



## ***Office of the General Counsel***

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### **The Emergency Paid Sick Leave Act**

The Emergency Paid Sick Leave Act passed by Congress and signed by the President into law requires that covered employers provide paid sick leave for the reasons described below.

- I. What employers are required to provide the paid sick leave? Any employer engaged in commerce or in any industry affecting commerce that employs fewer than 500 employees.
- II. Who is eligible for paid sick leave? With respect to private employers, any person who is regarded as an “employee” for purposes of the Fair Labor Standards Act.<sup>1</sup>
- III. For what reasons may the prescribed paid sick leave be used? Paid sick leave may be used for any of the following reasons—

(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 concerns related to COVID-19;

(3) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(4) the employee is caring for an individual who is subject to an order as described in paragraph (1) above or has been advised as described in paragraph (2);

(5) the employee is caring for a son or daughter<sup>2</sup> if their school or place of care has been closed, or the child care provider of the son or daughter is unavailable, due to COVID-19 precautions;

(6) the employee is experiencing any other substantially similar condition specified by the Secretary of HHS in consultation with the Secretaries of Treasury and Labor.

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<sup>1</sup> An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the paid sick leave provisions of the bill.

<sup>2</sup> “Son” and “daughter” have the same meaning given such terms in the Family and Medical Leave Act, i.e., a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is (a) under 18 years of age, or (b) 18 years of age or older and incapable of self-care because of a mental or physical disability.

- IV. How much paid sick leave must be provided under the bill? Up to 80 hours for full time employees. For part-time employees, the number of hours that the employee works, on average, over a 2-week period. Special rules apply if the average pay of a part-time employee whose schedule varies from week to week cannot be determined with certainty.<sup>3</sup>
- V. How much pay must be provided during the leave? Regular pay, but only 2/3 of pay need be provided if the reasons for the leave are as described in III(4), (5), or (6). However, in no event shall paid sick leave exceed (a) \$511 per day and \$5,110 in the aggregate for a use described in III(1), (2), or (3), or (b) \$200 per day and \$2,000 in the aggregate for a use described in III(4), (5), or (6).
- VI. Does paid sick leave carry over from one year to the next? No.
- VII. When does paid sick leave cease? Paid sick leave under the bill ceases beginning with the employee's next scheduled workshift immediately following the termination of the need for paid leave under III above.
- VIII. What about employers that already provide paid sick leave? Paid sick time under the Act must be made available to employees *in addition* to any paid leave the employer already provides on the day before the date of enactment of the Act, and the employer may not change its paid leave policy on or after the date of enactment of the Act to avoid this requirement.
- IX. May an employer require, as a condition of providing paid sick leave under the Act, that the employee search for or find a replacement to cover the hours during which the employee is using paid sick leave? No.

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<sup>3</sup> Under the special rules, the employer shall figure the number of average hours that the part-time employee was scheduled per day over the 6-month period ending on the date on which the employee takes the paid sick leave, including hours for which the employee took leave of any type. If the employee did not work over such period, then the employer shall base its calculation on the "reasonable expectation" of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

- X. May an employer require an employee to take paid leave under the employer's policies before taking paid leave under the Act? No.
- XI. Are there posting requirements? Yes. The employer must post and keep posted, in conspicuous places on its premises where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements of the Act. The Act requires the Secretary to make a model notice publicly available no later than seven days after enactment of the Act.
- XII. May an employer discharge, discipline, or in any other manner discriminate against any employee who takes leave under the Act or has filed a complaint related to the Act? No.
- XIII. May the employer require that the employee follow reasonable notice procedures to continue receiving paid sick leave under the Act? Yes. After the first workday (or portion thereof) an employee receives paid sick time under the Act, the employer may require the employee to follow "reasonable notice procedures" in order to continue receiving such paid leave.
- XIV. When does the Act take effect? No later than 15 days after the date of enactment of the Act.
- XV. How long are these requirements in place? The sick leave requirements of the Act expire on December 31, 2020.
- XVI. Can employer receive a subsidy to offset the cost of providing sick leave under the bill?  
Yes. The payroll tax credits give employer 100 percent of the qualified sick leave wages an employer is required to pay under the Emergency Paid Sick Leave Act. The credit shall not exceed \$511 per day for any portion of sick leave paid for reasons described in paragraphs (1), (2), and (3) of Q&A No. 3 above. The credit is capped at \$200 per day for any portion of sick leave paid for reasons described in paragraphs (4), (5), and (6) of Q&A No. 3 above.