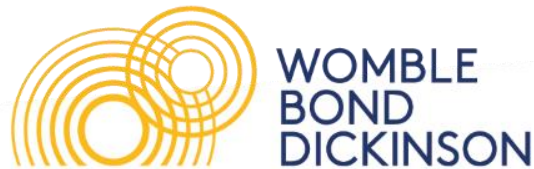


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# Coronavirus Response Act: Paid Leave and Tax Credits

Webinar

March 23, 2020



# Reminders

- Slides and recording will be circulated to all attendees after the presentation.
- If you have any questions during this webinar, please submit them through the Q&A box.
- We will include any questions we were unable to answer during this webinar in a FAQ sheet that will be distributed with the slides and recording.
- For anything else, please email [wbdus\\_covid19@wbd-us.com](mailto:wbdus_covid19@wbd-us.com) or the Womble Bond Dickinson attorney with whom you usually work.

# Agenda

- Introductions
- Who is Covered by the Act
- Emergency Paid Sick Leave
- Emergency Family and Medical Leave Expansion Act
- Determining Leave Pay Rates
- Tax Credits for Paid Leaves
- Frequently Asked Questions

## Presenters



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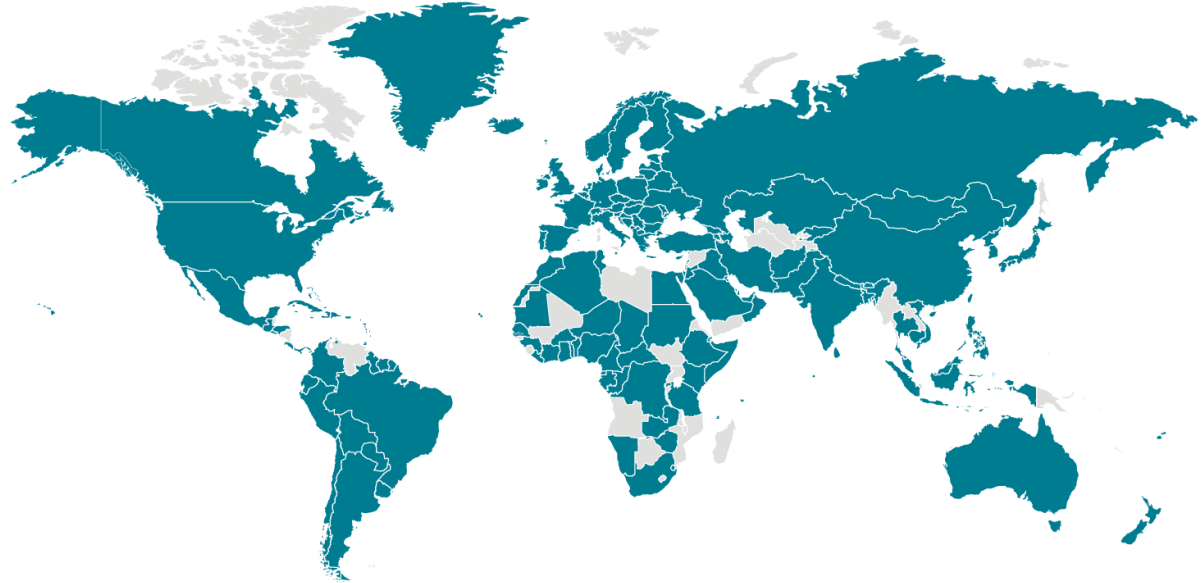
# Recent Statistics

## Worldwide

- Cases: 332,935
- Deaths: 14,510

## United States

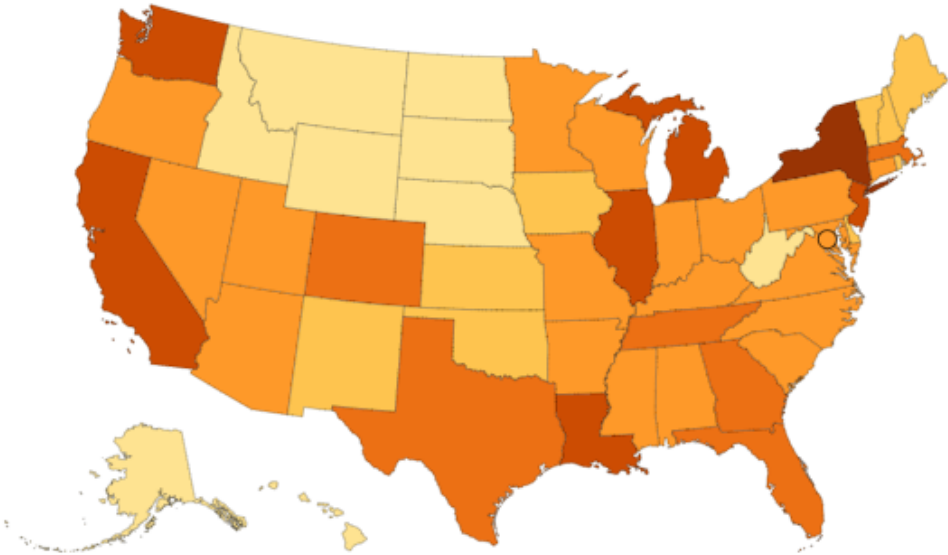
- Cases: 33,404
- Deaths: 400



Source (Worldwide): World Health Organization. Updated: 23 March 2020, 12:03 GMT-4.

Source (U.S.): COVID-19 Situation Summary, Centers for Disease Control and Prevention. Data reviewed as of March 23, 2020. World Map as of 12:00 pm ET March 21, 2020.

# States Reporting Cases of COVID-19 to CDC



### Reported Cases

(last updated March 23, 2020)

- None
- 6 to 50
- 51 to 100
- 101 to 500
- 501 to 1000
- 1001 to 5000
- 5001 or more

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Source (U.S.): COVID-19 Situation Summary, Centers for Disease Control and Prevention. Data reviewed as of March 23, 2020.

# How Businesses are Responding

- Schools in affected areas closed
- Universities going to distance learning
- Business and government imposing travel restrictions and work-from-home protocols
- Shelter in Place Orders in numerous states
- Layoffs, furloughs, shutdowns, temporary closures
- Protocols limiting the presence of customers, employers and guests

# Families First Coronavirus Response Act Overview

- Signed on March 18, 2020
- Effective no later than April 2, 2020 through December 31, 2020
- Creates a new emergency paid sick leave mandate for COVID-19 related absences
- Expands the Family and Medical Leave Act to include paid leave to care for son/daughter due to school/day care closures
- Provides payroll tax credits for employers to cover the paid leave requirement
- Other additional emergency relief
- Further guidance will be issued by the Department of Labor

# Who's Covered?

## Covered Employers

- **Private employers with less than 500 employees**
  - Employees defined by the FLSA
  - All employees within a company and not just a single location
  - Affiliated companies and the FLSA
- **Government employers**
- **Secretary of Labor may issue regulations to exempt employers**
  - Small business with fewer than 50 employees

## Eligible Employees

- **“Employee”**: Any person employed with an employer as defined by the FLSA
  - Employees must be unable to work including remote work
  - Forthcoming exemption for certain health care providers and first responders
- **Paid Sick Leave**
  - Available to all employees
- **Paid Family Medical Leave**
  - Must be employed for at least 30 days
  - Standard FMLA service requirements (1 year / 1250 hours) do not apply



# Emergency Paid Sick Leave

## Amount of Leave

- Full-time employees receive 80 hours (up to two weeks)
- Part-time employees receive a prorated amount based on the average work hours in a 2-week period

## Leave Usage

Employee is unable to work or telework due to:

- Employee experiencing symptoms related to COVID-19 and seeking medical care;
- Employee is self-quarantined based on provider recommendation;
- Employee is quarantined or isolated by order from a federal, state, or local authority;
- Employee is caring for a family member or individual who is quarantined due to COVID-19;
- Employee is caring for a child under 18, whose school or care provider is closed due to COVID-19.

# Emergency Paid Sick Leave

## Additional Considerations

- Leave does not carry over into 2021
- Leave is not payable at employment separation
- Leave is in addition to any existing leave policies
- Immediately available
- Employees may elect to use other paid sick leave, but cannot be required to do so

## Notice Requirements

- Reasonable call-in procedures may be required after the first work day of paid leave
- Must post a notice of employee rights (model forthcoming from DOL by March 25)

# Emergency Paid Family Medical Leave

## Amount of Leave

- 12 weeks job-protected leave: first 10 days are unpaid; remaining days up to 12 weeks are paid

## Qualifying Reason for Leave

- Care for a child under the age of 18 due to the closure of a school or child care provider due to COVID-19 emergency

## Reinstatement

- Employees must be reinstated to the same or equivalent position
- Reinstatement not required under certain circumstances for employers with less than 25 employees if this crisis causes the employee's job to be eliminated

## Additional Considerations

- Employees may elect to substitute any accrued paid leave for the unpaid portion
- Reasonable notice can be required for foreseeable leave
- DOL will provide regulations to permit exclusion of certain healthcare and emergency responders and certain small businesses with less than 50 employees

# Calculating the Correct Pay Rates

- Paid Sick Leave for Employee Self-Care
  - Entitled to regular rate of pay for normally scheduled hours or minimum wage
  - Compensation capped at \$511 per day or \$5,110
- Paid Sick Leave to Care for a Family member or child due to closure
  - Entitled to 2/3 of regular rate of pay for normally scheduled hours
  - Compensation capped at \$200 per day or \$2,000
- Paid FMLA
  - Entitled to 2/3 of regular rate of pay for normally scheduled hours
  - Compensation capped at \$200 per day or \$10,000 total
- Paid FMLA in conjunction with paid sick leave
  - Entitled to 2/3 of regular rate of pay for normally scheduled hours
  - Compensation capped at \$200 per day
- What is the “regular rate” to be used?

**Good news!** DOL announced a 30-day, temporary non-enforcement policy for good faith compliance efforts.

## Enforcement and Remedies

- No discharge, discipline or other discrimination
  - Use of leave
  - Filing a complaint
- Failure to Pay Minimum Wage under the FLSA
  - \$10,000 fine and/or 6 months imprisonment
- Civil suit including:
  - Unpaid Leave
  - Liquidated damages
  - Equitable relief
  - Attorneys' fees and costs

## FAQs: Coverage

Does the 500 employee coverage limit apply to employees throughout the entire company or at a single location?

Coverage under the Act is determined based on the number of employees company-wide. The FMLA requirement for 50 or more employees in a 75-mile radius does not apply.

We have several interrelated companies. Will each be considered a separate employer under the act?

Generally, separate companies will be treated as separate employers unless they are sufficiently integrated to be considered a single enterprise under the FLSA.

What if my company has over 500 employees?

Employers with over 500 employees have no obligation to provide paid sick leave or paid FMLA, under this law.

Do I have to pay employees leave if I decide to close the business temporarily and they are unable to work?

If an employer decides to close or cancel shifts due to lack of work, paid leave under the Act does not have to be paid.

# FAQs: Paid Sick Leave and Paid FMLA

How do you calculate the number of hours for paid leave for employees with varying work schedules?

For part-time employees, use the number of hours that they work, on average, over a two-week period.

Can employees be required to help find other employee to cover their shift so they can take paid sick leave?

Employees cannot be required to locate shift coverage.

Can employees use the paid leave under the FMLA policy?

Employees can elect to use the available leave under the emergency paid sick leave in place of the unpaid, 10 day portion of FMLA.

# Tax Credits

- Federal “employment taxes”:
  - Employer-paid social security taxes (6.2%)
  - Employer-paid Medicare taxes (1.45%)
  - Employee-paid (withheld from pay) social security taxes (6.2%)
  - Employee-paid (withheld from pay) Medicare taxes (1.45%)
  - Income tax withholding
  - Employee-paid additional Medicare tax (0.9%) on higher-income employees
- Tax credit for mandatory paid leave applies only against employer-paid social security taxes
  - The IRS issued a March 20 news release indicating that the credit would apply against all employment taxes, but this is not consistent with the actual terms of the new law.



# Tax Credits

- Tax credit offsets 100% of the cost of paid sick leave and FMLA leave
  - Applies first against employer-paid social security taxes
  - If the cost exceeds such taxes, the excess is paid to the employer as a tax refund
  - Tax credit is provided only for leave payments required under the new law
- Tax credit also covers related employer healthcare costs
- Tax credit applies on a quarterly basis
- No double tax benefit
  - Leave payments cannot be used to obtain the tax credit and a tax deduction
  - Leave payments cannot be used to obtain the tax credit and the existing tax credit for companies with certain paid family and medical leave policies
  - Leave payments cannot be used against taxes already offset by certain credits for qualified veterans and research costs of qualified small businesses

# FAQs: Tax Credits

The credit applies quarterly. Will I have to wait until the end of the quarter to get the benefit of the credit?

- Employers will be able to reduce social security tax payments as they are made, based on an estimate of the credit for the quarter.
- There is no guidance yet indicating how quickly refund payments will be made. The government is aware that this is a critical issue.

Are mandatory leave payments subject to employment taxes?

- Such payments are exempt from employer-paid social security taxes.
- They are subject to all other federal employment taxes. Employer-paid Medicare taxes on such payments are offset by an increase in the tax credit, but, as noted, the tax credit applies against social security taxes, not Medicare taxes.

Will there be further guidance?

Yes, the Department of Treasury is directed to issue regulations and other guidance relating to the credits by the time the law becomes effective.

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