



Labor Provisions in the Coronavirus Aid, Relief, and Economic Security (CARES) Act

ISABEL SOTO | MARCH 23, 2020

Executive Summary

- The new paid sick and childcare leave provisions already enacted in H.R. 6201 would be changed by the recently introduced Coronavirus Aid, Relief, and Economic Security (CARES) Act.
- As a result of Department of Labor and Treasury action, employers are expected to be able to keep the same amount in payroll taxes that they spend on employee leave, expediting the payment process—a change that the CARES Act codifies.
- In addition to paid leave changes, the CARES Act's labor provisions expand Department of Labor authority and ensure unemployment insurance accessibility.
- Throughout the CARES Act, there are much-needed supports for small businesses to incentivize retaining workers who otherwise would likely have been laid off to offset the cost of the new leave mandate.

Introduction

After being established as part of the Families First Coronavirus Response Act (H.R. 6201) and undergoing technical changes after passing the House, the new emergency paid sick and childcare leave provisions are once again being altered. As discussed in a prior [AAF analysis](#), the paid-leave mandate could create negative consequences, including further aggravating cash-flow problems for small businesses and incentivizing additional layoffs to avoid the mandate. The Coronavirus Aid, Relief, and Economic Security (CARES) Act addresses these two important issues through changes to paid leave reimbursement and offers additional support for workers and small businesses throughout the legislation.

Changes to Paid Leave

Exemptions and Restrictions

As currently written in the draft CARES Act, the paid leave mandate applies only to businesses with fewer than 500 workers. It is possible for businesses with under 50 employees to receive exemptions in order to protect those businesses from closing, although the precise method by which the Secretary of Labor would determine exemptions is unclear in the bill. The bill also puts caps on the employer requirements. Under the CARES Act, the maximum employers must pay at full wage replacement for two weeks of sick pay would be \$511 per day. Under the 10-week childcare leave, an employer would not be required to pay more than \$200 a day for each employee. An additional exemption has been included in the CARES Act draft that would allow the Office of Management and Budget director to exclude certain executive branch government employees from both kinds of paid leave.

Payroll Credits

The main concern surrounding paid-leave mandates is the funding. Will businesses be able to pay for their employees' leave without risking closure or additional layoffs? To address cash-flow concerns, the Treasury is already allowing for the advance refunding of credits and is directing the Internal Revenue Service (IRS) to waive penalties on employers who fail to deposit payroll taxes in anticipation of receiving the credit. While this change would ease some of the cost burden on small businesses, it does little to incentivize keeping workers on payroll.

The new tax credit system is now ready to be put to the test. On Friday, March 20, the Department of Labor (DOL) and Treasury announced that the [credits are now available](#) for business with fewer than 500 workers. Guidance is expected to be released explaining that employers can simply keep the same amount in payroll taxes that they pay in leave. The CARES Act would codify this payment system already put in place by the DOL and Treasury. This new method shortens the time between when employers make leave payments and receive a refund from the Treasury. The IRS expects the entire credit process to take up to two weeks. Given how quickly the virus has been spreading and the widespread school closures, the number of people who will need to take sick or childcare leave will likely only go up, potentially making the entire process more difficult for government agencies and employers to navigate.

As an additional measure, the CARES Act gives the DOL expanded authority under the public health emergency declaration to postpone deadlines surrounding pension and other employee benefit plans.

Unemployment Insurance

For those workers who do get laid off and are ineligible for paid leave, the CARES Act's labor provisions have added a change to the Emergency Unemployment Insurance Stabilization and Access Act, included in H.R. 6201, that ensures workers can apply for unemployment or receive application assistance through phone, in-person, or online. Ensuring this system is accessible and well supported through additional funds and deregulatory measures is necessary to support those who lose their jobs.

Recent changes made to the CARES Act outside of the labor provisions mentioned above provide additional financial support to the unemployment insurance program. Given the [increase in unemployment claims](#) this past week and those that are expected in the future, the decision to expand unemployment insurance (UI) benefits by both length and weekly compensation will provide more workers with the ability to continue to cover their necessary expenses.

Support for Small Businesses

Beyond these changes that provide leave and increase accessibility to UI, there are important measures in other parts of the CARES Act that address job retainment concerns. Prior to this bill, there was little to protect jobs or avoid disconnecting individuals from work.

The paid leave program already enacted into law incentivized businesses, especially those with limited resources, to lay off workers to avoid paying for the leave mandate. Concern for small businesses has led to increased support in the CARES Act in the form of loan forgiveness, increased loan eligibility, and greater flexibility of use. Prior [AAF analysis](#) goes into greater detail on many of these small business supports, chief among them being Small Business Interruption Loans. Similar to the paid leave provisions, the Small Business

Interruption loans, which run through the Small Business Administration 7(a) loan program, would be targeted to certain firms. Eligible firms must have fewer than 500 employees or be no larger than “the size standard in number of employees established by the Administration for the industry in which the business concern, nonprofit organization, or veterans organization operates.” Firms determined to be eligible would receive loan forgiveness equal to payroll and operating costs not including the salaries of those employees making greater than \$100,000 annually. There would not be a requirement for the small business to show that it could not achieve credit elsewhere and the loan would not require collateral or a personal guarantee. The total amount allocated for this portion of the bill is \$300 billion.

Conclusion

SBA 7(a) loans and general loan flexibility and expansion, in addition to the UI expansion and expedited paid leave payment system, would allow employers to provide sick workers with leave they need and provide laid off workers with an income stream, all while incentivizing employers to keep workers on payroll. The challenges H.R. 6201 presented with the novel paid sick and care leave are addressed in this most recent draft of the CARES Act, as are the interests of small businesses and their employers. If disagreements among legislators persist, however, the economic and employment situation will only further deteriorate.