

Voya Employee Benefits responds: Families First Coronavirus Response Act

The U.S. Senate passed HR 6201, a bill passed in the House of Representatives on March 16, 2020. The president signed the legislation into law on March 18, 2020. This law, known as the Families First Coronavirus Response Act, enacts a number of emergency relief measures related to the COVID-19 pandemic. There are two aspects of the law: the “Emergency Family and Medical Leave Expansion Act,” and the “Emergency Paid Sick Leave Act.” These two divisions of HR 6201 require employers to provide employees with paid leave benefits for absences related to COVID-19.

The Acts’ requirements apply to employers with fewer than 500 employees. The Act’s leave requirements provide job-protected paid leave to employees for up to 12 weeks for an absence that is related to COVID-19. In addition to providing 12 weeks of job protection, this new Act also provides for a required paid sick leave program. These new leave laws become effective 15 days after enactment, which falls on April 2, 2020. A summary of the legislation is reflected below:

Effective date:

Effective April 2, 2020; sunsets on December 31, 2020.

Administration:

The Federal government is funding the program, which the SSA is administering. Social Security Disability and SSI benefits remain separate programs where benefit funding comes from employee paychecks.

Covered Employer:

An employer with fewer than 500 employees.

Eligible Employee:

Any full-time or part-time employee who has been on the employer’s payroll for 30 days.

Reasons for leave related to COVID-19:

Under the Families First Coronavirus Response Act, an eligible employee can take emergency leave for the following reasons:

- To comply with a requirement or recommendation to quarantine due to exposure to, or symptoms of, COVID-19.
- To care for a family member whose presence in the community would jeopardize the health of other individuals because of the exposure of such family member to COVID-19 or exhibition of symptoms of COVID-19 by such family member.
- To care for a child of an employee if the child’s school or place of care has been closed, or the childcare provider is unavailable, due to COVID-19.

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What Portion is Paid Leave?

Eligible employees may take up to **12 weeks** of leave related to COVID-19.

First 10 days

The first 10 days of leave is unpaid time, but an employee can choose to use accrued vacation leave, personal leave, or other medical or sick time during the leave. The employer cannot force an employee to use their accrued paid leave during this initial 10 day timeframe.

The Remaining 10 weeks

This leave is paid at two-thirds the employee's regular rate of pay for the number of hours the employee would have been normally scheduled. The amount of leave is limited to no more than \$200 per day and \$10,000 total. No federal income tax applies to this benefit.

Definition of "Family Member"

The legislation expands the definition of "parent" and "family member" found under the FMLA:

- **Parent:** a biological, foster or adoptive parent; stepparent; parent-in-law; parent of a domestic partner; or legal guardian or other person who stood in loco parentis when the employee was a child.
- **Family member:** an individual who is a pregnant woman, senior citizen, individual with a disability, or has access or functional needs and who is a son or daughter of the employee, a next of kin of the employee for whom the employee is next of kin; or a grandparent or grandchild of the employee.

Job Protection

This leave is job-protected. However, there is an exception to this requirement for employers with fewer than 25 employees if the employee's position does not exist after this leave is exhausted due to an economic downturn or other operating conditions that affect employment caused by a public health emergency during the period of leave.

Tax Credits for Emergency Family and Medical Leave

The new law provides for a series of refundable tax credits.

Specifically, the new legislation provides for:

- A refundable tax credit for employers equal to 100 percent of qualified paid sick leave wages required to be paid by the Emergency Paid Sick Leave Act that is paid by an employer for each calendar quarter. The tax credit is allowed against section 3111(a) (the employer portion of Social Security taxes). The amount of qualified family leave wages taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters. If the credit exceeds the employer's total liability under section 3111(a) for all employees for any calendar quarter, the excess credit is refundable to the employer.

- A refundable tax credit equal to 100 percent of a qualified sick leave equivalent amount for eligible self-employed individuals. The credit is allowed against income taxes and is refundable. Eligible self-employed individuals are individuals who would be eligible to receive paid leave under the Emergency Family and Medical Leave Expansion Act if the individual was the employee of an employer. The qualified family leave amount is capped at the lesser \$200 per day or the average daily self-employment income for the taxable year per day.

Emergency Paid Sick Leave Act

Reasons for Sick Leave:

Under the EPSLA, an employee may take sick leave for the following reasons:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a health care provider to self-quarantine because of COVID-19;
- The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- The employee is caring for an individual advised to quarantine or to be in isolation;
- The employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19; or
- The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

What is Paid?

Under the EPSLA, employees are entitled to the following:

- **Full-time employees:** 80 hours of sick leave at their regular rate of pay. However, when caring for a family member, sick leave is paid at two-thirds of the employee's regular rate.
- **Part-time employees:** the number of hours that the employee works, on average, over a 2-week period.

Amount of Pay:

Under the ESPLA, the paid leave benefit is limited to \$511 per day (\$5,110 in total) where leave is taken due an employee's illness or quarantine; and \$200 per day (\$2,000 in total) where leave is taken to care for others or because of school closures.

Tax Credits for Emergency Paid Sick Leave

Specifically, the bill as passed by the House provides for:

- A refundable tax credit for employers equal to 100 percent of qualified paid sick leave wages required to be paid by the Emergency Paid Sick Leave Act that are paid by an employer for each calendar quarter.
- A refundable tax credit for self-employed individuals equal to 100 percent of a qualified sick leave equivalent amount for eligible self-employed individuals who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus. For eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus, the section provides a refundable tax credit equal to 67 percent of a qualified sick leave equivalent amount.

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