

On 18 March 2020, the Senate passed a stimulus package regarding the COVID-19 crisis following House passage and amendment of the bill earlier this week. The legislation, which includes new paid emergency and sick leave requirements for certain employers, now goes to the President for signature. Below please find answers to commonly asked questions about this law, which expires on December 31, 2020. The full bill can be read [by clicking here](#).

**UPDATE: On 20 March 2020 the Department of Labor announced that businesses with fewer than 50 employees are exempt from the paid emergency leave requirement. They are still subject to the paid sick leave requirement. More guidance on this is forthcoming from the DOL. Additionally, the phase III stimulus legislation includes new small business loans that can be applied to the new paid sick and emergency leave requirements.**

**All updates in this memo are indicated with red text.**

*Please note: This memo does not constitute legal advice. We urge exhibitors subject to this requirement to consult with counsel about specific obligations.*

## **Who is covered by this law and what are they obligated to provide?**

Covered employers are obligated to provide both paid sick leave and paid emergency leave above any existing paid leave program offered by the employer. These requirements apply to employers with fewer than 500 employees by headcount. The Department of Labor may choose to exempt employers with 50 or fewer employees, but would need to issue a waiver to do so. Under certain conditions, the law exempts companies with 25 or fewer employees—businesses of that size should consult with counsel to determine if they are covered.

## **What is included in the paid sick leave requirements?**

Full-time employees are eligible for up to 80 hours of paid sick leave at their regular rate of pay if they are subject to a government quarantine order; advised to quarantine by a health provider; experiencing COVID-19 symptoms and waiting for a diagnosis. The amount of paid leave is capped at \$511 per day, or \$5,110 in the aggregate.

Full-time employees who are caring for someone quarantined by COVID-19 or caring for a child because their school, daycare, or childcare provider has been closed due to COVID-19 precautions are entitled to up to 80 hours of paid sick leave at two-thirds of their regular rate of pay. The amount of paid leave in this instance is capped at \$200 per day, or \$2,000 in the aggregate.

Part-time employees are entitled to two weeks of paid sick leave for the same reasons as full-time employees. Part-time employees are eligible to receive two weeks' worth of pay for the average number of hours they work in a two-week period.

## **What is included in the paid emergency leave requirements?**

Employers are required to allow both full- and part-time employees who are not working because they are caring for a child whose school is closed or whose child care provider is unavailable due to a public health emergency to take up to 12 weeks of job-security emergency leave. Of those 12 weeks, the first 10 days can be unpaid (although employees can cash in any accrued leave). After the first 10 days, for the remaining 10 weeks, employers are required to pay employees two-thirds of their regular rate of pay for the number of hours

they would normally be scheduled to work. Employees with variable schedules must be paid for the average number of hours they were scheduled to work per day in the six-month period before taking leave. The amount of paid leave in this instance is capped at \$200 per day, or \$10,000 in the aggregate.

**On 20 March 2020 the Department of Labor announced that businesses with fewer than 50 employees are exempt from the paid emergency leave requirement. They are still subject to the paid sick leave requirement. More guidance on this is forthcoming from the DOL.**

**My company employs fewer than 500 people, but my theaters are closed and my employees are furloughed, not terminated. Am I still obligated to provide paid emergency or sick leave to furloughed employees who meet the paid leave conditions (quarantined, waiting on a diagnosis, home with children because their school is closed, etc.)?**

Yes. You must provide the paid sick and emergency leave benefits to furloughed employees who meet the criteria even if your business is closed. The paid leave sections of the bill consider individuals eligible for the benefits if they are “employees.” Until their employment is formally terminated, if they are active employees but not receiving pay, they are eligible for the benefit.

**Can my furloughed employees also apply for unemployment insurance benefits?**

Most likely yes. In most states, furloughed employees who have not been formally terminated are eligible to apply for unemployment insurance benefits. They should apply through their state unemployment insurance offices. The federal government has asked states to reduce waiting times and has waived the work search requirements. You should consult with local counsel to confirm that unemployment insurance status applies to your furloughed employees and check if such employees would be required to reimburse any paid leave received if they are also receiving unemployment insurance benefits.

**What is the government doing to help covered employers with this new mandate?**

Employers covered by this mandate are eligible for a payroll tax credit equivalent to 100% of the amount paid out for emergency leave and sick leave under this bill (the payroll tax credit does NOT apply to paid leave that the employers would pay in the normal course of events, i.e. any leave that is paid out based on the employer’s existing policies). The payroll tax credit will be refundable, meaning that any amount above what the employer would pay in payroll taxes is refundable in cash to the employer. The payroll tax credit will be available within three months of the initial leave payment.

The Treasury Department has also pledged to allow employers worried about cash flow to use cash deposited with the IRS to pay sick leave wages. For businesses that don’t have sufficient taxes to draw from, Treasury has said they make advances to small businesses to cover the leave costs.

**Can I apply for a Small Business Administration loan to help with this new mandate?**

**We expect that the federal government will pass legislation expanding the SBA loan program. However, we do not yet know what the specific parameters will be, but in the drafts that have been released thus far, the SBA would make available loans of up to \$10 million for small businesses with 500 or fewer employees that can be used for a variety of**

**purposes, including paid sick leave, existing debts, employee salaries, and mortgage and rent. Borrower and lender fees for these loans are waived. A portion of these loans is eligible for loan forgiveness, and businesses may require to keep employees on as a condition of receiving the loan.**

**Please note these additional loans would not be able to be commingled with other SBA disaster assistance. If you apply for and receive multiple loans from the SBA, they must be used for separate and distinct purposes.**

The SBA also offers Economic Injury Disaster Loans of up to \$2 million for small businesses in eligible areas designated by states. The loans may be used to pay fixed debts, payroll, accounts payable, and other bills that cannot be paid because of the COVID-19 impact. The loan is ONLY available to businesses that do not have credit available elsewhere. The interest rate is 3.75% for private businesses with a maximum repayment length of 30 years. Loan terms are determined on a case-by-case basis, based on the borrower's ability to repay. Businesses can apply for an SBA loan [by clicking here](#).

Normally, outside of the disaster relief program, the SBA partners with lenders to provide loans to small businesses (it does not provide loans itself) and sets the guidelines for these loans. Generally, to be eligible for an SBA loan, a business must qualify as small under the SBA standards – for movie theaters, they must have no more than \$41.5 million in average annual receipts, and for drive-ins, they must have average annual receipts of no more than \$8 million – as well as meet a number of other criteria.

For more information and to find a lender, please [click here](#).

**Is this all that Congress is planning to do for businesses?**

**No. Congress is working on phase III legislation that includes a variety of other provisions for businesses, including delayed tax filing deadlines and deferred payroll taxes. More information will be available in the coming days.**

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