



# Legislative Issues

## McAllen Chamber of Commerce

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### ***Coronavirus Legislation Update US Congress (3-18-20)***

***Revised Using Track Changes to Reflect Changes Passed By the House of Representatives on March 16<sup>th</sup>.***

***Document Now Reflects Bill Pending in the Senate.***

#### Contents:

- Unemployment Compensation
- Paid Sick Leave
- Paid Family and Medical Leave (FMLA)
- Provisions for Diagnostic Testing
- Health Services
- School Nutrition Programs, WIC, SNAP, Senior Food Programs
- Medical Devices Liability
- Discussion of Liquidity Impact for Small Businesses

#### **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.

#### Examples:

- 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.
- 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).

- 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 to work or telework because they are:

- Subject to a government quarantine or isolation order related to COVID-19,
- Have been advised by health provider to self-quarantine due to COVID-19,
- Experiencing symptoms of COVID-19 and seeking medical diagnosis,
- Caring for an individual subject to quarantine order or self-quarantine,
- Caring for children if schools are closed or their caregiver is unavailable because of a public health emergency, or
- Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services-

Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid sick leave.

Rate of Pay: Employees are compensated at the higher of their regular rate, the federal minimum wage, or the local minimum wage, but not to exceed \$511 per day and \$5,110 in the aggregate. However, if the employee is absent to care for a sick family member, child unable to attend school, or because they meet the criteria for similar conditions they are compensated at 2/3 of the rate they would otherwise receive, but not to exceed \$200 per day and \$2,000 in the aggregate. (This conforms the pay to the amount of the available tax credit.)

Small Business and Other Exemptions: The Secretary of Labor is authorized to issue regulations to exempt health care providers and emergency responders from the definition of employer. In addition, the Secretary may exempt small businesses with fewer than 50 employees from the requirement to offer leave to care for a child when a school is closed when the imposition of paid sick leave would jeopardize the viability of the business as an ongoing concern.

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).

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.

Additional Credit for Health Plan Expenses: The amount of the tax credit is further increased by the amount of the expenses of the employer's health care plan allocable to the qualified sick leave. This allows the employer to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.

Tax on Employers: Paid sick leave is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax, for the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax.

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

Examples:

- 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, but not to exceed \$200 a day and will receive a refundable tax credit on his next quarterly tax filing to offset the cost up to \$200 per day.
- 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.
- John owns a manufacturing company with more than 500 employees. The paid sick leave provisions under the bill do not apply.

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**Paid Family and Medical Leave (FMLA):**

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 (FMLA).

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

- Care for children if schools are closed or their daycare is unavailable because of a public health emergency and they are unable to work or telework.

Rate of Pay: After -10 days, during which time the employee can take unpaid or paid leave (if available), employees are compensated at 2/3 of their regular rate. Paid leave under this requirement shall not exceed \$200 per day and \$10,000 in the aggregate. (This conforms to the amount of the tax credit.)

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. Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid FMLA.

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 FMLA wages paid by the employer. Qualified paid FMLA 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 FMLA 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.

Additional Credit for Health Plan Expenses: The amount of the tax credit is further increased by the amount of the expenses of the employer's health care plan allocable to the qualified sick leave. This allows the employer to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.

Tax on Employers: Paid FMLA is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax, for the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax.

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

Examples:

- 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 10 days of unpaid or paid leave, she is eligible for paid FMLA 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.
- Same as above, but the employee can perform her job functions remotely. She is not eligible for paid FMLA leave.
- 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 FMLA 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 FMLA, exempting businesses with fewer than 50 employees if it would jeopardize the business. Moreover, leave under the bill is not available if an employee can perform their job remotely, and the qualifying conditions for providing paid family leave have been scaled back to taking care of children when school is closed or their ordinary care giver is not available.

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 FMLA 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.