



# The Families First Coronavirus Response Act ("H.R. 6201")



## FAQs

**Q: When does the Act go into effect?**

A: Employers are required to comply with the Act effective April 1, 2020. Unless extended, these provisions will apply through December 31, 2020.

**Q: To whom does the Act apply?**

A: All public agencies with one or more employees, and private employers with less than 500 employees.

**Q: How does an employee become eligible for Emergency Paid Sick Leave under the Act?**

A: All employees, regardless of length of employment can become eligible in any of the following ways:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee needs to care for an individual who is subject to a quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
5. The employee is caring for a child whose school or other childcare provider has been closed, or the childcare provider of such child is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

**Q: How much Emergency Paid Sick Leave does the Act require?**

A: Full-time employees are entitled to 80 hours of paid sick time and part-time employees are entitled to a pro rata share of 80 hours depending upon their average hours per week over a two-week period. When the leave is needed for the employee's own condition or circumstance (the first 3 reasons above), the pay must equate to what the employee would otherwise be paid, capped at \$511 per day and \$5,110 in the aggregate. When the leave is needed to care for a child or other individual, or due to a "substantially similar condition" (the last 3 reasons above), the required payment is 2/3 of the employee's pay, capped at \$200 per day and \$2,000 in the aggregate.

**Q: How does an employee become eligible for Public Health Emergency Leave under the Act?**

A: Employees who have been employed for at least 30 days can become eligible for job-protected leave under the Family and Medical Leave Act (FMLA). An employee is eligible due to a need to provide care for a child whose school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency with respect to COVID-19.

## FAQs (continued)

**Q: How much Public Health Emergency Leave does the Act require?**

A: The Act provides for 10 weeks of leave paid at 2/3 of the employee's regular pay up to a maximum of \$200/day. However, the paid portion of the leave does not begin for 2 weeks (10 work days), which must be taken as unpaid leave unless the employee has available PTO or qualifies for the Emergency Paid Sick Leave provision of the Act. Employers cannot force an employee to use other available paid leave during this period.

**Q: Can an employee take Emergency Paid Sick Leave or Public Health Emergency Leave intermittently?**

A: Employers are not required, but are encouraged, to provide intermittent leave under the Act.

- If an employee is **teleworking**: If the employer allows and the employee is unable to telework his/her normal schedule of hours due to a qualifying reason, then the employee may take intermittent leave. An employee is permitted to take intermittent leave in any increment as agreed upon between the employee and employer.
- If an employee is **working at his/her usual worksite** (not teleworking): If the employee is taking paid sick leave for any of the qualifying reasons related to COVID-19 other than caring for a child because of a school/place of care closure, then the employee may not take intermittent leave. In this case, leave must be in full-day increments, and the employee must continue to take paid sick leave each day until the employee either (1) uses the full amount of paid sick leave, or (2) no longer has a qualifying reason for taking paid sick leave. Employees taking leave to care for a child (whether as paid sick leave or public health emergency leave) and still working on site may take intermittent leave if the employer allows it. Employers may also agree to intermittent leave for less than a full work day in these circumstances.

**Q: What does it mean to be unable to work (including telework) for COVID-19 related reasons?**

A: An employee is unable to work if the employer actually has work for the employee **and** the employee cannot work (at the workplace or at home, if permitted) for a qualifying reason set forth in the Act. If the employer and the employee agree the employee can perform his/her work outside of normal work hours (i.e. early morning or late at night), then the employee does not need leave unless a covered reason for leave prevents the employee from working the agreed upon schedule.

**Q: Can an employee use other paid leave to supplement his/her leave?**

A: Employers are not required, but are permitted, to allow employees to use other paid leave simultaneously with paid leave under the Act. For example, an employer may choose to allow an employee who is receiving 2/3 of his/her normal earnings from paid sick leave or public health emergency leave to make up the other 1/3 of normal earnings with other preexisting employer-provided paid leave. However, an employer may not require an employee to supplement paid leave under the Act with this preexisting paid leave.

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## FAQs (continued)

**Q: What is the procedure for employees to request leave under the Act?**

A: Employers must require employees to provide appropriate documentation in support of the reason for the leave as specified in applicable IRS forms, instructions, and information. Employers may also require additional documentation, for example, for sick leave - a copy of the quarantine/isolation order or written documentation by a health care provider who has advised the employee to self-quarantine; for family and medical leave - a notice of closure from the school, daycare, or child care provider.

**Q: Will employers be reimbursed for wages paid under the Act?**

A: Employers can claim a tax credit for 100% of the wages paid under the Act up to the amount of all payroll taxes paid on all employees' wages from April 1, 2020 through December 31, 2020. The wages paid are subject to the limitations of \$200/day (paid family leave time) and \$511/day (paid sick time). Employers should continue paying payroll taxes and take the credit on their next tax filing. We recommend speaking with your GBQ tax representative.

**Q: What if an employer offered paid sick leave to employees for COVID-19-related symptoms or diagnosis prior to the passage of the Act?**

A: The guidance issued by the Department of Labor states that paid sick leave and public health emergency leave under the Act are **not** to be applied retroactively.

**Q: What if compliance with the Act will put such a burden on a small business that it will likely fail?**

A: Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements when compliance with the Act will jeopardize the viability of the business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

1. The provision of paid sick leave or public health emergency leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
  2. The absence of the employee or employees requesting paid sick leave or public health emergency leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
  3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or public health emergency leave, and these labor or services are needed for the small business to operate at a minimal capacity.
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## FAQs (continued)

**Q: Do I need to inform employees of their right to take paid sick leave under the Act?**

A: Yes, employers will need to post a notice of the requirements of this Act. This has been prepared by the Department of Labor: Employee Rights can be found [here](#) and Federal Employee Rights can be found [here](#).

**The Department of Labor has issued two fact sheets, [one for employees](#) and [one for employers](#), along with a [Q&A related to required leaves](#).**

Should you have questions, or if you would like to discuss the above information in more detail, please contact:

**Darci Congrove, CPA**  
*Managing Director*  
614.947.5224  
dcongrove@gbq.com