

BOOKS AND STRATEGY LLC



EMPLOYER PAID SICK AND FAMILY LEAVE

Guide to Paid Sick and Family Leave
During COVID-19 Outbreak

EMPLOYER PAID SICK LEAVE AND FAMILY LEAVE DURING COVID 19 OUTBREAK

The devil is in the details. This guide is meant for small businesses with employees and self-employed individuals. If you are a health care provider, non-profit, operate under a multi-employer bargaining agreement, or have more than 500 employees there are exceptions in the laws that I did not take the time to detail out. You should look for industry specific advice.

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What's the time frame on the special provisions for family leave and paid sick leave?

This applies to coronavirus impacted employees through 12/31/20.

What businesses have to provide paid sick leave and family leave?

Businesses with fewer than 500 employees. If you have fewer than 50 employees and paying for leave would jeopardize your business, then you may be eligible for an exemption.[1] "Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern." [2]

If you are self-employed, you may provide sick leave and family leave for yourself.

Who is eligible for paid sick leave?[3]

One who has been employed in their position full or part time for at least 30 days, or is self-employed, and **is unable to work or telework** because they've been impacted by COVID-19 in one of the following ways:

- They are quarantined, isolated, or otherwise ordered to stay at home by state, local, or federal government.

[1] 5111(2) Families First Coronavirus Response Act. I regret that more detail has not been provided by the Secretary of Labor at this time.

[2] <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

[3] CARES Act Sec. 3602 updates provisions from Families First Coronavirus Response Act

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- A health care provider has advised them to self-quarantine.
- They are experiencing symptoms of COVID-19, or a substantially similar condition and are seeking a diagnosis.

Who is an eligible employee for family leave?[4]

One who has been employed in their position full or part time for at least 30 days, or is self-employed, and **is unable to work or telework** because they've been impacted by COVID-19 in one of the following ways:

- The employee is caring for someone with COVID-19, or a substantially similar condition.
- The employee is caring for a son or daughter whose normal school or childcare is closed or unavailable due to the current public health emergency.

How much do I have to pay per employee?

Paid Sick Leave: Normal wages or salary, capped at \$511 per day or \$5,110 in total. For a maximum of 80 hours, or for a part time employee the normal number of hours they would work in a two week period.

Paid Family Leave: First 10 days may be taken unpaid, or the employee may use previously accrued paid leave. After the first 10 days, pay is two thirds of their normal wages or salary, capped at \$200 per day or \$2,000 in total.[5]

[4] CARES Act Sec. 3602 updates provisions from Families First Coronavirus Response Act

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If an employee does not always work the same schedule, use the number of hours they would have worked during the time period they took off. If they were not yet scheduled, you can take the average of how much they worked over the previous 6 months and use that to determine their average number of hours.

How much can I pay myself for sick leave or family leave if I'm self-employed?

- First, find your average daily self-employment earnings. Take your net self-employment earnings from 2019 and divide them by 260.
- When paying yourself for sick leave (up to 2 weeks) **for time that you are unable to work**, pay yourself your average daily self-employment earnings. Not to exceed \$511 per day or \$5,110 in total.
- When paying yourself for family leave (up to 50 days) **for time that you are unable to work**, pay yourself 67% of your average daily self-employment income. Not to exceed \$200 per day or \$2,000 in total.
- Keep documentation of the days you are unable to work. You'll need it to get your tax credits later

Rules

- If your employee is on sick leave or family leave, you can't require them to find their own coverage.
- You can't make an employee take their accrued sick leave before they can take their coronavirus public health emergency paid sick leave.
- You'll need to hang a labor poster with the coronavirus public health emergency sick pay and family pay guidelines in your break room or other conspicuous place.

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- If an employee takes leave, you can't discipline or fire them for it. There are a bunch of rules around what happens if an employee's position is eliminated while they are gone. Those are beyond the scope of this document.
- If you violate the above rules it's equivalent to a minimum wage violation, with a \$1,000 fine for each violation.
- Keep documentation of any sick pay or family leave pay.

Reimbursement via Payroll Tax Credits

- Qualifying sick pay or family leave pay as described above can be reimbursed via payroll tax credit. When you file your payroll taxes, reduce the social security amount accordingly. If the amount of paid leave exceeds the amount of taxes you would normally pay, then you can apply for a credit in the same way that you would in the case of an overpayment. Consult your payroll company for practical instructions.
- You can also include qualified health plan expenses. So if you pay for your employees insurance, then include that in the amount you decrease your taxes by.
- Paid family leave is reimbursable up to \$200 per day per employee or \$2,000 in total per employee.

Reimbursement via Self-Employment Tax

- If you are self-employed and pay self-employment tax, you can reduce your self-employment tax by the amount of sick or family leave you have taken.

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- You'll need to provide documentation of the time you were unable to work to present when you file your taxes and request the credit.
- You can also include qualified health plan expenses. So if you pay for your health insurance through your business, then include that in the amount you decrease your taxes by.
- In the Families First Coronavirus Response Act it says that for self-employed individuals paid family leave is reimbursable up to \$200 per day or \$10,000 in total. In the CARES Act, the limits on reimbursable family leave are lowered to \$2,000 in total per employee. It does not mention self-employed persons, so strictly speaking it might be that self-employed individuals could reimburse themselves up to \$10,000 in total for family leave. However, I don't think the Social Security administration or the IRS will see it that way.

No Double Dipping!

If you're thinking of a way to double pay yourself, be paid by yourself and an outside employer, give yourself a raise, or to use PPP loan funds to pay for sick days that get reimbursed, forget about it. There's a "Denial of Double Benefit" passage in practically every section.

Payroll Tax

Any wages paid in regards to the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act are not considered wages for payroll tax purposes. So they're not adding to the payroll taxes that you would owe under normal circumstances.

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