



## U.S. CHAMBER OF COMMERCE

### Summary of Latest Congressional Action on Coronavirus Response

On March 14, the House of Representatives [passed](#) the U.S. Chamber of Commerce [supported](#), Families First Coronavirus Response Act. President Trump has announced his support for the bill and it is expected to pass the Senate early next week. Secretary Mnuchin has announced that there will be additional technical corrections to the bill as soon as Monday.

Below is a summary of the bill and the text is available [here](#).

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#### **Unemployment Compensation:**

The bill gives state governments flexibility with respect to waiting periods and in interpreting the “able, available and actively looking” test for Unemployment Compensation (UC) eligibility. That said, it is important to emphasize that UC is not sick leave.

- Example: John owns a restaurant. Business has slowed down dramatically because of the virus. He sends three employees home on furlough. They would be eligible for UC and under the bill would not have to wait one week before collecting benefits. Because the intent is for them to return to John’s restaurant when business picks up, a state can determine that they are actively looking for work. If they are later asked to return to work, but refuse, they will then be considered no longer able, available, and actively looking.
- Example: A worker is forced to stay home under orders of a public health professional or because John’s restaurant is in an area that cannot be reached because of the virus. The worker in the first instance, and all workers in the second, could be eligible for UC because the intention is that they will return to working at the restaurant at some point in the future. (note: the worker on quarantine would also be qualified for paid sick leave under the bill).

- Example: John shuts down his restaurant because of a lack of business caused by the virus. Employees laid off as a result are eligible for UC.

Provides an additional \$1 billion for state unemployment programs.

Authorizes extended unemployment benefits (beyond the usual 26 weeks), fully funded by the federal government, for states that experience a spike in unemployment.

### **Paid Sick Leave:**

Requires private sector employers with fewer than 500 employees and government employers to provide employees with two-weeks of paid sick leave (80 hours for full-time employees and typical number of hours over two-weeks for part-time employees).

Eligibility: The paid sick leave is available to any employee without regard to duration of employment if they are out in order to:

- Self-isolate because they have coronavirus,
- Obtain a diagnosis because they are exhibiting symptoms,
- Comply with an order by a health care professional to stay away from work,
- Care for a family member facing the instances mentioned above, or
- Care for children if schools are closed or their caregiver is unavailable because of a public health emergency.

Rate of Pay: Employees are compensated at the higher of their regular rate, the federal minimum wage, or the local minimum wage. However, if the employee is absent to care for a sick family member or a child unable to attend school, they are compensated at 2/3 of the rate they would otherwise receive.

Relationship to Existing Programs: This paid sick leave is in addition to whatever sick leave is already offered by the employer (including subject to state or local requirements). Once this legislation is enacted an employer may not make changes to its sick leave policy.

Effective Dates: The provision takes effect not later than 15 days after enactment of the bill and sunsets on December 31, 2020.

Funding: Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified sick leave wages paid by the employer. Qualified sick leave wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member) and 10 days. The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified sick leave exceed the taxes they would owe. The Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties on failing to deposit payroll taxes in anticipation of the credit.

Self-Employed: There is a similar tax credit against self-employment taxes for individuals who are self-employed but would otherwise qualify for paid sick leave if they were an employee of an employer.

- Example: John owns a manufacturing firm with fewer than 500 employees. One of his full-time employees has a family member who is diagnosed with coronavirus. John must provide up to 80 hours of paid sick leave at 2/3 of her normal rate of pay and will receive a refundable tax credit on his next quarterly tax filing to offset the cost up to \$200 per day.
- Example: At the same manufacturing firm, 5 full-time employees need to self-quarantine. John must provide up to 80 hours of paid sick leave for those employees at their normal rate of pay and will receive a refundable tax credit on his next quarterly filing to offset the cost up to \$511 per day.
- Example: John owns a manufacturing company with more than 500 employees. The paid sick leave provisions under the bill do not apply.

### **Paid Family and Medical Leave:**

With certain possible exceptions (see below), requires private sector employers with *fewer* than 500 employees and government employers to provide employees with up to 12 weeks of paid family and medical leave.

Eligibility: The paid sick leave is available to any employee who has been employed for at least 30 days if they are out in order to:

- Comply with a requirement or recommendation to quarantine because of exposure to or symptoms of coronavirus,
- Care for a family member facing the instances mentioned above, or
- Care for children if schools are closed or their daycare is unavailable because of a public health emergency.

Rate of Pay: After 14 days, during which time the employee can take unpaid or paid leave (if available), employees are compensated at 2/3 of their regular rate.

Small Business and Other Exemptions: The Secretary of Labor is authorized to exempt health care providers and emergency responders and small businesses with fewer than 50 employees if the requirement would jeopardize the business as an ongoing concern. The requirements to restore the employee to their position after the paid leave is taken do not apply to businesses with fewer than 25 employees if the position no longer exists because of the public health emergency (provided the employer takes certain actions to try and assist the employee). Employers with less than 50 employees are exempt from civil actions brought by employees for violations of this section.

Effective Dates: The provision takes effect not later than 15 days after enactment of the bill and sunsets on December 31, 2020.

Funding: Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified paid family leave wages paid by the employer. Qualified paid family leave wages are capped at \$200 per day and \$10,000 overall. The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified

paid family leave exceed the taxes they would owe. The Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties on failing to deposit payroll taxes in anticipation of the credit.

Self-Employed: There is a similar tax credit against self-employment taxes for individuals who are self-employed but would otherwise qualify for paid family leave if they were an employee of an employer, but leave would be capped at 50 days.

- Example: Jane owns a manufacturing facility with fewer than 500 employees. One of his employees has been exposed to coronavirus and ordered by a public health official to remain away from work and the employee is unable to perform her job. After 14 days of unpaid or paid leave, she is eligible for paid family leave for the time she must remain quarantined for up to 12 weeks. The manufacture will be reimbursed \$200 a day up to a total of a \$10,000.
- Example: Same as above, but the employee can perform her job functions remotely. She is not eligible for paid FMLA leave.
- Example: Jane's manufacturing facility has more than 500 employees. It is not subject to paid FMLA leave under the bill. State or local laws, however, may apply.

#### **Provisions for Diagnostic Testing:**

- Requires private health plans to provide coverage for diagnostic testing at no cost to the consumer
- Waives beneficiary cost sharing under Medicare Part B when provider visit includes diagnostic test
- Requires Medicare Advantage to provide diagnostic test and associated provider visit at no cost to the beneficiary
- Requires Medicaid to provide diagnostic test and associated provider visit at no cost to the beneficiary
- Requires that those under TRICARE, Veterans programs, Indian Health Services, and federal civilian workers have coverage for diagnostic testing without cost sharing
- \$1 billion to reimburse cost of testing for individuals without health insurance
- \$82 million for Defense Department Health program
- \$64 million for Indian Health Service
- \$60 million for Veterans Medical Services

#### **Health Services:**

- 6.2% increase in FMAP – State Medicaid Match Rate
- Increase in Medicaid allotments for U.S. territories

#### **School Nutrition Programs, WIC, SNAP, Senior Food Programs:**

- \$500 million for the WIC program
- \$400 million for Dept of Agriculture Commodity Assistance program for local food banks
- \$100 million for nutrition assistance to U.S. territories
- \$250 million for senior nutrition programs including home-delivered meals and congregate nutrition
- Authority to provide school nutrition benefits, including through the EBT system, for families with children in schools closed for five or more days
- Authority for state waivers for certain program requirements under school nutrition, WIC, and SNAP to respond to COVID-19
- Suspension of SNAP work and work training requirements

**Medical Devices Liability:**

- Provides limited liability protection for manufacturers of personal respiratory protective devices

**Discussion of Liquidity Impact for Small Businesses:**

Concerns have been expressed about the liquidity problems the paid sick leave and paid family leave could create for some small businesses as they pay employees but wait for reimbursement from the federal government. We expect the technical corrections announced by Secretary Mnuchin will add to the provisions included right before the bill passed the House to help mitigate any problems. The provisions in the House passed bill include regulatory flexibility to waive penalties for businesses not submitting their payroll taxes if they do so in anticipation of a refund under this bill. And with respect to paid family leave, exempting businesses with fewer than 50 employees if it would jeopardize the business.

It is expected that some businesses who face a severe revenue disruption and are unable to pay their employees whether at work or not may elect to furlough employees which would allow them to access unemployment compensation.

Some businesses who absent this legislation would elect to pay employees for sick leave or paid family leave will likely be marginally better off as they are reimbursed by the federal government.

Finally, and most importantly, for businesses facing revenue problems as a result of the coronavirus, it is essential that the next bill include meaningful financial assistance. This is the Chamber's top priority.