

AFSCME *Facts*

New Leave Requirements Mandated by Congress for COVID-19

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A new federal law enacted in response to the coronavirus crisis creates a temporary right to paid leave. However, not all employers are required to provide the leave and not all employees will be eligible for it. This fact sheet provides an overview of the rights and requirements in this new law.

What kind of leave is required to be provided?

Two kinds of leave are required. *Emergency paid sick leave* is the most widely available leave of the two kinds but is provided for only two weeks. *Emergency family leave* is available for a longer period but only in very limited circumstances when a parent needs to care for a child. An employee generally would take emergency paid sick leave before taking emergency family leave.

For what reasons can an employee take leave?

Emergency paid sick leave is available only when an employee is unable to work (or to telework) due to any of the following reasons related to COVID-19:

1. The employee is under an official quarantine or isolation order.
2. The employee has been advised by a health care provider to self-quarantine.
3. The employee is experiencing COVID-19 symptoms and seeking a medical diagnosis.
4. The employee is caring for an individual who is under an official quarantine or isolation order or who has been advised by a health care provider to self-quarantine.
5. The employee is caring for a son or daughter under 18 years old if the child's school or place of care has been closed, or childcare provider is unavailable, due to COVID-19 precautions.
6. The employee is experiencing substantially similar conditions to those listed above, as specified in the future by the U.S. Secretary of Health and Human Services.

Emergency family leave is available *only* when an employee is unable to work (or to telework) *due to a need to care for the employee's son or daughter under 18 years old if the child's school or place of care has been closed, or childcare provider is unavailable*. An employee is entitled to this leave only when the closure or unavailability is due to an officially declared COVID-19 public health emergency. By comparison, emergency paid sick leave is available when the closure or childcare provider's unavailability is due to COVID-19 precautions.

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How long is the leave?

Emergency paid sick leave can be taken for up to two weeks. For a full-time employee, this means 80 hours. For a part-time employee, it is the average of hours worked over a 2-week period.

Emergency family leave can be taken for up to 12 weeks. While the first two weeks (i.e., 10 days) of it may be unpaid, the expectation is that an employee will take emergency paid sick leave during that time.

How much does an employee get paid while on leave?

When taking *emergency paid sick leave* to care for oneself (reasons 1–3 under “For what reasons can an employee take leave?”), an employee is paid 100% of the employee’s regular rate of pay multiplied by the number of hours the employee would normally be scheduled to work. Pay is capped at \$511 per day and \$5,110 total.

When taking this leave to care for others or for other reasons (reasons 4–6), an employee is paid two-thirds of the employee’s regular rate of pay multiplied by the number of hours. Pay is capped at \$200 per day and \$2,000 total.

After the first 10 days of *emergency family leave*, an employee is paid two-thirds of the employee’s regular rate of pay multiplied by the number of hours the employee would normally be scheduled to work. Pay is capped at \$200 per day and \$10,000 total.

Which employers are required to provide this leave?

- Private-sector employers with fewer than 500 employees.
- Government employers of any size.

Exemption for Small Businesses—The U.S. Secretary of Labor can exempt small businesses with fewer than 50 employees from this requirement when imposing this requirement would jeopardize the viability of the business as a going concern.

Which employees are eligible for paid leave?

- *Emergency paid sick leave*—Any employee, regardless of hours of work or length of service.
- *Emergency Family and Medical Leave*—Employees who have been employed for at least 30 calendar days by their employer.

Exclusion of Certain Health Care Providers and Emergency Responders—An employer can deny either kind of leave to employees who are health care providers or first responders. Also, the U.S. Secretary of Labor can issue regulations excluding these workers from eligibility.

It is not clear which workers will be considered to be health care providers or emergency responders. Existing Labor Department rules define health care provider relatively narrowly to include jobs like medical doctors, dentists, nurse practitioners, physician assistants, nurse midwives and clinical social workers. The Labor Department might try to broaden the definition to include other kinds of workers, such as those in the nursing profession.

How do these new leave requirements relate to leave provided for under collective bargaining agreements, employer policies or other laws?

Emergency paid sick leave is not instead of any other paid leave to which an employee has a right and does not diminish an employee's rights or benefits under any other law, collective bargaining agreement or existing employer policy. An employer is prohibited from changing its leave policy to get around that requirement. An employee can choose to take emergency paid sick leave before taking any other kind of paid leave, and an employer cannot require an employee to take other employer-provided paid leave before taking emergency paid sick leave. Any employee who separates from employment is not entitled to payment for any unused emergency paid sick leave.

An employee can choose to take any accrued vacation leave, personal leave or medical or sick leave for the unpaid first two weeks of *emergency family leave*. Generally, an employee would be likely to take emergency paid sick leave during that period. An employer cannot require an employee to take other kinds of accrued leave instead of the emergency family leave.

Since this new leave is temporary, when will eligible employees have a right to this leave?

These temporary requirements are in effect during the period that begins not later than 15 days after the date of enactment and ends on December 31, 2020. The law was enacted on March 18, 2020. The law does not create a right to pay for leave taken before the effective date.

Does the federal government provide any financial assistance to help employers pay for this leave?

The new law includes *significant tax benefits only for private-sector employers*. It does not provide any financial assistance to government employers even though all government employers are required to provide this paid leave. The benefits provided to private-sector employers include:

- Refundable tax credits that generally cover the cost of the leave, the cost of an employee's health benefits paid by the employer during the leave period and the amount the employer pays in Medicare payroll tax on the leave pay.
- An exemption from paying the employer share of the Social Security payroll tax on the employee's pay during the leave period.