



Summary of Paid Leave Mandates under the *Families First Coronavirus Response Act, H.R. 6201**

***THE FIGHT IS NOT OVER**

On March 18, 2020, Congress approved and the president signed into law legislation that includes mandates for employer-fronted federal paid leave—emergency sick leave and emergency paid family and medical leave described below. These requirements take effect on April 2, 2020, and sunset on December 31, 2020. However, the legislative environment remains fluid. The Senate could consider altering these paid leave mandates in a COVID-19 economic investment bill, a third COVID-19 relief bill. Such a measure could pass within days and would then need to be considered by the House before it became law. As such, please note that the information in this document is potentially subject to change before it takes effect.

From the onset, AGC of America opposed this regime of construction contractor-fronted paid leave mandates, as our members' cash-flows tighten, markets contract and uncertainty continues. Instead, AGC called upon Congress to enable federally-backed agencies (such as the Social Security Administration) and/or programs (such as Unemployment Insurance (UI)) to provide such paid leave compensation. This approach would provide financial security and economic resiliency for both employers and employees to endure this crisis.

Regarding UI, AGC of America supported Sen. Ron Johnson's (R-Wisc.) amendment to H.R. 6201 that would have repealed and replaced the employer-fronted paid leave mandates with direct payments from the federal government to workers through a temporary emergency unemployment insurance program. However, the [vote](#) failed (50-48) to reach the 60-vote threshold to pass—with Sens. Joe Manchin (D-W.Va.) and Krysten Sinema (D-Ariz.) voting with Republicans in support of the amendment and with Sens. Susan Collins (R-Me.), Lisa Murkowski (R-Alaska) and Mitt Romney (R-Utah) voting with Democrats against it.

Nevertheless, by announcing our opposition to the employer-fronted paid leave mandates, AGC of America and its members set the stage for making some improvements to the enacted paid leave mandates. These include:

- Allowing the Secretary of Labor to exempt employers of under 50 employees from providing both the Family and Medical Leave Act (FMLA) paid leave benefits and the paid sick leave benefits;
- While the paid sick leave benefits are still to be provided in addition to whatever the employer may already be providing, an employer will now be able to adjust their current leave benefits after the bill is enacted; and
- Narrowed the expansive instances for employees to be eligible to use paid FMLA leave from three instances to one (to care for a child of an employee if the child's school or care is unavailable due to the COVID-19).

However, there remains opportunity to make additional improvements to these new mandates, as Congress considers the impending economic investment bill. AGC of America continues to press for avenues to make such improvements, along with pushing for expedited public owner payments to contractors for losses associated with COVID-19-related project impacts, investment in infrastructure funding, and protecting the financial viability of multiemployer pension plans, among other things.

EMERGENCY PAID SICK LEAVE

H.R. 6201 requires employers with fewer than 500 employees to provide employees with two-weeks of paid sick leave (80 hours for full-time employees and typical number of hours over two-weeks for part-time employees). Employees under multi-employer collective bargaining agreements whose employers pay into pension plans would have access to this emergency paid sick leave.

Eligibility: The 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 related to COVID-19;
- Have been advised by health provider to self-quarantine due to COVID-19;
- Experiencing symptoms of COVID-19 and seeking medical diagnosis;
- Caring for an individual subject to quarantine order or self-quarantine;
- Caring for children if schools are closed or their caregiver is unavailable because of a public health emergency; or
- Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.

Rate of Pay: Employees are compensated at the higher of their regular rate, the federal minimum wage, or the local minimum wage, but not to exceed \$511 per day and \$5,110 in the aggregate. However, if the employee is absent to care for a sick family member, a child unable to attend school, or because they meet the criteria for similar conditions they are compensated at 2/3 of the rate they would otherwise receive, but not to exceed \$200 per day and \$2,000 in the aggregate. (This conforms the pay to the amount of the available tax credit.)

Potential Small Business Exemptions: The Secretary of Labor is allowed to exempt small businesses with fewer than 50 employees from the requirement to offer leave to care for a child when a school is closed when the imposition of paid sick leave would jeopardize the viability of the business as an ongoing concern.

Relationship to Existing Programs: This paid sick leave is in addition to whatever sick leave is already offered by the employer (including subject to state or local requirements).

Funding: Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to the “qualified sick leave wages” paid by the employer. Qualified sick leave wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member) and 10 days. 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 Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties on failing to deposit payroll taxes in anticipation of the credit.

Additional Credit for Health Plan Expenses: The amount of the tax credit is further increased by the amount of the expenses of the employer’s health care plan allocable to the qualified sick leave. This allows the employer to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.

Tax on Employers: Paid sick leave is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax, for the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax.

EMERGENCY PAID FAMILY & MEDICAL LEAVE

With certain possible exceptions (see below), H.R. 6201 requires employers with fewer than 500 employees to provide employees with up to 12 weeks of paid family and medical leave (FMLA). Employees under multi-employer collective bargaining agreements whose employers pay into pension plans would have access to this emergency paid family and medical leave.

Eligibility: The paid family and medical leave is available to any employee who has been employed for at least 30 days if they are out in order to:

- Care for children if schools are closed or their daycare is unavailable because of a public health emergency and they are unable to work or telework.

Rate of Pay: After 10 days, during which time the employee can take unpaid or paid leave (if available), employees are compensated at 2/3 of their regular rate. Paid leave under this requirement shall not exceed \$200 per day and \$10,000 in the aggregate. (This conforms to the amount of the tax credit.)

Small Business and Other Exemptions: The Secretary of Labor is authorized to exempt small businesses with fewer than 50 employees if the requirement would jeopardize the business as an ongoing concern. The requirements to restore the employee to their position after the paid leave is taken do not apply to businesses with fewer than 25 employees if the position no longer exists because of the public health emergency (provided the employer takes certain actions to try and assist the employee). Employers with less than 50 employees are exempt from civil actions brought by employees for violations of this section.

Funding: Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal the “qualified paid FMLA wages” paid by the employer. Qualified paid FMLA wages are capped at \$200 per day and \$10,000 overall. The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified paid FMLA exceed the taxes they would owe. The Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties on failing to deposit payroll taxes in anticipation of the credit.

Additional Credit for Health Plan Expenses: The amount of the tax credit is further increased by the amount of the expenses of the employer’s health care plan allocable to the qualified sick leave. This allows the employer to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.

Tax on Employers: Paid FMLA is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax, for the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax.