

Key Labor and Worker Provisions in the New COVID-19 Response Laws

Families First Coronavirus Response Act (FFCRA)

Signed into law March 18, 2020

Paid Sick Leave: The FFCRA provides that covered employers (described below) must provide to all employees:

- Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work in order to care for an individual subject to quarantine (pursuant to government order or advice of a health care provider), or care for a child (under age 18) whose school or child care is unavailable for reasons related to COVID-19.
- Paid sick leave is capped at \$511 per day and \$5,110 total per employee. This amount drops to \$200 per day and \$2,000 total for sick leave taken by an employee in order to care for a family member in quarantine or care for a child whose school has closed. (Change enacted by later virus-related stimulus CARES Act).

Paid Family Leave: A covered employer (described below) must provide to employees that it has employed for at least 30 days:

- Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee is unable to work in order to care for a child whose school or child care is unavailable for reasons related to COVID-19.
- The 10 days of expanded FMLA leave may be unpaid, but an employee may elect to substitute other paid time off (vacation, personal leave, or medical or sick leave) for the unpaid 10-day period.
- Note: Workers that were laid off after March 1, 2020, but then rehired, are eligible for this leave immediately instead of needing to be an employee for 30 days. (Change enacted by CARES Act).
- Paid family and medical leave is capped at \$200 per day and \$10,000 total per employee. (Change enacted by CARES Act).

Covered Employers: These provisions apply to certain public employers, and private employers with fewer than 500 employees.

- Federal government employees who are not covered under Title II of the original Family and Medical Leave Act are not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision. (Title II covers the majority of Federal workers; those excluded include employees of the US Postal Service, and District of Columbia employees, and employees on temporary or intermittent appointment.)

Key Labor and Worker Provisions in the New COVID-19 Response Laws

- 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.

Tax Credits:

- Employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA paid sick leave and paid family leave provisions, up to the per diem and aggregate payment caps. Tax credits also extend to amounts paid or incurred to maintain health insurance coverage.
- FFCRA paid sick leave and paid family leave is not considered wages subject to the 6.2% FICA tax.
- Businesses can keep money that they would have deposited for FICA payroll taxes in anticipation of refunds for paid sick leave and paid FMLA leave, including amounts that would have been refunded later. (Change enacted by the CARES Act.)

Job Protection:

- Employees who work for employers that qualify for FFCRA paid sick and family leave are required to provide as much notice of leave “as is practicable,” and they will be restored to their prior position or an equivalent position at the time their public health emergency FMLA leave is over unless (1) the employer employs fewer than 25 employees, and (2) the employee’s position no longer exists “due to economic conditions or other changes in operating conditions of the employer that affect employment and are caused by a public health emergency during the period of leave,” provided that the employer makes reasonable efforts to restore the employee to an equivalent position and, if such efforts fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available during the following year.
- Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

Key Labor and Worker Provisions in the New COVID-19 Response Laws

Coronavirus Aid, Relief, and Economic Security (CARES) Act Signed into law March 27, 2020

I. Business

Warning: There is a lot of uncertainty about these new laws, including how the regulations will be written, and how the Administration decides to implement the distributions.

1. Loans for Businesses Affected by Coronavirus

Provides \$500 billion in loans, loan guarantees, and other transactions divided into four categories:

- (1) \$25 billion for passenger airlines;
- (2) \$4 billion for cargo air carriers;
- (3) \$17 billion for businesses critical to maintaining national security; and
- (4) \$454 billion for use in loan or loan guarantees established by the Federal Reserve for eligible businesses as well as states or municipalities

Note: Many commentators believe that the \$17 billion allocated to businesses critical to maintaining national security is allocated specifically for Boeing. This is not stipulated in the legislation, and even if Boeing qualifies for the money, it might not get the entire amount.

Provisions:

- Any company receiving a loan under the program is barred from making stock buybacks for the term of the loan plus one year.
- “To the extent practicable,” businesses must maintain employment at March 24, 2020 levels and not reduce employment levels by more than 10% as of that date.
- During the term of the loan plus one year, no employee who made over \$425,000 in 2019 will receive compensation greater than 2019 pay or severance greater than twice 2019 pay; and no employee who made over \$3 million in 2019 may receive any 12-month compensation over \$3 million plus half of any total over \$3 million.

Additional Airline Provisions:

- “Air carrier” covers scheduled airlines, charter, and other types of operations. The law also incorporates airline catering services, airline contractors, and subcontractors involved in aviation support service providers (e.g., security, check-in/ticketing functions, ground-handling of aircraft).
- The law provides for immediate financial assistance to support employee wages, salaries, and benefits. The bill allocates \$25 billion for passenger air carriers, \$4 billion for cargo air carriers, and \$3 billion airline contractors, like catering service providers.
- Carriers or contractors who receive financial assistance must: (1) refrain from involuntary furloughs or reduction in pay/benefits through September 30, 2020; (2) prohibit stock buy backs through September 30, 2021; and prohibit dividends

Key Labor and Worker Provisions in the New COVID-19 Response Laws

through September 30, 2021; (3) protect collective bargaining agreements through September 30, 2020; and limit executive compensation by the terms above, but through March 24, 2022.

- The loans and loan guarantees provided to air carriers, air cargo carriers, and businesses critical to maintaining national security shall not be conditioned on renegotiating collective bargaining agreements. Specifically, the bill provides protection for collective bargaining agreements by prohibiting the Treasury Secretary from requiring the loan recipient from entering into collective bargaining negotiations under RLA or NLRA during the period of the loan and 1 year following.

2. Small Business Grants and Loans

Small businesses are those with 500 employees or fewer, unless:

- Existing SBA requirements for the company's NAICS code has a higher threshold, or
- The company is in accommodation and food service industry, and has more than one location, in which case the threshold is 500 employees per location.

a. Economic Injury Disaster Loan (EIDL) Program Expansion

The law expands SBA's Economic Injury Disaster Loan (EIDL) program from January 31, 2020, to December 2020, and authorizes an additional \$10 billion for its use to help small businesses against COVID-19.

The law expands eligibility for EIDL loans to:

- Tribal businesses, cooperatives and Employee Stock Ownership Plans (ESOPs) with 500 or fewer employees;
- Sole proprietorships and independent contractors; and
- Private nonprofits.

The loan can be used for:

- Pay fixed debts;
- Payroll;
- Accounts payable;
- Employee sick leave; and
- Other bills that cannot be paid due to the disaster's impact.

The loan cannot be used to:

- Refinance debts incurred prior to the disaster event;
- Make payments on other loans owned by another federal agency or SBA;
- Pay tax penalties or non-tax criminal/civil fines;
- Repair physical damage; or
- Pay dividends or other disbursements to owners or partners except as related to their performance of services for the business.

Key Labor and Worker Provisions in the New COVID-19 Response Laws

Other provisions:

- Regular EIDL loan amounts are determined by actual economic injury and can be worth up to \$2 million. Borrowers can receive a \$10,000 emergency grant cash advance that can be forgiven if spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments or repaying obligations that cannot be met due to revenue losses.
- The interest rate is 3.75% for small businesses and 2.75% for nonprofits.
- The loans have long-term options, for up to 30 years, but the term will be determined on a case-by-case basis, depending on a borrower's ability to pay.
- During the covered period, the SBA is allowed to approve and offer EIDLs based solely on an applicant's credit score, or use "alternative appropriate methods" for determining an applicant's ability to pay. The law waives the following existing EIDL requirements:
 - A personal guarantee on advances and loans below \$200,000;
 - An entity has one year in business prior to the disaster; and
 - An applicant be unable to find credit elsewhere.
- Small businesses can receive both the emergency EIDL and the forgivable loan, as long as they are not used for the same expenses

b. Forgivable Loans ("Paycheck Protection Program")

The law allocates \$350 billion for SBA to provide loans of up to \$10 million to incentivize small businesses to not lay off workers and to rehire laid-off workers that lost jobs due to COVID-19 disruptions.

Loan amounts:

- The amount to be guaranteed is the average total monthly payroll costs in the one-year period before the loan is made.
- Payroll costs are the sum of all payments for compensation, including salary, wage, cash tips, paid time off, severance, healthcare benefits, and state or local taxes.
- The maximum interest rate is 4%.

The loans can be used for:

- Paid sick, medical or family leave (except for sick and family leave wages covered under the Families First Coronavirus Response Act);
- Costs related to continuation of group healthcare benefits during periods of leave;
- Employee salaries (except for individual compensation over \$100,000/year and compensation of employees who reside outside of the US);
- Mortgage payments; and
- Any other debt obligations.

Key Labor and Worker Provisions in the New COVID-19 Response Laws

Other provisions:

- Loans will be forgiven completely if employers maintain their payroll during the covered period (February 15, 2020 – June 30, 2020).
- SBA application fees are waived.
- No collateral or personal guarantees are required for the loan.
- Small businesses can receive both the emergency EIDL and the forgivable loan, as long as they are not used for the same expenses

c. Additional Help for Small Businesses

Existing SBA Loans:

- The law allocates \$17 billion to the SBA to wipe out six months' worth of principal and interest payments for the 320,000 businesses that currently hold an SBA-backed loan.
- Provision is designed to stabilize the SBA's lending portfolio and enable lenders to focus on getting the new emergency loans out the door.

Bankruptcy (All provisions sunset after one year):

- Amends the Small Business Reorganization Act to increase the eligibility threshold to file under subchapter V of Chapter 11 Bankruptcy to businesses with less than \$7,500,000 of debt. (Eligibility threshold is normally \$2,725,625.)
- Amends the definition of income Chapters 7 and 13 to exclude coronavirus-related payments from the federal government from being treated as "income" for bankruptcy filing.
- The calculation of disposable income for confirming a chapter 13 plan shall not include coronavirus-related payments.
- Permits individuals and families currently in chapter 13 to seek payment plan modifications if they are experiencing a material financial hardship due to the coronavirus pandemic, including extending their payments for up to seven years after their initial plan payment was due.

3. Tax Credits

- The law establishes a fully refundable tax credit for businesses of all size that are closed or distressed to help them keep workers on the payroll. The goal is to get those employees hired back or put on paid furlough to make sure they have jobs to return.
- The credit covers to 50 percent of payroll on the first \$10,000 of compensation, including health benefits, for each employee.
- For employers with more than 100 full-time employees, the credit is for wages paid to employees when they are not providing services because of the coronavirus. Eligible employers with 100 or fewer full-time employees could use the deduction even if they aren't closed.
- The credit is provided through December 31, 2020.

Key Labor and Worker Provisions in the New COVID-19 Response Laws

4. Financial Assistance to Transportation Industry

- a. **\$10 billion to Airports** help publically-owned, commercial airports to address the COVID-19 crisis. These funds will help airport operators meet ongoing needs and to manage current construction projects.
- b. **\$1.0 billion Amtrak and Rail Safety** to meet its changing operational needs related to COVID-19. This includes direct assistance to states to help them meet their obligations under the FAST Act in order to minimize service impacts on state-supported routes.
- c. **\$25 billion to Public Transit Systems** to protect public health and safety while ensuring transportation access to jobs, medical treatment, food, and other essential services remain available during the COVID-19 response. This investment will help to sustain over 430,000 transit jobs.

5. Financial Investments in Manufacturing and Construction

- \$50 million is provided for the Hollings Manufacturing Extension Partnership to help small- and medium-sized manufacturers recover by finding value within the supply chain and expanding markets.
- Additional \$10 million for the National Institute for Innovation in Manufacturing Biopharmaceuticals to support the development and manufacture of new medical countermeasures and biomedical supplies to combat the coronavirus.
- \$1.5 billion for expansion of military hospitals and expeditionary hospital packages.
- \$1 billion for the Department of Defense to invest in manufacturing of personal protective equipment and medical equipment to meet the demand of healthcare workers all across the nation.

Key Labor and Worker Provisions in the New COVID-19 Response Laws

II. Individuals

1. Stimulus Check

- a. Direct payments to all Americans with a Social Security number, with actual amount based on income (see chart below).
- b. Social Security recipients and currently unemployed are eligible.
- c. For those who file taxes via direct deposit, check will arrive within a couple of weeks. For all others, it will take up to two months.

Adjusted Gross Income*		Stimulus Payment	
Individual	Married Filing Jointly	Individual	Married Filing Jointly
Up to \$75,000	Up to \$150,000	\$1,200 plus \$500 for every dependent child under age 17	\$2,400 plus \$500 for every dependent child under age 17
\$75,000 - \$99,000	\$150,000 - \$198,000	Payment reduced by \$5 for every \$100 above the limit	
Higher than \$99,000	Higher than \$198,000	No payments	

* AGI is based on 2019 tax return, or 2018 if not yet filed. If the 2020 filing would give you a higher payment, you can adjust and apply for the additional money when filing the 2020 return.

2. Expanded Unemployment Benefits

- a. Eligible workers will get an extra \$600 per week on top of their state benefit.
- b. The expansion was meant to fully replace the average worker’s paycheck. (The average worker earns about \$1,000 a week, and unemployment benefits often replace roughly 40 - 45 percent of that. The \$600 additional payment attempts to fill the gap. However, some states are more generous than others. For example, the maximum weekly benefit in Alabama is \$275, \$450 in California, and \$713 in New Jersey.)
- c. The law provides all eligible workers with an additional 13 weeks of UI benefits, capped at 39 weeks. (Total weeks of UI ranges from 12 to 28 weeks, depending on the state.)
- d. The extra \$600 payment will last for up to four months, covering weeks of unemployment ending July 31.
- e. Workers are covered if their unemployment is COVID-19 related, such as the worker is: receiving or seeking a diagnosis, experiencing symptoms of the virus, under state-imposed quarantine or self-quarantine, working for a facility that has shut down due to the virus, caring for a family member who has the virus, or caring for a dependent child whose school or day care has

Key Labor and Worker Provisions in the New COVID-19 Response Laws

shut down due to the virus. People who haven't worked but whose breadwinner in the household has died due to the virus are also eligible.

- f. Workers are NOT covered if their workplace has remained open and they are choosing to quit due to fear of contracting the virus. Workers are also ineligible if they are able to work from home, receiving paid sick or paid family leave, or if they are new entrants to the workforce who cannot find jobs.
- g. Self-employed and part-time workers are eligible, even if they are not normally covered by their state's UI. Workers already receiving UI will be eligible, even if their unemployment was not COVID-19 related.
- h. Expanded coverage is available to workers who were newly eligible for UI starting on Jan. 27, 2020, and through Dec. 31, 2020.
- i. States have been incentivized to waive the one-week waiting period for benefits.

III. State and Local Government Investments

- \$274 billion toward specific COVID-19 response efforts, including \$150 billion in direct aid for those state and local governments running out of cash due to high numbers of cases.
- \$5 billion for Community Development Block Grants
- \$13 billion for K-12 schools
- \$14 billion for higher education
- \$5.3 billion for programs for children and families, including immediate assistance to child care centers

IV. Public Health Investments

- \$100 billion for hospitals responding to the coronavirus.
- \$11 billion for drug diagnostics, treatments, and vaccines.
- \$16 billion to the Strategic National Stockpile to increase availability of equipment, including ventilators and masks. It also boosts hiring for vital health care jobs during the public health crisis and speeds the development of a vaccine, treatments and faster diagnostic.
- \$1.32 billion for community health centers that provide health care services for roughly 28 million people.

Key Labor and Worker Provisions in the New COVID-19 Response Laws

Sources

<https://www.forbes.com/advisor/personal-finance/stimulus-check-calculator/>
<https://www.nytimes.com/article/coronavirus-stimulus-package-questions-answers.html>
https://www.washingtonpost.com/graphics/business/coronavirus-stimulus-check-calculator/?itid=lk_inline_manual_8
<https://www.cnn.com/2020/03/25/politics/stimulus-package-details-coronavirus/index.html>
<https://www.npr.org/2020/03/26/821457551/whats-inside-the-senate-s-2-trillion-coronavirus-aid-package>
<https://www.squirepattonboggs.com/-/media/files/insights/publications/2020/03/current-economic-relief-opportunities-for-us-small-businesses-impacted-by-the-covid-19-outbreak-in-the-cares-act/currenteconomicreliefoportunitiesalert.pdf>
<https://www.uschamber.com/co/start/strategy/cares-act-small-business-guide>
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
<https://www.natlawreview.com/article/updated-president-signs-sweeping-congressional-action-response-to-coronavirus-us>
https://www.democrats.senate.gov/imo/media/doc/C-3%20summary_V1.2-updated.pdf
<https://www.fedsmith.com/2011/09/26/family-medical-leave-fmla-title-i/>
<https://www.washingtonpost.com/business/2020/03/25/boeing-bailout-coronavirus/>
CARES Act Section by Section Summary, sent via IAM Legislative Department