumably the employee would be covered under paid sick-leave for those two weeks)
- After that, the employee is eligible for 10 weeks of paid FMLA

While taking paid FMLA leave, the employee will receive 2/3 of his/her regular rate of pay up to a maximum of \$200 per day (or \$10,000 in aggregate).

*For more guidance, please click [here](#) to visit the IRS website.*

**Restoration to Previous Position:** For businesses with fewer than 25 employees, it is not necessary to restore the employee to his/her previous position after paid FMLA leave is taken if the position no longer exists because of the public health emergency and the employer makes reasonable efforts to restore the employee to a similar position.

# EXEMPTIONS

## What if I have fewer than 50 Employees... Am I exempt?

Under current Department of Labor guidance, you can be exempt only if leave is being requested because of a school closure or because the child's regular caregiver is unavailable due to Coronavirus and if this leave would jeopardize the viability of the small business as a going concern.

This exemption is available if an authorized officer of the business certifies that at least one of the following is true:

- Providing leave would result in expenses and financial obligations exceeding existing revenues and cause the business to cease operating
- The absence of the employee would entail a substantial risk to the operation of the business because of their specialized skills, knowledge of the business, or responsibilities
- You cannot find other workers to perform the work of the employee, and that work is required for the business to operate at a minimal capacity

## What if I am in the health care business... Am I exempt?

Businesses whose employees are healthcare providers or emergency responders may elect to exclude such employees from paid sick leave and paid FMLA leave.

The definition is fairly broad. Visit [www.dol.gov/agencies/whd/pandemic/ffcra-questions](http://www.dol.gov/agencies/whd/pandemic/ffcra-questions) for specific definitions of those terms.

## Do I have to provide paid sick or paid FMLA leave if my business is closed?

No. If you close due to a lack of business or because of a federal, state, or local directive, you do not have to provide paid leave. In this case your employees would likely be eligible for unemployment compensation. This is the case whether you lay off or furlough employees.

# REIMBURSEMENT



## How will my business be reimbursed for this leave?

Costs associated with the paid sick and paid family leave programs are 100% reimbursable by the federal government through a refundable tax credit up to the maximum wages allowed (e.g. \$511 or \$200 per day), which is also applicable to the self-employed.

- The Treasury Secretary is provided with regulatory authority to help with cash flow issues, for example by waiving penalties for failing to deposit payroll taxes in anticipation of the credit and by providing advances to employers

For questions, please call the Department of Labor help line at (866)487-9243 (866-4US-WAGE).