

In response to the COVID-19 pandemic, the federal government has taken several measures to help small business and families recuperate as best as possible from the impending financial impact of this global disaster. The legislative assistance is being announced in phases to address different priority areas. The details are outlined below.

### PHASE I: CORONAVIRUS PREPAREDNESS AND RESPONSE SUPPLEMENTAL APPROPRIATIONS ACT (PL 116-123)

The declaration of COVID-19 as a national emergency on March 13, 2020 allows the US Small Business Administration (SBA) to make Economic Injury Disaster Loans available. These targeted, low-interest loans to small businesses and private, non-profits will provide working capital loans of up to \$2 million to help respond to the temporary loss of revenue. The program is retroactive to February 15 – June 30, 2020. See <https://www.sba.gov/disaster-assistance/coronavirus-covid-19> for more information.

#### Who is eligible for these loans?

Entities that meet the definition of a small business as defined by the SBA can qualify for this assistance. The definition of a small business varies by industry. Size standards are mostly based on the [average annual receipts](#) or the [average number of employees](#).

For more information about size standards, contact the size standards specialist at your nearest [SBA Government Contracting Area Office](#). You also can contact the Office of Size Standards by email at [sizestandards@sba.gov](mailto:sizestandards@sba.gov) or by phone at 202-205-6618.

#### What are the interest rates for the loans?

The interest rate for the loans are:

- 3.75% for eligible small businesses
- 2.75% for eligible private, non-profits

#### What can the loans be used towards?

The loans may be used for:

- Fixed debts
- Payroll
- Accounts payable
- Other bills that cannot be paid because of the disaster impact

#### What are the terms for the loans?

Terms for the loans will be determined on a case-by-case basis with most loans being offered with long-term repayment of up to a maximum of 30 years. And, loans may be forgiven based on maintaining employees and salary levels.

For more information, contact the Academy's Practice Management Center:

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### How do businesses get the assistance?

Each state or territory's governor must request the SBA to issue an Economic Injury Disaster declaration that will make the loans available to small business and private, non-profit organizations in designated areas of the state or territory. Once the declaration is made, the SBA's office of Disaster Assistance will work with the respective governor to submit the request for assistance and make information on the application process available to all affected communities as well as updated on the SBA web site. Applicants are encouraged to apply online for a disaster loan by visiting: <https://covid19relief.sba.gov/#/>

### Does my state or territory already have a disaster declaration?

You can check if your state or territory already has a COVID-19 Economic Injury Disaster declaration by visiting: <https://disasterloan.sba.gov/ela/Declarations/Index>.

### Where can I get additional information?

For additional information, contact the SBA disaster assistance customer service center at 1-800-659-2955 or e-mail [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov).

## PHASE II: FAMILIES FIRST CORONAVIRUS RESPONSE ACT (H.R. 6201)

This act provides supplemental appropriations related to the COVID-19 public health emergency as well as waivers and modifications of Federal nutrition program, employment-related protections and benefits, health programs and insurance coverage requirements, and related tax credits. *These provisions are effective not later than 15 days after the bill's enactment and expire on December 31, 2020.*

### DIVISION C: EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

This amends the *Family and Medical Leave Act* (FMLA) to require employers with fewer than 500 employees to provide all employees paid leave because of a qualifying need related to a public health emergency. Federal, state, and local governments are not eligible for the Credit.

### Do small practices have to comply?

If you are a practice that employs fewer than 500 employees, you are mandated to comply with this act; however, the Secretary of Labor has the authority to issue regulations to exempt small businesses with fewer than 50 employees if the requirements would jeopardize the viability of the business.

Additionally, an employer with fewer than 50 employees is not subject to a private right of action brought by an employee under the FMLA's civil enforcement provisions, including for damages and attorney's fees. Under the current FMLA, absent this special rule, an employee may bring a private civil action against an employer for violations of the terms of the FMLA. Furthermore, employers of a health care provider or an emergency responder may elect to exclude such employees from Division C's requirements.

### Are all employees covered under this act?

An employee who has been employed for at least 30 days by the employer is eligible for the new leave entitlement which is in contrast to FMLA which requires that an employee be employed for at least 12 months and for at least 1,250 hours.

### Are healthcare providers or emergency respondents included in this act?

The law gives the Secretary of Labor authority to issue regulations to exclude certain healthcare providers and emergency responders from the definition of eligible employee.

For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is anyone employed at any doctor's office, hospital, health care center,

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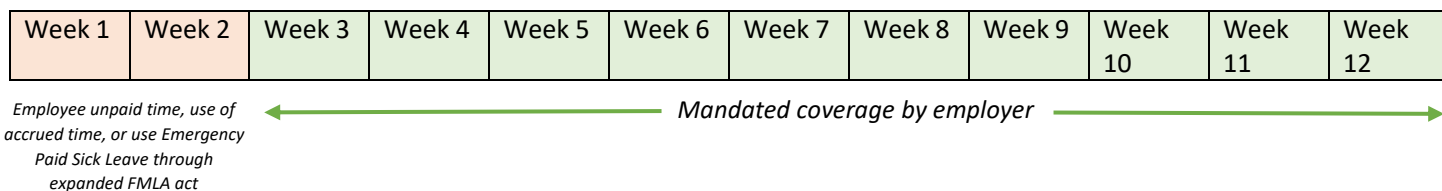
clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

### What is the total duration of the paid leave?

The paid leave mandate under Division C requires that the employer cover 10 weeks of qualifying paid emergency FMLA to an eligible employee. The employee may choose to take the first 10 days (prior to the 10 weeks covered by the employer) as unpaid; elect to substitute with any accrued vacation, medical, personal, or sick leave provided by the employer; or (if eligible) utilize 2 weeks of the Emergency Paid Sick Leave (covered in by Division E).



### How is the paid leave pay calculated?

Paid leave must be at least two-thirds of an employee's regular rate of pay and reflect the number of hours an employee would otherwise be normally scheduled to work. The paid leave shall not exceed \$200/day and \$10,000 in aggregate. Employers would receive 100% refundable payroll tax credit for the wages required to be paid by the Emergency Family and Medical Leave Expansion Act for each employee (capped at \$200/day and \$10,000 for the calendar year).

### How are the paid leave hours calculated?

The amount of leave required is based on the number of hours the employee is normally scheduled to work. If the employee's scheduled hours vary from week to week, the employer must calculate the number of hours based on the number of hours the employee was scheduled, on average, over the 6-month period preceding the beginning of leave. If the employer does not have the information to make this calculation, the employer must calculate the amount of hours based on the reasonable expectation of the employee at the time of hiring regarding the average number of hours per day the employee would be scheduled to work.

### How do employees know if they qualify?

Employers are required to provide notice of eligibility to employees. The Department of Labor is required to create model notification within 7 days after enactment of the bill (available at [https://www.dol.gov/sites/dolgov/files/WH422/Posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WH422/Posters/FFCRA_Poster_WH1422_Non-Federal.pdf)). Additionally, the employee must provide notice of leave if practicable and the need for leave is foreseeable, but no other guidelines have been outlined related to required notice to employers.

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### Are there any special provisions for employers with less than 25 employees?

Under the current FMLA, an employee taking FMLA leave is entitled to be restored to their position or an equivalent position with equivalent pay and benefits. However, under the new act, employers with fewer than 25 employees are not required to restore the employee to their position upon completion of emergency FMLA leave if:

- ✚ the position does not exist due to economic conditions caused by the public health emergency;
- ✚ the employer makes reasonable efforts to restore the employee to an equivalent position; and
- ✚ an equivalent position does not become available in the following year.

### DIVISION E: EMERGENCY PAID SICK LEAVE ACT

This act requires employers with fewer than 500 employees to provide 80 hours (or two weeks) of paid emergency leave on top of any other existing paid leave program immediately to all employees because of a qualifying need related to a coronavirus public health emergency. The sick leave is available for immediate use by employees, regardless of length of employment. An employer may not require an employee to use existing paid leave provided by the employer before the employee uses paid leave provided under Division E and cannot change their existing leave policy after the date of enactment to avoid compliance. Additionally, employers may not require the employee to search for a replacement employee to cover their scheduled hours.

### What are the requirements for paid sick leave?

The employer should immediately provide each employee two weeks of paid sick leave if the employee is unable to work (or telework) because of the following reasons related to COVID-19:

- 1) The employee is subject to a federal, state, or local quarantine or isolation order;
- 2) The employee has been advised by a health care provider to self-quarantine;
- 3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- 4) The employee is caring for an individual to which points 1 or 2 apply;
- 5) The employee is caring for a child (under age 18) if the child's school or place of care has been closed due to COVID-19 precautions; or,
- 6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Labor and the Treasury.

There is a 10-sick-days-per-worker limit.

### How is the leave pay calculated?

Pay is calculated based on which circumstance noted above the employee qualifies for. See table below:

Reason (see corresponding # above)	Compensation
(1), (2), and (3)	Full wages not to exceed \$511/day and \$5,110 in the aggregate
(4), (5), and (6)	Two-thirds of wages not to exceed \$200/day and \$2,000 in the aggregate

### Are all businesses eligible for a tax credit for the paid leave they will provide the employees?

The requirement to provide the paid leave (both sick and FMLA) would apply to all public sector employers and those private sector employers with less than 500 employees; however, the tax credit eligibility would only apply only to those private sector employers with less than 500 employees. Those employers would receive a 100 percent refundable payroll tax credit on the wages required to be paid.

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## Is anyone exempt?

The Secretary of Labor has been given the authority to:

- ✚ issue regulations for good cause to exempt businesses with fewer than 50 employees from the requirements if such requirements would jeopardize the viability of the businesses as an ongoing concern;
- ✚ exclude certain health care providers and emergency responders (see definition above) from these requirements, including by allowing such employers to opt out.

## How will this be enforced?

An employer who does not provide paid leave as required by Division E is considered to have failed to pay minimum wage in violation of the *Fair Labor Standards Act* (FLSA) and is subject to FLSA penalties and remedies.

### **OVERVIEW EMPLOYER PAID LEAVE REQUIREMENTS AND TAX CREDIT PROVISIONS**

*(Prepared by Ways and Means Republicans)*

Employers	Covered Employers	Duration of Leave	Qualifying Reasons for Leave	Required Wage Replacement	Applicability of: Division G – Tax Credits for Paid Sick and Paid Family and Medical Leave
<b>Division E – Emergency Paid Sick Leave</b> Effective 15 days after enactment. Expires 12/31/2020	Private sector employers with fewer than 500 employees. Public sector employers with 1 or more employees. Good cause exemption for employers with fewer than 50 employees. Applies to reason #5 only. (DOL Rule)	Employer must provide 2 weeks of paid sick leave for full-time covered employees. Special rule for part-time employees.	1. Employee is subject to a Federal, state or local quarantine related to COVID-19. 2. Employee has been advised by a health care provider to self-quarantine. 3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis. 4. Employee is caring for an individual who is subject to quarantine pursuant to 1 and 2. 5. To care for a child or children whose school or care provider is unavailable due to COVID-19. 6. Employee is experiencing a similar condition as specified by HHS, DOL or Treasury.	Reasons #1-3: Employee's regular rate of pay. Capped at \$511/day and \$5,110 total. Reasons #4-6: 2/3 of employee's regular rate of pay. Capped at \$200/day and \$2,000 total. Special rule for part-time employees.	Private sector employers with fewer than 500 employees may obtain a credit for wage replacement: Employers receive 100% payroll tax credit (refundable as needed) for required paid sick leave wages plus certain health care expenses of the employer. Special rule for self-employed.
<b>Division C – Emergency Family and Medical Leave</b> Effective 15 days after enactment. Expires 12/31/2020	Private sector employers with fewer than 500 employees. Good cause exemption for employers with fewer than 50 employees. (DOL rule)	Employer must provide 10 weeks of paid family and medical leave for employees (employed for at least 30 days). Special rule for part-time employees.	Employee is unable to work (or telework) due to a need for leave to care for a son or daughter under 18 years of age if the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency.	Not less than 2/3 of regular rate of pay based on # of hours scheduled to work. Capped at \$200/day and \$10,000 total. Special rule for part-time employees.	Private sector employers with fewer than 500 employees may obtain a credit for wage replacement: Employers receive 100% payroll tax credit (refundable as needed) for required paid family and medical leave wages

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					plus certain health care expenses of the employer. Special rule for self-employed.
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#### **DIVISION G: TAX CREDITS FOR PAID SICK AND PAID FAMILY AND MEDICAL LEAVE**

A refundable tax credit for employers equal to 100 percent of qualified paid sick leave wages required to be paid by the Emergency Paid Sick Leave Act that are paid by an employer for each calendar quarter. The tax credit is allowed against the tax imposed by section 3111(a) of the Internal Revenue Code (the employer portion of Social Security taxes).

The highlights of these tax credits include:

- ✚ The tax credits would be administered by the IRS and be creditable against employer-side payroll tax liability, with any excess refunded to the employer.
- ✚ Self-employed workers facing the same employment disruptions would be eligible for refundable tax credits similar in scope and amount
  - Sick Leave
    - Credit is limited to the amount equal to the qualified sick leave equivalent amount for the individual. The amount per day is the lesser of \$200 or \$511 (depending on who is sick) and 67% of the average daily self-employment income of the individual.
  - Family Leave
    - Credit is limited to the number of days, not to exceed 50, the individual is unable to work. The amount is \$200 per day or 67% of the daily income of the employee, whichever is less.
- ✚ Payments to employees would be taxable income to the employees and subject to employee-side payroll taxes, but not subject to the employer portion of payroll taxes.

#### **PHASE III: CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT (H.R. 748)**

The Coronavirus Phase III Response Legislation passed on March 27, 2020 allows for \$350 billion for 100% federally guaranteed, zero-fee loans, up to \$10 million, to small businesses (less than 500 employees, sole-proprietors, independent contractors, and other self-employed individuals) to maintain up to 8 weeks of existing workforce and help pay for other expenses like rent, mortgage, and utilities.

#### **What are the additional reliefs offered in Phase III?**

**Paycheck Protection Loan Program:** Visit your local FDIC approved bank, credit union or Small Business Administration (SBA) lender and fill out an application for <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf> paycheck protection. You will need to provide payroll documentation. If you are interested in applying through an SBA lender, find one in your state at <https://www.sba.gov/partners/lenders/microloan-program/list-lenders>.

- If approved, all of the loan will be forgiven as long as you use it for payroll, mortgage interest, rent, and utilities over the 24-week time period that the loan is given. Guidance on how to apply and additional details can be found here: <https://www.aad.org/member/practice/coronavirus/managing-business/paycheck-protection-loans>.

**Express Bridge Loans:** express bridge loans are available up to \$25,000 to small business owners who have an existing relationship with an SBA express lender. These loans will be processed quickly and can provide immediate cash flow while waiting for an economic injury disaster loan. Visit <https://www.sba.gov/document/support-express-bridge-loan-pilot-program-guide> for more information.

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**Employee retention credit:** the legislation also creates an employee retention credit for employers subject to closure due to COVID-19. You may be eligible for a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose:

- ✚ operations were fully or partially suspended, due to a COVID-19-related shut-down order, or
- ✚ gross receipts declined by more than 50% when compared to the same quarter in the prior year.

**Deferment of employer payroll tax:** you may defer payment of employer payroll taxes, which includes the employer share of the Social Security tax you otherwise are responsible for paying to the federal government with respect to your employees. And, you may also carry net operating losses from 2020 back five years. Please note, you cannot take both a tax credit and a loan in the paycheck protection program.

**SUSPENDED (04/27/20) - Expanded CMS Accelerated and Advance Payment Program:** As part of the recently enacted CARES Act, CMS had [expanding its accelerated and advance payment program](#) for all Medicare physicians throughout the country to ensure they have the resources needed to combat COVID-19. Physicians were asked to request a specific amount of 100% payment for three months using an accelerated or advance payment request form provided on each MAC's website. On Monday, April 27, CMS announced that it is reevaluating the amounts that will be paid under its Accelerated Payment Program and suspending its Advance Payment Program to Part B suppliers effective immediately. Before rolling back the program CMS had approved 24,000 applications advancing \$40.4 billion in payments. Now, CMS will **not** be accepting any new applications for the Advance Payment Program and will be reevaluating all pending and new applications in light of historical direct payments made available through the Department of Health & Human Services' (HHS) Provider Relief Fund. Significant additional funding will continue to be available to hospitals and other health care providers through other programs. Visit <https://www.cms.gov/files/document/Accelerated-and-Advanced-Payments-Fact-Sheet.pdf> for additional information.

**Medicare Payments:** As part of the recently enacted CARES Act, CMS is immediately providing \$30 billion in direct payments to the healthcare system. Practices who received payments from Medicare fee-for-service (not Medicare Advantage) in 2019 will begin receiving direct deposit payments to the practice's associated TIN starting April 10, 2020 via Automated Clearing House information on file with the UnitedHealth Group or CMS. These funds will be directly deposited in the accounts normally associated with Medicare payments and will come via Optum Bank with the "HHSPAYMENT" as the description. Note, each Tax Identification Number (TIN) linked to Medicare will receive a payment. Please note, these are payments, not loans, to healthcare providers, and will not need to be repaid. The practice will receive funds equivalent to their 2019 Medicare fee-for-service payments (not Medicare Advantage) divided by 484 billion and multiply that ratio by 30 billion.

HHS has also opened an application for practices to apply for a second round of funding if their initial funding did not equal 2% of their net patient revenue from 2018 (or most recent complete tax year) in the first payment. If your initial General Distribution payment, which you should have received in April, was at least 2% of your 2018 patient revenue (including all payers), you won't receive the second distribution. If you do qualify for a second payment, you can estimate it with the following equation: (Individual Provider Revenues/\$2.5 Trillion) X \$50 Billion = Expected Combined General Distribution. You may use "Gross Receipts or Sales" or "Program Service Revenue" for your revenue calculation. Practices that received a first payment and wish to receive a second payment need to visit the [HHS portal](#) and apply.

As a condition to receiving these funds, providers must agree not to seek collection of out-of-pocket payments from a COVID-19 patient that are greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network provider and abstain from "balance billing" any patient for COVID-related treatment. The attestation is being done via [web portal](#). HHS's payment of this initial tranche of funds is conditioned on acceptance of the [Terms and Conditions](#) (PDF download). You have until [June 3, 2020 to determine to accept or reject the funds](#) (and related terms and conditions) and until July 9, 2020 to complete the [attestation process](#) and submit [revenue information](#) if you choose to accept the funds

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(and related terms and conditions). The Terms and Conditions require the submission of revenue information through the [provider portal](#) for later verification. For further information, please see the [HHS Provider Relief site](#).

If your total relief payment exceeds 2% of your 2018 net patient revenue and you feel you were overpaid, you should reject the entire General Distribution payment and submit appropriate revenue documents through the portal. HHS has noted they do not intend to recoup funds as long as the physician's lost revenue and increased expenses exceed the amount of relief funding a physician has received. HHS does reserve the right to audit recipients in the future to ensure that this requirement is met and collect any Relief Fund amounts that were made in error or exceed lost revenue or increased expenses due to COVID-19. Failure to comply with the Terms and Conditions may be grounds for recoupment.

#### How can these opportunities be availed and implemented?

In addition, reviewing the information provided above, the Academy recommends you consult your tax advisor or accountant for help in understanding and implementing these provisions.

### ADDITIONAL RESOURCES

Looking for a quick checklist of steps you should take? [The AAD has created one you can download!](#)

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