

# **Families First Coronavirus Relief Act: Excerpts for Employers**

## **DIVISION C—EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT**

### **SEC. 3101. SHORT TITLE.**

This Act may be cited as “Emergency Family and Medical Leave Expansion Act”.

### **SEC. 3102. AMENDMENTS TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993.**

#### **(a) PUBLIC HEALTH EMERGENCY LEAVE.—**

**(1) IN GENERAL.**—Section 102(a)(1) of the Family and Medical Leave Act of 1993 ([29 U.S.C. 2612\(a\)\(1\)](#)) is amended by adding at the end the following:

“(F) During the period beginning on the date the Emergency Family and Medical Leave Expansion Act takes effect, and ending on December 31, 2020, because of a qualifying need related to a public health emergency in accordance with section 110.”.

**(2) PAID LEAVE REQUIREMENT.**—Section 102(c) of the Family and Medical Leave Act of 1993 ([29 U.S.C. 2612\(c\)](#)) is amended by striking “under subsection (a)” and inserting “under subsection (a) (other than certain periods of leave under subsection (a)(1)(F))”.

**(b) REQUIREMENTS.**—Title I of the Family and Medical Leave Act of 1993 ([29 U.S.C. 2611 et seq.](#)) is amended by adding at the end the following:

#### **“SEC. 110. PUBLIC HEALTH EMERGENCY LEAVE.**

**“(a) DEFINITIONS.**—The following shall apply with respect to leave under section 102(a)(1)(F):

“(1) APPLICATION OF CERTAIN TERMS.—The definitions in section 101 shall apply, except as follows:

“(A) ELIGIBLE EMPLOYEE.—In lieu of the definition in sections 101(2)(A) and 101(2)(B)(ii), the term ‘eligible employee’ means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested under section 102(a)(1)(F).

“(B) EMPLOYER THRESHOLD.—Section 101(4)(A)(i) shall be applied by substituting ‘fewer than 500 employees’ for ‘50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year’.

“(2) ADDITIONAL DEFINITIONS.—In addition to the definitions described in paragraph (1), the following definitions shall apply with respect to leave under section 102(a)(1)(F):

“(A) QUALIFYING NEED RELATED TO A PUBLIC HEALTH EMERGENCY.—The term ‘qualifying need related to a public health emergency’, with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

“(B) PUBLIC HEALTH EMERGENCY.—The term ‘public health emergency’ means an emergency with respect to COVID–19 declared by a Federal, State, or local authority.

“(C) CHILD CARE PROVIDER.—The term ‘child care provider’ means a provider who receives compensation for providing child care services on a regular basis, including an ‘eligible child care provider’ (as defined in section 658P of the Child Care and Development Block Grant Act of 1990 ([42 U.S.C. 9858n](#))).

“(D) SCHOOL.—The term ‘school’ means an ‘elementary school’ or ‘secondary school’ as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 ([20 U.S.C. 7801](#)).

“(3) REGULATORY AUTHORITIES.—The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(A) of title 5, United States Code—

“(A) to exclude certain health care providers and emergency responders from the definition of eligible employee under section 110(a)(1)(A); and

“(B) to exempt small businesses with fewer than 50 employees from the requirements of section 102(a)(1)(F) when the imposition of such requirements would jeopardize the viability of the business as a going concern.

“(b) RELATIONSHIP TO PAID LEAVE.—

“(1) UNPAID LEAVE FOR INITIAL 10 DAYS.—

“(A) IN GENERAL.—The first 10 days for which an employee takes leave under section 102(a)(1)(F) may consist of unpaid leave.

“(B) EMPLOYEE ELECTION.—An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave under section 102(a)(1)(F) in accordance with section 102(d)(2)(B).

“(2) PAID LEAVE FOR SUBSEQUENT DAYS.—

“(A) IN GENERAL.—An employer shall provide paid leave for each day of leave under section 102(a)(1)(F) that an employee takes after taking leave under such section for 10 days.

“(B) CALCULATION.—

“(i) IN GENERAL.—Subject to clause (ii), paid leave under subparagraph (A) for an employee shall be calculated based on—

“(I) an amount that is not less than two-thirds of an employee’s regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 207\(e\)](#)); and

“(II) the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)).

“(ii) CLARIFICATION.—In no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate.

“(C) VARYING SCHEDULE HOURS CALCULATION.—In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken leave under section 102(a)(1)(F), the employer shall use the following in place of such number:

“(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type.

“(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

“(c) NOTICE.—In any case where the necessity for leave under section 102(a)(1)(F) for the purpose described in subsection (a)(2)(A)(iii) is foreseeable, an employee shall provide the employer with such notice of leave as is practicable.

“(d) RESTORATION TO POSITION.—

“(1) IN GENERAL.—Section 104(a)(1) shall not apply with respect to an employee of an employer who employs fewer than 25 employees if the conditions described in paragraph (2) are met.

“(2) CONDITIONS.—The conditions described in this paragraph are the following:

“(A) The employee takes leave under section 102(a)(1)(F).

“(B) The position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer—

“(i) that affect employment; and

“(ii) are caused by a public health emergency during the period of leave.

“(C) The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.

“(D) If the reasonable efforts of the employer under subparagraph (C) fail, the employer makes reasonable efforts during the period described in paragraph (3) to contact the employee if an equivalent position described in subparagraph (C) becomes available.

“(3) CONTACT PERIOD.—The period described under this paragraph is the 1-year period beginning on the earlier of—

“(A) the date on which the qualifying need related to a public health emergency concludes; or

“(B) the date that is 12 weeks after the date on which the employee’s leave under section 102(a)(1)(F) commences.”.

### **SEC. 3103. EMPLOYMENT UNDER MULTI-EMPLOYER BARGAINING AGREEMENTS.**

(a) EMPLOYERS.—An employer signatory to a multiemployer collective bargaining agreement may, consistent with its bargaining obligations and its collective bargaining agreement, fulfill its obligations under section 110(b)(2) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act, by making contributions to a multiemployer fund, plan, or program based on the paid leave each of its employees is entitled to under such section while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act.

(b) EMPLOYEES.—Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (a) may secure pay from such fund, plan, or program based on hours they have worked under the

multiemployer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act.

#### **SEC. 3104. SPECIAL RULE FOR CERTAIN EMPLOYERS.**

An employer under 110(a)(B) shall not be subject to section 107(a) for a violation of section 102(a)(1)(F) if the employer does not meet the definition of employer set forth in Section 101(4)(A)(i).

#### **SEC. 3105. SPECIAL RULE FOR HEALTH CARE PROVIDERS AND EMERGENCY RESPONDERS.**

An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions in the amendments made under of section 3102 of this Act.

#### **SEC. 3106. EFFECTIVE DATE.**

This Act shall take effect not later than 15 days after the date of enactment of this Act.

### **DIVISION E—EMERGENCY PAID SICK LEAVE ACT**

#### **SHORT TITLE**

#### **SEC. 5101.**

This Act may be cited as the “Emergency Paid Sick Leave Act”.

#### **PAID SICK TIME REQUIREMENT**

#### **SEC. 5102.**

(a) IN GENERAL.—An employer shall provide to each employee employed by the employer paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.

(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.

(3) The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.

(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).

(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions.

(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Except that an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection.

(b) DURATION OF PAID SICK TIME.—

(1) IN GENERAL.—An employee shall be entitled to paid sick time for an amount of hours determined under paragraph (2).

(2) AMOUNT OF HOURS.—The amount of hours of paid sick time to which an employee is entitled shall be as follows:

(A) For full-time employees, 80 hours.

(B) For part-time employees, a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.

(3) CARRYOVER.—Paid sick time under this section shall not carry over from 1 year to the next.

(c) EMPLOYER'S TERMINATION OF PAID SICK TIME.—Paid sick time provided to an employee under this Act shall cease beginning with the employee's next scheduled workshift immediately following the termination of the need for paid sick time under subsection (a).

(d) PROHIBITION.—An employer may not require, as a condition of providing paid sick time under this Act, that the employee involved search for or find a replacement employee to cover the hours during which the employee is using paid sick time.

(e) USE OF PAID SICK TIME.—

(1) IN GENERAL.—The paid sick time under subsection (a) shall be available for immediate use by the employee for the purposes described in such subsection, regardless of how long the employee has been employed by an employer.

(2) SEQUENCING.—

(A) IN GENERAL.—An employee may first use the paid sick time under subsection (a) for the purposes described in such subsection.

(B) PROHIBITION.—An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under subsection (a).

NOTICE

SEC. 5103.

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements described in this Act.

(b) MODEL NOTICE.—Not later than 7 days after the date of enactment of this Act, the Secretary of Labor shall make publicly available a model of a notice that meets the requirements of subsection (a).

PROHIBITED ACTS

SEC. 5104.

It shall be unlawful for any employer to discharge, discipline, or in any other manner discriminate against any employee who—

(1) takes leave in accordance with this Act; and

(2) has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act (including a proceeding that seeks enforcement of this Act), or has testified or is about to testify in any such proceeding.

ENFORCEMENT

SEC. 5105.

(a) UNPAID SICK LEAVE.—An employer who violates section 5102 shall—

(1) be considered to have failed to pay minimum wages in violation of section 6 of the Fair Labor Standards Act of 1938 ([29 U.S.C. 206](#)); and

(2) be subject to the penalties described in sections 16 and 17 of such Act ([29 U.S.C. 216](#); 217) with respect to such violation.

(b) UNLAWFUL TERMINATION.—An employer who willfully violates section 5104 shall—

(1) be considered to be in violation of section 15(a)(3) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 215\(a\)\(3\)](#)); and

(2) be subject to the penalties described in sections 16 and 17 of such Act ([29 U.S.C. 216](#); 217) with respect to such violation.

## EMPLOYMENT UNDER MULTI-EMPLOYER BARGAINING AGREEMENTS

### SEC. 5106.

(a) EMPLOYERS.—An employer signatory to a multiemployer collective bargaining agreement may, consistent with its bargaining obligations and its collective bargaining agreement, fulfill its obligations under this Act by making contributions to a multiemployer fund, plan, or program based on the hours of paid sick time each of its employees is entitled to under this Act while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement and for the uses specified under section 5102(a).

(b) EMPLOYEES.—Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (a) may secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for the uses specified in section 5102(a).

## RULES OF CONSTRUCTION

### SEC. 5107.

Nothing in this Act shall be construed—

(1) to in any way diminish the rights or benefits that an employee is entitled to under any—

(A) other Federal, State, or local law;

(B) collective bargaining agreement; or

(C) existing employer policy; or

(2) to require financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for paid sick time under this Act that has not been used by such employee.

## EFFECTIVE DATE

## **SEC. 5108.**

This Act, and the requirements under this Act, shall take effect not later than 15 days after the date of enactment of this Act.

## **SUNSET**

## **SEC. 5109.**

This Act, and the requirements under this Act, shall expire on December 31, 2020.

## **DEFINITIONS**

### **SEC. 5110.**

For purposes of the Act:

(1) **EMPLOYEE.**—The terms “employee” means an individual who is—

(A) (i) an employee, as defined in section 3(e) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 203\(e\)](#)), who is not covered under subparagraph (E) or (F), including such an employee of the Library of Congress, except that a reference in such section to an employer shall be considered to be a reference to an employer described in clauses (i)(I) and (ii) of paragraph (5)(A); or

(ii) an employee of the Government Accountability Office;

(B) a State employee described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(C) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 ([2 U.S.C. 1301](#)), other than an applicant for employment;

(D) a covered employee, as defined in section 411(c) of title 3, United States Code;

(E) a Federal officer or employee covered under subchapter V of [chapter 63](#) of title 5, United States Code; or

(F) any other individual occupying a position in the civil service (as that term is defined in section 2101(1) of title 5, United States Code).

(2) **EMPLOYER.**—

(A) **IN GENERAL.**—The term “employer” means a person who is—

- (i) (I) a covered employer, as defined in subparagraph (B), who is not covered under subclause (V);
  - (II) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;
  - (III) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;
  - (IV) an employing office, as defined in section 411(c) of title 3, United States Code; or
- (V) an Executive Agency as defined in section 105 of title 5, United States Code, and including the U.S. Postal Service and the Postal Regulatory Commission; and
  - (ii) engaged in commerce (including government), or an industry or activity affecting commerce (including government), as defined in subparagraph (B)(iii).

**(B) COVERED EMPLOYER.—**

- (i) **IN GENERAL.**—In subparagraph (A)(i)(I), the term “covered employer”—
  - (I) means any person engaged in commerce or in any industry or activity affecting commerce that—
    - (aa) in the case of a private entity or individual, employs fewer than 500 employees; and
    - (bb) in the case of a public agency or any other entity that is not a private entity or individual, employs 1 or more employees;
  - (II) includes—
    - (aa) includes any person acting directly or indirectly in the interest of an employer in relation to an employee (within the meaning of such phrase in section 3(d) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 203\(d\)](#))); and
    - (bb) any successor in interest of an employer;
  - (III) includes any “public agency”, as defined in section 3(x) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 203\(x\)](#)); and
  - (IV) includes the Government Accountability Office and the Library of Congress.
- (ii) **PUBLIC AGENCY.**—For purposes of clause (i)(IV), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.
- (iii) **DEFINITIONS.**—For purposes of this subparagraph:

(I) COMMERCE.—The terms “commerce” and “industry or activity affecting commerce” means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce”, as defined in paragraphs (1) and (3) of section 501 of the Labor Management Relations Act of 1947 ([29 U.S.C. 142](#) (1) and (3)).

(II) EMPLOYEE.—The term “employee” has the same meaning given such term in section 3(e) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 203\(e\)](#)).

(III) PERSON.—The term “person” has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 203\(a\)](#)).

(3) FLSA TERMS.—The terms “employ” and “State” have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 ([29 U.S.C. 203](#)).

(4) FMLA TERMS.—The terms “health care provider” and “son or daughter” have the meanings given such terms in section 101 of the Family and Medical Leave Act of 1993 ([29 U.S.C. 2611](#)).

(5) PAID SICK TIME.—

(A) IN GENERAL.—The term “paid sick time” means an increment of compensated leave that—

(i) is provided by an employer for use during an absence from employment for a reason described in any paragraph of section 2(a); and

(ii) is calculated based on the employee’s required compensation under subparagraph (B) and the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)), except that in no event shall such paid sick time exceed—

(I) \$511 per day and \$5,110 in the aggregate for a use described in paragraph (1), (2), or (3) of section 5102(a); and

(II) \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6) of section 5102(a).

(B) REQUIRED COMPENSATION.—

(i) IN GENERAL.—Subject to subparagraph (A)(ii), the employee’s required compensation under this subparagraph shall be not less than the greater of the following:

(I) The employee’s regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 207\(e\)](#)).

(II) The minimum wage rate in effect under section 6(a)(1) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 206\(a\)\(1\)](#)).

(III) The minimum wage rate in effect for such employee in the applicable State or locality, whichever is greater, in which the employee is employed.

(ii) SPECIAL RULE FOR CARE OF FAMILY MEMBERS.—Subject to subparagraph (A)(ii), with respect to any paid sick time provided for any use described in paragraph (4), (5), or (6) of section 5102(a), the employee's required compensation under this subparagraph shall be two-thirds of the amount described in clause (B)(i).

(C) VARYING SCHEDULE HOURS CALCULATION.—In the case of a part-time employee described in section 5102(b)(2)(B) whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken paid sick time under section 2(a), the employer shall use the following in place of such number:

(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes the paid sick time, including hours for which the employee took leave of any type.

(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

(D) GUIDELINES.—Not later than 15 days after the date of the enactment of this Act, the Secretary of Labor shall issue guidelines to assist employers in calculating the amount of paid sick time under subparagraph (A).

(E) REASONABLE NOTICE.—After the first workday (or portion thereof) an employee receives paid sick time under this Act, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.

## REGULATORY AUTHORITIES

### SEC. 5111.

The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(A) of title 5, United States Code—

(1) to exclude certain health care providers and emergency responders from the definition of employee under section 5110(1) including by allowing the employer of such health care providers and emergency responders to opt out;

- (2) to exempt small businesses with fewer than 50 employees from the requirements of section 5102(a)(5) when the imposition of such requirements would jeopardize the viability of the business as a going concern; and
- (3) as necessary, to carry out the purposes of this Act, including to ensure consistency between this Act and Division C and Division G of the Families First Coronavirus Response Act.

## **DIVISION G—TAX CREDITS FOR PAID SICK AND PAID FAMILY AND MEDICAL LEAVE**

### **PAYROLL CREDIT FOR REQUIRED PAID SICK LEAVE**

#### **SEC. 7001.**

(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter.

(b) LIMITATIONS AND REFUNDABILITY.—

(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified sick leave wages taken into account under subsection (a) with respect to any individual shall not exceed \$200 (\$511 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act) for any day (or portion thereof) for which the individual is paid qualified sick leave wages.

(2) OVERALL LIMITATION ON NUMBER OF DAYS TAKEN INTO ACCOUNT.—The aggregate number of days taken into account under paragraph (1) for any calendar quarter shall not exceed the excess (if any) of—

(A) 10, over

(B) the aggregate number of days so taken into account for all preceding calendar quarters.

(3) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code for such quarter) on the wages paid with respect to the employment of all employees of the employer.

(4) REFUNDABILITY OF EXCESS CREDIT.—

(A) IN GENERAL.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (3) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any amounts due to an employer under this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(c) QUALIFIED SICK LEAVE WAGES.—For purposes of this section, the term “qualified sick leave wages” means wages (as defined in [section 3121\(a\)](#) of the Internal Revenue Code of 1986) and compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Paid Sick Leave Act.

(d) ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.—

(1) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer’s qualified health plan expenses as are properly allocable to the qualified sick leave wages for which such credit is so allowed.

(2) QUALIFIED HEALTH PLAN EXPENSES.—For purposes of this subsection, the term “qualified health plan expenses” means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in [section 5000\(b\)\(1\)](#) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

(3) ALLOCATION RULES.—For purposes of this section, qualified health plan expenses shall be allocated to qualified sick leave wages in such manner as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) SPECIAL RULES.—

(1) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

(2) ELECTION NOT TO HAVE SECTION APPLY.—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe) not to have this section apply.

(3) CERTAIN TERMS.—Any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

(4) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(f) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a), and

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid sick time required to be provided under the Emergency Paid Sick Leave Act.

(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act ([42 U.S.C. 401](#)) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 ([45 U.S.C. 231n-1\(a\)](#)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

## PAYROLL CREDIT FOR REQUIRED PAID FAMILY LEAVE

SEC. 7003.

(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified family leave wages paid by such employer with respect to such calendar quarter.

(b) LIMITATIONS AND REFUNDABILITY.—

(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified family leave wages taken into account under subsection (a) with respect to any individual shall not exceed—

(A) for any day (or portion thereof) for which the individual is paid qualified family leave wages, \$200, and

(B) in the aggregate with respect to all calendar quarters, \$10,000.

(2) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code, and section 7001 of this Act, for such quarter) on the wages paid with respect to the employment of all employees of the employer.

(3) REFUNDABILITY OF EXCESS CREDIT.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

(c) QUALIFIED FAMILY LEAVE WAGES.—For purposes of this section, the term “qualified family leave wages” means wages (as defined in section 3121(a) of such Code) and compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act).

(d) ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.—

(1) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer’s qualified health plan expenses as are properly allocable to the qualified family leave wages for which such credit is so allowed.

(2) QUALIFIED HEALTH PLAN EXPENSES.—For purposes of this subsection, the term “qualified health plan expenses” means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in [section 5000\(b\)\(1\)](#) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

(3) ALLOCATION RULES.—For purposes of this section, qualified health plan expenses shall be allocated to qualified family leave wages in such manner as the Secretary of the

Treasury (or the Secretary's delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) SPECIAL RULES.—

(1) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

(2) ELECTION NOT TO HAVE SECTION APPLY.—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe) not to have this section apply.

(3) CERTAIN TERMS.—Any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

(4) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(f) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a), and

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid leave required to be provided under the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act).

(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act ([42 U.S.C. 401](#)) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 ([45 U.S.C. 231n-1\(a\)](#)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

#### SPECIAL RULE RELATED TO TAX ON EMPLOYERS

##### SEC. 7005.

(a) IN GENERAL.—Any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages for purposes of [section 3111\(a\)](#) of the Internal Revenue Code of 1986 or compensation for purposes of section 3221(a) of such Code.

##### (b) ALLOWANCE OF CREDIT FOR HOSPITAL INSURANCE TAXES.—

(1) IN GENERAL.—The credit allowed by section 7001 and the credit allowed by section 7003 shall each be increased by the amount of the tax imposed by [section 3111\(b\)](#) of the Internal Revenue Code of 1986 on qualified sick leave wages, or qualified family leave wages, for which credit is allowed under such section 7001 or 7003 (respectively).

(2) DENIAL OF DOUBLE BENEFIT.—For denial of double benefit with respect to the credit increase under paragraph (1), see sections 7001(e)(1) and 7003(e)(1).

(c) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act ([42 U.S.C. 401](#)) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 ([45 U.S.C. 231n-1\(a\)](#)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.