



Federally Mandated Paid Leave and Changes to SBA's Disaster Loan Program

As part of our ongoing efforts to support our dealers, we want to help you stay informed about how new legislation related to the COVID-19 outbreak may impact your business. This report describes how the paid leave provisions in the Families First Coronavirus Response Act, that was signed into law on March 18, 2020, apply to you. It also describes changes to the federal government's disaster loan program that allow small businesses impacted by the COVID-19 pandemic access to the program.

We will continue to provide updates on new developments in government policy that may impact our dealers.

How the "Families First Coronavirus Response Act" Impacts the Dealer Community

The Families First Coronavirus Response Act applies to employers with under 500 employees. It requires them to provide 1) emergency paid sick leave and 2) emergency paid family leave for issues related to COVID-19.¹

As described in more detail below, the emergency leave paid by employers under this law is fully refundable by the federal government within three months. Business with fewer than 50 employees may apply for a waiver if the new programs would "jeopardize the viability of the business as a going concern."

1) Emergency Paid Sick Leave

Employers must provide paid sick leave if an employee is unable to work (or telework) for any of these six reasons:

1. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19. This likely covers employees subject to local "shelter-in-place" orders or other workforce reduction orders, such as the ones issued in the San Francisco bay area, and the states of California and New York.²
2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. For employee to obtain a medical diagnosis if the employee has symptoms of COVID-19.
4. Employee is caring for an individual who is subject to an order described in item 1 or 2 above.
5. Employee is caring for his or her child if the child's school has been closed, or the childcare provider is closed or unavailable due to COVID-19 precautions.
6. The employee has other similar conditions, to be specified later by the Secretary of Health and Human Services.

Duration of Paid Sick Leave: Full-time employees are entitled to 80 hours of paid sick time. Part-time employees are entitled to the average number of hours they work over a two-week period. This applies regardless of the employee's length of service. Employers are prohibited from requiring employees to use other paid leave before using the new emergency paid sick leave.

¹ The new law also provides for free COVID-19 testing, additional funding for food and nutrition programs, and funding for state unemployment insurance programs. Those provisions do not directly impact your business, so they are not addressed here.

² The Department of Labor will issue regulations in April to provide additional guidance on interpreting this law.

Nothing in the law prohibits employees from using their paid sick leave intermittently, i.e., it does not have to be used sequentially in one uninterrupted period of time. However, an employee's emergency paid sick leave ceases beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick time.³

Compensation: Sick leave for the first three reasons listed above is paid at the employee's regular pay rate, based on the number of hours the employee otherwise would have worked, **capped at \$511 per day and \$5,110 total**. Sick leave used for reasons 4-6 above, is at two-thirds of the employee's regular pay, **capped at \$200 per day and \$2,000 total**.

The Labor Department must issue guidelines by April 2 to assist employers in calculating how much paid leave their employees should get.

2) Emergency Family Leave

Employers must provide paid leave for employees who are unable to work (or telework) because of the need to care for their child (under the age of 18) *if the child's school or daycare has been closed, or the child's caretaker is unavailable due to a public health emergency related to COVID-19.*

Duration of Emergency Family Leave: Eligible employees may receive up to 12 weeks of leave. The initial 10 days is unpaid under this provision (first 10 days are intended to be covered by emergency sick leave or existing PTO policies).

Compensation: After the first 10 days, employer must pay two-thirds of the employee's regular rate of pay (which includes all salary, hourly pay, and other non-discretionary compensation) for the number of hours the employee would typically work during the leave period. **Payment is 2/3 of usual pay; capped at \$200 per day or \$10,000 total.**⁴

Notice to Employees: *Employers are required to post a notice to employees of the requirements in both provisions of this law. The Secretary of Labor is required to provide a model notice for employers to use by March 25.*

Date of Implementation: These emergency sick leave and family leave provisions must be implemented by April 2, though the Department of Labor has stated it will observe a temporary period of non-enforcement for the first 30 days after the law takes effect, so long as the employer has acted reasonably and in good faith to comply.

Exceptions for Employers with Fewer than 50 Employees: The Secretary of Labor is expected to issue regulations within the next couple weeks outlining exceptions from both the emergency sick leave and family leave requirements for employers with fewer than 50 employees if the imposition would "jeopardize the viability of the business as a going concern."

³ Unused paid sick time under the Act does not carry over to the next year, and employers are not required to pay unused sick time upon separation of employment. The Emergency Paid Sick Leave program expires at the end of 2020.

⁴ The Emergency Family Leave Act expires at the end of 2020.

Both Programs are Fully Reimbursed by the Federal Government

- Employers initially front the cost of emergency paid sick leave and family leave but will be fully reimbursed by the federal government within three months.
- The reimbursement will cover both the wages paid and the employer's contribution to employee health insurance premiums during the period of leave.
- Employers will be reimbursed through a refundable tax credit that counts against employers' payroll tax. Employers will submit emergency paid sick leave and family leave expenses as part of their estimated quarterly tax payments. If employer's costs more than offset their tax liability, they will get a refund from the IRS.

The Secretary of the Treasury is expected to issue regulations before April 2 to provide additional guidance about how to claim the tax credit.

Small Business Loans Through the Disaster Loan Program

On Thursday, March 12th, the Small Business Administration announced that the "Economic Injury Disaster Loan Program" (EIDL) would be available for small businesses impacted by the COVID-19 pandemic in states declared "disaster zones." A full list of qualifying states is [here](#).

The disaster loan program provides low-interest, long-term loans of up to \$2 million to help meet financial obligations and operating expenses that could have been met had the disaster not occurred. The repayment terms are usually friendlier than otherwise available loans, and repayment terms are crafted to meet the needs and ability of the business.

More details are available through the Small Business Administration's website [here](#).

**This information is not intended to constitute legal advice. All information is for general informational purposes only.*