

# Tax Credit for Paid Sick and Family Leave in the Families First Coronavirus Response Act (H.R. 6201)

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The Families First Coronavirus Response Act (H.R. 6201) includes an employer tax credit for the paid sick and family leave required as part of this legislation. This tax credit is intended to help businesses with the cost of providing paid leave to address the coronavirus disease (COVID-19) pandemic.

## Tax Credits for Paid Leave

The employer payroll tax credit is for wages paid to fulfill the new leave requirements. The Emergency Paid Sick Leave Act, Division E of H.R. 6201, requires private employers with fewer than 500 employees, and all government employers, to provide employees with two workweeks of paid sick leave for coronavirus-related leave purposes. The Emergency Family and Medical Leave Expansion Act, Division C of H.R. 6201, provides employees of employers with fewer than 500 employees expanded job-protected [Family and Medical Leave Act \(FMLA\)](#) leave; under certain conditions this leave must be partially compensated by employers. The legislation expands access to paid sick and family leave for employees at many small- and mid-sized businesses. Employees of large businesses, however, would not have guaranteed access to paid sick or family leave under this proposal.

## Employer Payroll Tax Credit

The employer payroll tax credit is computed using wages paid, and claimed against the employer's share of the Social Security payroll tax in each calendar quarter. The Social Security payroll tax rate is generally 12.4% of wages, with 6.2% paid by employers and 6.2% paid by employees. The tax applies to workers' earnings up to an annual limit, \$137,700 in 2020. The [Social Security trust fund](#) will not be affected by the tax credit. A general fund transfer to the trust fund will offset the reduction in federal revenues from the tax credit.

The tax credit is refundable. If an employer's tax credits exceed its payroll tax liability, the excess can be received as a payment from the Treasury. Employers that claim this credit are required to include the amount claimed in gross income, for income tax purposes, offsetting the reduction in gross income from

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deducting wages paid (preventing a double benefit). Additionally, employers cannot claim this credit for any wages taken into account for the purposes of calculating the [employer tax credit for paid family and medical leave](#). Employers may also elect not to have the credit apply. The credit does not apply to state or local governments. The tax credits can be claimed for a period to begin within 15 days following enactment, and ending December 31, 2020.

### *Sick Leave*

Employers can claim a tax credit for amounts required to be paid in sick leave wages to individuals who miss work to (1) self-isolate because of coronavirus diagnosis; (2) obtain a medical diagnosis or care for coronavirus symptoms; or (3) quarantine based on the recommendation or order of a public official or health care provider. Sick leave wages are paid at 100% of the employee's normal wages, and the tax credit is 100% of qualifying sick leave wages, up to \$511 per day. A maximum of 10 days of paid sick leave can be taken into account when determining the tax credit.

### *Family Leave*

The employer tax credit for family leave is 100% of qualified family or medical leave wages paid, up to a maximum amount. Family and medical leave wages include those paid to individuals who are (1) quarantining on the recommendation or order of a public official or health care provider and cannot perform their work while doing so; (2) caring for an at-risk family member who is in quarantine on the recommendation or order of a public official or health care provider; or (3) caring for a minor child whose school or place of care has closed, or whose child-care provider is unavailable due to coronavirus.

The paid leave period for the purposes of the tax credit begins once an individual has taken 14 days of leave for a family (or medical) leave purpose described above. These 14 days of leave may consist of unpaid leave, or an employee election to use paid vacation, personal, or other medical or sick leave. After this 14-day period, employees will receive a benefit from their employers that is at least two-thirds of the employee's usual pay. The tax credit for family leave wages is limited to \$200 per day, and \$10,000 total.

## **Tax Credit for Self-Employed Individuals**

Self-employed individuals, including [gig workers](#), are eligible for tax credits similar to above. If individuals are unable to perform services in their trade or business for the sick leave purposes described above, the individual may qualify for an income tax credit equal to 100% of average daily self-employment income. Like the employer credits, this credit is limited to \$511 per day for qualifying sick leave purposes, and \$200 for other qualified leave purposes. The sick leave credit is limited to a maximum of 10 days. The family leave credit is limited to 50 days. For self-employed individuals, the income tax credit is refundable (meaning that if the tax credit amount exceeds the individual's income tax liability, the excess is received as a refund, or payment, from the Treasury). Like the employer tax credit, the tax credits for self-employed taxpayers can be claimed for a period to begin within 15 days of enactment, and ending December 31, 2020.

## **Issues and Considerations for Congress**

The tax credit for required paid sick and family leave will largely offset the cost of providing such required leave in the Emergency Paid Sick Leave Act. The legislation mandates leave for employees of firms that employ fewer than 500 employees. In 2019, 47.6% of employees worked in [firms with fewer than 500 employees](#). The other 52.4% of employees worked in large firms, or firms with 500 or more employees. This legislation does not mandate sick leave for employees of these firms who may not have

access to paid sick or family leave. Nor does it provide tax credits for these larger firms for providing leave. [Some experts have expressed concern](#) about this potential gap in coverage.

A refundable payroll tax credit will likely reduce the financial burden of providing required paid sick and family leave. The credit, however, does not necessarily encourage businesses to provide additional leave beyond what is required. Employees of large businesses in particular may be left without coverage. Additionally, this credit is not designed to help businesses who have suffered lost business as a result of COVID-19.

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