

BI-WEEKLY CALL: STATE & LOCAL ACTION ON PAID LEAVE & COVID-19

Co-hosted by:



How to Submit Questions or Comments

Please submit your questions using the chat function on the right of your Zoom window or by emailing dboesch@americanprogress.org.

Please specify who you would like to address your question.

Agenda

- Introduction (*Dawn Huckelbridge, Paid Leave for All*)
- Overview of federal bills (*Vasu Reddy, National Partnership for Women & Families*)
- Overview of DOL Regulation (*Tanya Goldman, CLASP*)
- States taking action on paid sick days and paid family & medical leave (*Sherry Leiwant, A Better Balance*)
- UI updates (*Judy Conti, National Employment Law Project*)
- Q&A
- Resources

The Federal Package – FFCRA/CARES Act

- FFCRA signed into law **March 18, 2020**
 - Emergency Paid Sick Leave Act (EPSLA)
 - Emergency Family and Medical Leave Expansion Act (EFMLEA)
- CARES Act signed into law **March 27, 2020**
 - Limits maximum amount of EPSLA and EFMLEA benefits that employers are required to pay
 - Gives OMB authority to exempt certain federal employees
 - Clarifies that certain rehired employees are eligible for EFMLEA
 - Provides for advance refunding of employer tax credit for EPSLA and EFMLEA
- Effective **April 1, 2020**
- Expires **December 31, 2020**

Emergency Paid Sick Leave Act

- Applies to employers with **fewer than 500 employees**
- Covers **all employees**
- Employees may take **up to 80 hours** (two workweeks) of emergency paid sick time
- Available if you are unable to work or telework due to:
 1. Being subject to a government quarantine/isolation order related to COVID-19;
 2. Having been advised by a health care provider to self-quarantine due to COVID-19-related concerns;
 3. Experiencing symptoms of COVID-19 and seeking medical diagnosis;
 4. Needing to care for an individual who is subject to an order as described in (1) or having been advised as described in (2);
 5. Needing to care for a son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19; or
 6. Experiencing any other substantially similar condition.

Emergency Paid Sick Leave Act

- If employee takes leave due to their own quarantine or isolation, seeking diagnosis, or substantially similar condition, benefit is **100% of wages up to \$511 per day and \$5,110 in the aggregate**
- If employee takes leave due to caring for an individual in quarantine or isolation, or for a child whose school/place of care is closed or child care provider is unavailable, benefit is **2/3 of wages up to \$200 per day and \$2,000 in the aggregate**
- DOL has discretion to exempt employers with **fewer than 50 employees** from the requirement to provide leave for school/place of care closure or child care provider unavailability if providing such leave would jeopardize their business as a going concern
- Employers of **health care providers and emergency responders** can exclude such employees from receiving leave

Emergency Family and Medical Leave Expansion Act

- Applies to employers with **fewer than 500 employees**
- Covers employees who have worked for their employer for **at least 30 calendar days** (including certain rehired employees)
- Employees may take **up to 12 weeks of emergency family leave, 10 of which are paid**
- Available if you are unable to work or telework due to **need to care for a son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19**
- Benefit is **2/3 of wages up to \$200 per day and \$10,000 in the aggregate**
- DOL has discretion to exempt employers with **fewer than 50 employees** from the requirement to provide leave if doing so would jeopardize their business as a going concern
- Employers of **health care providers and emergency responders** can exclude such employees from receiving leave

DOL Regulation - some good news

- **Definition of “son or daughter” follows FMLA regulations**
 - Includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age;
 - or 18 years of age or older who is incapable of self-care because of a mental or physical disability.
- **“Subject to a quarantine or isolation order”** includes:
 - quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the Employee to be unable to work
 - when a Federal, State, or local government authority has advised categories of citizens (*e.g.*, of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of Employees to be unable to work even though their Employers have work for them.
- Allows for some **intermittent leave** with child care leave (with employer consent)
- Small biz employers who claim exemption still have to post a **Notice** (in English)

DOL Regulation – and less good

- “Need for leave” requires that the employer have work for the employee
- An employee who has already used 12 weeks of leave under the FMLA is not able to use EFMLEA leave
- Added language to the child care leave:
 - *Caring for a Son or Daughter.* An Employee has a need to take Paid Sick Leave if he or she is unable to work due to a need to care for his or her Son or Daughter whose School or Place of Care has been closed, or whose Child Care Provider is unavailable, for reasons related to COVID-19 only if no other suitable person is available to care for the Son or Daughter during the period of such leave.
- Documentation requirements for employees taking leave

DOL Regulation – defines “individual”

- an Employee's immediate family member,
- a person who regularly resides in the Employee's home,
- or a similar person with whom the Employee has a relationship that creates an expectation that the Employee would care for the person if he or she were quarantined or self-quarantined.
- For this purpose, “individual” does not include persons with whom the Employee has no personal relationship.

DOL Regulation – Health care providers

Potential **opt out** by employers of:

- anyone **employed** at any doctor's office, hospital, health care center, 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.
- includes anyone employed by a **contractor** with any of these institutions described above to provide services or to maintain the operation of the facility where that individual's services support the operation of the facility.
- 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.
- also includes any individual that the highest official of a State or territory determines is a health care provider necessary for their response to COVID-19.

DOL Regulation – emergency responders

Potential **opt out** by employers of:

- anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of patients, or others needed for the response to COVID-19
- includes military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.
- also includes any individual whom the highest official of a State or territory, including DC, determines is an emergency responder necessary for their response to COVID-19.

DOL Temporary Regulation

- **Potential small business exemption**
 - Businesses with < 50 employees are covered by the law, including non-profits
 - But – certain businesses can claim eligible for an exemption from providing their employees leave to care for their child whose school or place of care is closed (or child care provider is unavailable)
 - NOTE: cannot be exempted from providing any other paid sick leave
 - Only if providing this leave for child care would jeopardize the viability of the business
- **Exemption applies if the employer determines:**
 - Leave would result in expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity
 - Employee's absence would entail a substantial risk to the financial health or operational capabilities of the business because of the employee's specialized skills, knowledge of the business, or responsibilities; OR
 - Insufficient employees able, willing, and qualified at time and place needed to perform labor or services provided by the employee, and these labor or services are needed for business to operate at a minimal capacity.

COVID-19 UNEMPLOYMENT BENEFITS PRIMER



“Families First” State Grants

- \$1B State UI Administration Grants (feds pay 100% of the state administration of UI programs)
- First installment w/in 60 days, requires employer notice, multiple claims filing methods, plus report on steps take to improve “reciency rate”
- Second installment after UI claims rise 10%, requires state to show it has take steps to improve UI access, including waiving the waiting week, work search and non-charging employers for COVID-19 claims

Pandemic Unemployment Assistance

- Nationalized COVID-19 program (DUA Regs apply)
- 39 weeks, retroactive to January 27th through 2020
- Benefits levels same as DUA (state law applies)
- Covers workers not eligible for UI, who “self certifies” unemployed for 11+ COVID-19 reasons.
- Broadly covers: “self employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment compensation.”
- Does not cover those who can telework with pay or are receiving paid sick or paid leave benefits.
- No waiver overpayment protections (bad DUA regs)

Covered Conditions

Applicants will need to provide self-certification that they are (1) partially or fully unemployed, OR (2) unable and unavailable to work because of one of the following circumstances:

- They have been diagnosed with COVID-19 or have symptoms of it and are seeking diagnosis;
- A member of their household has been diagnosed with COVID-19;
- They are providing care for someone diagnosed with COVID-19;
- They are providing care for a child or other household member who can't attend school or work because it is closed due to COVID-19;
- They are quarantined or have been advised by a health care provider to self-quarantine;
- They were scheduled to start employment and do not have a job or cannot reach their place of employment as a result of a COVID-19 outbreak;
- They have become the breadwinner for a household because the head of household has died as a direct result of COVID-19;
- They had to quit their job as a direct result of COVID-19;
- Their place of employment is closed as a direct result of COVID-19; or
- They meet other criteria established by the Secretary of Labor.



Additional Programs

- Pandemic Unemployment Compensation (PUC):
 - \$600 boost in weekly benefits
 - Ends July 31st (hard cut off)
 - "Non-reduction rule" prevents cuts in state UI
 - Positive waiver overpayment protections
- Pandemic Emergency Unemployment Compensation (PEUC):
 - Available through 2020
 - 13 weeks for workers who exhaust state UI
 - Same benefit level as state UI
 - Positive overpayment waiver protections
- Full Federal Funding of Waiting Week

Common Questions

Do the states/Govs have to participate in “Families First” and CARES UI programs?

A: No

Are undocumented workers covered?

A: No, must be work authorized (e.g., DACA)

Are workers eligible if they didn’t earn enough for UI or were seasonable workers?

A: Yes

Does everyone get the PUC \$600?

A: Yes, even those on partial PUA or state UI.

How long will it take for workers to get their unemployment checks?

A: Normally 2-3 weeks, but will be much longer depending on the state and the nature of the claim.

Tougher Questions

What about people not expressly covered by the PUA conditions, e.g., students and parents with children who were about to return to the labor market?

A: Possibly, depending on DOL guidance.

If the state pays less than 26 weeks in regular UI, can the workers still get 39 weeks in total federal and state benefits?

A: Yes, claim PUA after state UI and PEUC.

Should state policymakers still expand eligibility for UI or increase benefits since the new program covers people ineligible for UI and pays more in benefits?

A: Yes, but it's tougher now.

Implementation Issues

- States were at record low staffing and funding levels, so now must staff up and process huge surge in claims.
- Flooded/crashing on-line and phone claims systems, plus other major IT challenges that have long existed.
- E.g., On-line systems require new PIN and passwords for all prior UI claimants, requiring phone assistance to reset.
- Limited multi-lingual and phone assistance if can't navigate the on-line claims process.
- No standard, efficient, streamlined process to identify and process claims for people without reported wages.

Coronavirus and Paid Sick Days

- Strong public health case that all workers should have paid sick time to use when they or a family member is sick.
- Possible routes:
- Emergency paid sick time for this crisis either free standing or added to existing paid sick time laws
- Fill in gaps in the FFCRA
- In states/localities without paid sick time – broader paid sick guarantees
- Coverage for state and local workers

Paid Sick Time: State of Play

- 12 states and 23 localities have paid sick time laws
- 16 jurisdictions allow paid sick days to be used in the case of public health emergency closures; some of these with respect to isolation/quarantine orders:
 - AZ, MI, NJ, OR, RI, VT, WA, Chicago/Cook County, New York City, Seattle, Minneapolis, Saint Paul, San Diego, Montgomery County, MD, Westchester County, NY

Paid sick days law provisions to address public health emergency

- Add purposes:
 - Quarantine provisions: “When presence on the job or in the community would be a threat to the health of others” as determined by a public official, health authority or health care provider
 - Closures of schools or places of business due to public health emergency
- Make sick time available for immediate use
- Add additional sick time to address the emergency
- Expand definition of those who can be cared for to insure everyone in the community will have help if they need it
- Waive documentation requirements
- Protect jobs with strong anti-retaliation and anti-discrimination provisions

Jurisdictions Passing New Laws

- New York state – emergency and statewide paid sick
- San Jose – sick leave for all essential workers who don't have sick time; immediate 40 hours and 2 hours for every 2 hours worked up to 80 hour cap
- Los Angeles – 80 hours of paid sick time to those working for businesses with more than 500 workers
- San Francisco – fill in the gaps in the FFCRA
- Other states and cities working on drafting laws

Challenge of many legislatures out of session

- Exploring emergency powers of executive (governor, mayor)
- Particular to each state/locality
- Executive has the ability to give sick leave to public employees in this crisis beyond FFCRA

Model Laws

- Visit our website:
 - [Paid Sick Time During a Public Health Emergency: Key Policy Elements to Include in an Emergency Paid Sick Time Bill](#)
 - [Model Law: Establishing a Permanent Right to Paid Sick and Safe Time that Includes Additional Leave for a Public Health Emergency](#)
 - [Model Law: Establishing Paid Sick Time Leave for a Public Health Emergency](#)
 - [Model Law: Establishing Public Health Emergency Leave for a Public Health Emergency That Covers the Private-Sector Gaps in the Federal Families First Coronavirus Response Act](#)

QUESTIONS & ANSWERS

*Please submit your questions using the Zoom chat box
or by emailing dboesch@americanprogress.org.*

Resources



the work and family legal center

- [Paid Sick Time During a Public Health Emergency: Key Policy Elements to Include in an Emergency Bill](#)
- Model Laws for [Private-Sector Gaps in FFCRA](#), [Permanent Paid Sick Leave](#), [Public Health Emergency Paid Sick Leave](#)



- [Congress Must Extend Paid Leave Protections to All Workers in Next Coronavirus Response Bill](#)
- [Lack of Paid Leave Risks Public Health During the Coronavirus Outbreak](#)
- [The Uneven Expansion of Access to Paid Sick Days](#)

CLASP

Policy solutions that work for low-income people

- [Paid Sick Days and Paid Leave Provisions in FFCRA and CARES Act](#)
- [CLASP COVID-19 site](#)



- [COVID-19 Know Your Rights](#)
- [Worker's Rights Factsheet: Coronavirus Paid Sick Days, Emergency Paid Leave, and Unemployment Insurance](#)



- [Paid Sick Days Statutes](#)
- [Fact Sheet: Paid Sick Days Improve Public Health](#)

PAID LEAVE for ALL

- [Paid Leave for All Coronavirus Response Hub](#)
- Paid Leave for All [statement on the Families First Coronavirus Response Act](#)

THANK YOU!

Please email Diana Boesch (dboesch@americanprogress.org) with any questions.

We will send a follow up email with a copy of this presentation.