

Policy Report



SPECIAL ALERT Coronavirus Response Bill Passed

A MESSAGE FROM TIM EHLERT, HEAD OF GOVERNMENT RELATIONS

I want to provide you with the latest update on the Coronavirus Response legislation. The bill (H.R. 6201 – called Phase II) passed the Senate yesterday by a wide margin 90-8 and has been sent to President Trump for his signature. We expect him to sign the bill into law and its provisions will become effective in 15 days.

Yesterday, the Senate is meeting with members of the Trump Administration to finalize what they are calling Phase III legislation. Phase III will include a number of financing measures that will be used to attempt to stabilize the economy. Details will need to be worked out between the Senate Republicans and Democrats and the Administration. Senate Republicans seem likely to try to pass a measure to send to the House, but it appears each party has a different idea on how the money should be spent.

Below, you'll find information on the H.R 6201 passing, Phase III details and action items.

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EMPLOYERS WITH MORE THAN 500 EMPLOYEES

The bill's paid sick leave and paid family leave requirements **DO NOT** apply. This is unchanged from the previous version. However:

- Employees infected with coronavirus may be entitled to FMLA.
- No entitlement to FMLA leave to avoid exposure.
- No federal obligation to provide private sector employees with leave to take care of healthy children dismissed from school.

- No federal requirement to provide paid leave.
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EMPLOYERS WITH 500 OR FEWER EMPLOYEES, BUT MORE THAN 50

Paid Sick Leave

- Will be required to provide paid sick leave to employees affected by COVID-19 for the following reasons:
 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 because of COVID-19;
 3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
 4. The employee is caring for an individual subject or advised to quarantine or isolation;
 5. The employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions; or
 6. The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.
- For full-time employees, they will be entitled to 80 hours of paid sick leave at their regular rate of pay. All employees are eligible on day one of employment.
 - The bill does not define “full time” employment or specify how employers will be expected to calculate total number of employees.
 - Both the existing FMLA and FLSA include provisions relating to the aggregation of employees where there is common control or an integrated enterprise.
 - Essentially, employee count will be calculated similar to the ACA.
- 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 at their regular rate of pay.
- The bill limits an employer’s requirement of paid leave to \$511 per day (\$5,110 in the aggregate) where leave is taken for reasons (1), (2), and (3) noted above (generally, an employee’s own illness or quarantine);
- The bill limits an employer’s requirement of paid leave to \$200 per day (\$2,000 in the aggregate) where leave is taken for reasons (4), (5), or (6) (care for others or school closures).

Paid Family Leave Expansion

- Additionally, the bill expands leave under the Family and Medical Leave Act (FMLA) to eligible employees who have 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.
 - The term ‘public health emergency’ means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.
- The first 10 days of leave allowed by this provision can be unpaid leave. Employees can use any employer-provided leave at this time.
- After the initial 10 days, leave will be required to be paid for up to 12 weeks (inclusive of the 10 days).
- For an employee to be eligible for the leave, they must have been employer for at least 30 days.
- Leave shall be paid at an amount that is not less than two-thirds of an employee’s regular rate of pay; and
- Calculated using the number of hours the employee would otherwise be normally scheduled to work.
- Paid leave shall be capped at \$200 per day and \$10,000 in the aggregate.
- Employees taking advantage of this leave policy will have their job protected upon their return.

Tax Credits

- Businesses of this size will receive a 100% tax credit for both types of leave up to capped levels, credited against quarterly payroll taxes.
 - If the employer has enough money to make payments, they will deduct it from IRS at end of quarter.
 - If the employer does not owe anything at end of quarter, IRS will issue a refund.
 - If the employer does not have the money, they will fill out an online form with the IRS and they will direct deposit a check into the employer's account and they'll pay the employees from that contribution.
 - More guidance is needed here from Treasury.
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EMPLOYERS WITH 50 OR FEWER EMPLOYEES

The bill also grants the Secretary of Labor the authority to issue regulations to exempt small businesses with fewer than 50 employees (which is likely) from these requirements if they jeopardize the viability of a business as a going concern. More to come. Without an explicit exemption, the following leave mandates will apply:

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As mentioned, this law will take effect 15 days after the date of the President's signature and will sunset on December 31, 2020.

PHASE III PROPOSAL

Here is the initial proposal shared with Senate Republicans this afternoon from the Treasury Department. We anticipate changes during negotiations with Senate Democrats this evening.

I. APPROPRIATION TO THE EXCHANGE STABILIZATION FUND FOR SPECIFIED USES

- A. Airline Industry Secured Lending Facility (\$50 billion)
 - This provision would appropriate an additional \$50 billion to the ESF and authorize use of those funds for secured lending to U.S. passenger and cargo air carriers.
- B. **Other Severely Distressed Sectors of the U.S. Economy (\$150 billion)**
 - This provision would appropriate an additional \$150 billion and authorize use of those funds for secured lending or loan guarantees to assist other critical sectors of the U.S. economy experiencing severe financial distress due to the COVID-19 outbreak.
 - Restaurants will likely fall into this category, but it is not clear how much of this funding would be accessible to the industry.

II. ECONOMIC IMPACT PAYMENTS

- This provision would authorize and **appropriate funds for two rounds of direct payments to individual taxpayers**, to be administered by the IRS and Bureau of the Fiscal Service.
 - **\$250 billion to be issued beginning April 6**
 - **\$250 billion to be issued beginning May 18**
- Payment amounts would be fixed and tiered based on income level and family size.
- Treasury is modeling specific options.
 - Each round of payments would be identical in amount.

IV. SMALL BUSINESS INTERRUPTION LOANS

- To provide continuity of employment through business interruptions, this provision would authorize the **creation of a small business interruption loan program and appropriate \$300 billion** for the program.

- The U.S. government would provide a 100% guarantee on any qualifying small business interruption loan.
 - Qualifying loan terms:
 - **Eligible borrowers: Employers with 500 employees or less (phased out)**
 - Loan amounts: 100% of 6 weeks of payroll, capped at \$1540 per week per employee (approx. \$80,000 annualized)
 - Borrower requirement: Employee compensation must be sustained for all employees for 8 weeks from the date the loan is disbursed.
 - Lender: U.S. financial institutions
 - Streamlined underwriting process: Lender verifies the previous 6-week payroll amount and later verifies that the borrower has paid 8 weeks of payroll from date of disbursement.
 - Authority for the Treasury Department to issue regulations establishing appropriate interest rate, loan maturity, and other relevant terms and conditions.
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ACTION ITEMS

Call your Members of Congress and Senators today (and keep calling) and ask them to do the following:

- As financial assistance measures are being considered in Phase III, any assistance to industries impacted by significant sales reductions due to the coronavirus **must include direct and targeted assistance for the restaurant industry.**
- Recommend restaurants be deemed essential businesses should any lockdown be ordered at the federal level. This will help secure the country's food supply and increase access to food in areas underserved by grocery stores.
- Funding for paid leave payments to employees required in H.R. 6201 must be available up-front in order to protect restaurant solvency. Guidance for employers released immediately to alleviate cash flow concerns.
- Share your story of how you and your employees are being impacted.

U.S. Senate Switchboard - (202) 224-3121

Contact list for every Senate office: https://www.senate.gov/general/contact_information/senators_cfm.cfm

U.S. House Switchboard - (202) 224-3121

Contact list for every House office: <https://www.house.gov/representatives>

QUESTIONS?

Inspire Brands Government Relations sends a monthly newsletter to shared services leaders and company and franchise operators to highlight current and emerging business, public policy and political trends impacting the Inspire family of brands.

Tim Ehlert leads Inspire Government Relations and advocates on issues at the federal, state and local level. If you have questions or comments on any of the topics discussed, please don't hesitate to reach out.

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