



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

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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 cover the cost to businesses of providing paid leave to address the coronavirus disease (COVID-19) pandemic. This Insight provides an overview of the tax credits, including the corrections included in H.Res. 904, as passed by the House on March 16, 2020.

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 as modified by H.Res. 904, generally requires private employers with fewer than 500 employees, and all government employers, to provide employees with two workweeks of paid sick leave for certain coronavirus-related leave purposes. The Emergency Family and Medical Leave Expansion Act, Division C of H.R. 6201, as modified by H.Res. 904, generally provides employees of private employers with fewer than 500 employees, state and local government employees, and some federal employees expanded job-protected [Family and Medical Leave Act \(FMLA\)](#) leave for certain caregiving responsibilities. Under certain conditions, this expanded family leave must be partially compensated by employers. For both sick and family leave, the bill includes provisions that may exclude health care providers, emergency responders, and employees in certain small businesses from leave requirements.

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.

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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 or railroad retirement 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 Social Security payroll tax applies to workers' earnings up to an annual limit, \$137,700 in 2020. Similar taxes are withheld for [railroad employees](#). 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 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 100% of the amount required to be paid in sick leave wages. Sick leave wages must be paid for up to 10 workdays for a full-time employee (prorated for part-time employees). The maximum amount that must be paid in sick leave depends on the purpose for which the sick leave is taken.

Sick leave wages cannot exceed \$511 per day for employees if they are taking leave because (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 COVID-19; or (3) the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

Sick leave wages cannot exceed \$200 per day for employees if they are taking leave because (A) the employee is caring for an individual described in number (1) or (2) above; (B) the employee is caring for their own minor child whose school, place of care, or caregiver is closed or unavailable due to COVID-19; or (C) the employee is experiencing any other to-be-specified "substantially similar condition." The tax credit amounts for paid sick leave can be increased by the amount employers pay for an employee's health care plan while they are on leave.

Family Leave

The employer tax credit is for paid family leave, required for employees who take leave (are unable to work) because they must care for their own minor child whose school or place of care has been closed due to a COVID-19-related public health emergency.

The paid leave period for the purposes of the tax credit begins once an individual has taken 10 days of leave for the family leave purpose described above. These 10 days of leave may consist of unpaid leave, or an employee may elect to use paid vacation, personal, or another form of paid leave. After this 10-day period, employees will receive a benefit from their employers that is at least two-thirds of the employee's usual pay, but not more than \$200 per day. The tax credit for family leave wages is limited to \$200 per day, and \$10,000 total per employee. The tax credit amounts for paid family leave can be increased by the amount employers pay for an employee's health care plan while they are on leave.

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 certain qualifying sick leave purposes, and \$200 for other sick and qualified family 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 Families First Coronavirus Response Act. The legislation mandates leave for employees of private-sector firms that employ fewer than 500 individuals. 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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