

# IPB Benefits & Compensation

# INSIDER

## COVID-19: Legislative Changes Affecting Leave Programs

The COVID-19 pandemic has left many employers struggling to manage their businesses while simultaneously looking out for their employees. Congress has responded by enacting bipartisan legislation to provide emergency relief for employees. The Families First Coronavirus Response Act (H.R. 6201) was passed overwhelmingly by the U.S. House of Representatives 363-40 on March 14, 2020 and modified by unanimous consent on March 16. The U.S. Senate quickly followed by voting 90-8 on March 18 to pass the House bill.

The Families First Act would require group health plans to provide free coronavirus diagnostic testing, without cost-sharing. In addition, it would require small and midsize employers, and government employers, to provide paid sick leave and paid family leave in certain COVID-19-related cases. Note that *larger private employers would be exempt from the leave rules*, based on the assumption that they already maintain paid sick leave and paid family leave policies. These leave rules are summarized briefly below.

### Paid Sick Leave

The Families First Act would temporarily require emergency paid sick leave with respect to small and midsize private employers (< 500 employees) and all government employers. Larger private employers would be exempt from the changes. (The bill does not explain how to count employees for this purpose, although prior FMLA guidance allows corporate affiliates and even certain non-affiliates to be aggregated under a facts-and-circumstances “integrated employer” test.) Health care workers and emergency responders also may be excluded. The leave would be available to new hires with no waiting period.

Covered employers would be required to provide two weeks of *paid sick leave* to all employees for COVID-19-related purposes, such as self-quarantine and medical care, at the employee’s full wage. Employers similarly would be required to pay for COVID-19-related leave taken to care for a child whose school or care provider is unavailable, or for a sick individual, at 2/3 of the employee’s wage.

Accompanying the expanded sick leave mandate are payroll tax credits. The credit provided generally would offset up to \$511 per day of qualifying paid sick leave provided to an individual under the Families First Act. The cap would be reduced to \$200 for paid sick leave provided to allow an individual to provide coronavirus-related care to a relative or child. The credit would apply with respect to up to ten days of paid sick leave per individual.

Notably, the amount of paid leave is capped at the value of the tax credit available, so covered employers won’t have any financial obligation beyond the credit provided. Employers also would be permitted to modify existing leave policies to integrate the new rules.

The provision would expire December 31, 2020.

## **Paid Family and Medical Leave**

The Families First Act would expand leave temporarily under the Family and Medical Leave Act (FMLA), with respect to small and midsize private employers (< 500 employees) and all government employers. Again, larger private employers are exempt from the changes.

For covered employers, the Families First Act would provide the right to 12 job-protected weeks of FMLA leave due to “a qualifying need related to a public health emergency.” A qualifying need occurs where an employee is unable to work (or telework) because the employee is caring for a minor child whose school or care provider is unavailable due to an emergency with respect to COVID-19. The employer can require that the first 10 days of this leave be unpaid (unless the employee elects to use accrued paid leave during this time, including the paid sick leave discussed above). The leave is available to new hires after 30 days.

As with the paid sick leave mandate, offsetting payroll tax credits are available. The credit provided generally offsets up to \$200 in qualifying family leave wages required by the Families First Act per day per individual, with the credit capped at a total of \$10,000 per individual. Again, the amount of paid leave is capped at the value of the tax credit available, to reduce the burden on covered employers.

Smaller employers with fewer than 50 employees may apply for an exemption, if the rule would jeopardize the viability of the business. Health care workers and emergency responders also may be excluded.

The provision would expire December 31, 2020.



If you have questions about how this may affect your company's leave plans, please contact a member of our [Benefits team](#).