



Many retailers are seeing reduced foot traffic in their stores resulting in reduced revenue and having to make difficult decisions regarding their valuable employees.

A number of state and federal measures have recently been adopted to offer employers and employees relief during this unprecedented time.

- **The United States Congress took steps with regards to mandated paid sick leave and additional leave that is similar to that afforded under the Family and Medical Leave Act. (Link to comparison chart at: <https://bit.ly/FFchart>).**
- **In North Carolina, Governor Cooper issued Executive Order 118 which included measures addressing unemployment insurance.**
- **Additionally, Small Business Administration Loans are also now available.**

Below is a breakdown of updates on these three programs.

1. STATE LEVEL UNEMPLOYMENT INSURANCE UNDER COVID-19

Executive Order 118 issued by Governor Cooper on March 17, 2020 provides additional options to employees who are separated from their employment due to COVID-19. In summary, Governor Cooper's Executive Order removes barriers to unemployment for applicants to by expediting the filing and processing of unemployment claims and receipt of benefits.

A. Eligibility Due to COVID-19

Under Governor Cooper's Executive Order, issued in accordance with North Carolina law, employees will be eligible for unemployment benefits compensation under any of these four conditions:

- 1) The employee is separated from their employment due to COVID-19;
- 2) The employee had their hours of employment reduced due to COVID-19;
- 3) The employee cannot work because of a medical condition caused by COVID-19 or due to communicable disease control measures.
- 4) The employee is subject to a quarantine or is directed to remain in isolation related to COVID-19 by a federal, state or local government authority or a medical or public health professional.

B. Removal of Barriers for Unemployment Insurance Benefits

Governor Cooper's Executive Order reflects an attempt to provide additional flexibility by providing waivers to North Carolina's general unemployment insurance law:

- 1) Employees separated from employment due to COVID-19 are not required to wait one week from the separation of their employment before applying for unemployment insurance benefits.
- 2) Employees separated from employment due to COVID-19 are not required to look for work in order to be eligible for unemployment insurance benefits.
- 3) Applicants for unemployment insurance due to COVID-19 can file for benefits online.

- 4) The Employers' unemployment experience rating will not be affected for unemployment filings due to COVID-19. The Employment Security Commission of the North Carolina Department of Commerce will not allocate charges to the employers' accounts for individuals who are paid benefits for reasons related to COVID-19. The NC Department of Commerce will separately account for these expenditures allowing the State of North Carolina to seek reimbursement from the federal government.

*Note: there will likely be at least a ten (10) day lag from the time the separated employee files for unemployment insurance and when benefits begin because, statutorily, the employer must be provided at least ten (10) days to respond to the unemployment claim. The ESC has stated that if the employee and employer both note that the unemployment claim is COVID-19 related that the claim will be expedited.

C. Attached Claims

One of the major changes in the unemployment insurance benefits that are available under COVID-19 applies specifically when the employer retains the employee, but reduces their hours. Employers need to file what is called an "attached claim." In order to file an attached claim, either the employee may file directly online or the employer may file on behalf of the employee through an [attached claim](#). An attached claim is a claim filed by an employer on behalf of an employee who has been temporarily laid off or who has worked less than 60% of the customary scheduled full-time hours.

D. Application Process

As stated above, employees can apply for unemployment benefits without having to wait a week and can do so remotely by utilizing this link <https://des.nc.gov/apply-unemployment/filing-your-unemployment-application>. Should you or your employee have questions about the unemployment insurance process please go to <https://des.nc.gov/apply-unemployment/before-you-apply> or call the Employment Security Commission's Customer Call Center at 888-737-0259, Monday through Friday, from 8 am to 4:30 pm.

The Employment Security Commission also has additional resources available to assist employers and employees including this short video <https://www.youtube.com/watch?v=Ae2fycW2cLM&feature=youtu.be> as well as a list of frequently asked questions <https://des.nc.gov/need-help/faqs/unemployment-insurance-faqs>

2. EMERGENCY PAID SICK LEAVE ACT

Federal legislation – HR 6201 - enacted on March 18, 2020, requires employers with LESS than 500 employees to provide two (2) weeks of paid emergency leave immediately to ALL employees if the employee has a qualifying need related to the COVID-19 public health emergency. This new requirement will be effective April 1, 2020 and will remain in effect until December 31, 2020.

A. Paid Sick Leave Requirement

Employers are required to immediately provide each employee two (2) weeks of paid sick leave to the extent that the employee is unable to work (or telework) because of the following reasons related to COVID-19:

- 1) The employee is subject to a federal, state, or local quarantine or isolation order;
- 2) The employee has been advised by a health care provider to self-quarantine;
- 3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- 4) The employee is caring for an individual to which provisions (1) or (2) above apply;

- 5) The employee is caring for a child if the child's school or place of care has been closed due to COVID-19 precautions; or
- 6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Labor and the Treasury.

B. Compensation for Care of Family Members

- 1) Employees are entitled to the equivalent of two weeks of pay for sick leave.
 - a) For full-time employees this equals eighty (80) hours of pay
 - b) For part-time and hourly employees this equals the number of hours the employee works on average over a two-week period.
- 2) Rate of Pay
 - a) For employees who are taking paid sick leave for reasons listed in provisions (1) through (3) above the employee would be paid their full rate of pay not to exceed \$511 per day or \$5,110 for ten days.
 - b) For employees who are taking paid sick leave for reasons listed in provisions (4) through (6) the employee would be entitled to two-thirds of their pay up to \$200 per day not to exceed \$2,000 for ten days.

C. Miscellaneous

- 1) Employers are not required to allow employees to carry over paid sick leave from one year to the next.
- 2) An employer may not require an employee to use existing paid leave provided by the employer before the employee uses paid leave provided under HR 6201.
- 3) An employer who does not provide paid leave required by HR 6201 is considered to have failed to pay minimum wage in violation of the Fair Labor Standards Act (FLSA) and is subject to FLSA penalties and remedies.
- 4) The United States Secretary of Labor is directed to issue guidelines to assist employers in calculating the amount of paid sick leave within 15 days.
- 5) An employer is not required to reimburse an employee for unused sick leave following an employee's termination, resignation, retirement, or other separation from employment.
- 6) The United States Secretary of Labor has the authority to:
 - a) Issue regulations for good cause to exempt businesses with fewer than 50 employees from the requirements of the above point A.5) when the imposition of such requirements would jeopardize the viability of the business;
 - b) Exclude certain health care providers and emergency responders from these requirements, including by allowing such employers to opt out;

3. OVERVIEW OF EMERGENCY FAMILY MEDICAL LEAVE UNDER HR 6201 RELATED TO COVID-19

- 1) Amends the Family and Medical Leave Act (FMLA) to require employers with LESS than 500 employees to provide all employees paid leave because of a qualifying need related to a public health emergency.
- 2) Changes eligibility requirements for FMLA leave to include employees who are taking care of a child that is out of school to COVID-19
- 3) This requirement is effective April 1, 2020 and expires on December 31, 2020.

A. Paid Leave Mandate

- 1) The first 10 days for which an employee takes the “emergency” FMLA leave may consist of unpaid leave.
- 2) An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave provided by the employer in lieu of this unpaid leave, including utilizing the new two weeks of federally mandated emergency paid sick leave as outlined in H.R. 6201, previously described in this memo.
- 3) The remainder of emergency FMLA leave taken by an employee must be paid leave provided by the employer. A covered employer must provide at least ten (10) weeks of qualifying paid emergency FMLA leave to a covered employee.
- 4) When combined with the newly required federal sick leave pay, the employer must pay for a total of twelve (12) weeks of total leave.

B. Employer Pay Calculation

- 1) Employees must be paid at least two-thirds of their regular rate of pay and reflect the number of hours an employee would otherwise be normally scheduled to work.
- 2) The paid leave shall not exceed \$200 per day and \$10,000 in the aggregate over the ten (10) weeks.

C. Which Employees Are Eligible for Emergency FMLA Leave

- 1) An employee who has been employed for at least thirty (30) days by the employer is eligible for the new leave entitlement.
- 2) This differs from current FMLA law which requires that an employee be employed for at least 12 months and for at least 1,250 hours with the covered employer during the previous 12-month period to be eligible for leave.
- 3) Also, note that employees are eligible for two weeks of the new federal paid sick leave on day one of their employment while the emergency FMLA leave requires thirty (30) days of employment to be an eligible employee.

D. Qualifying Event for Emergency FMLA Event

- 1) An employee may only take the “emergency” FMLA leave if the employee is unable to work (or telework) due to a need to care for the employee’s child if the child’s school or place of care has been closed due to a public health emergency
- 2) A “public health emergency” is an emergency with respect to COVID-19 declared by a federal, state, or local authority.

E. Miscellaneous

- 1) Employers with fewer than 50 employees are not subject to a private right of action brought by an employee under the FMLA’s civil enforcement provisions, including for damages and attorney’s fees.
- 2) Employers of a health care provider or an emergency responder may elect to exclude such employees from Emergency FMLA Leave requirements.
- 3) The United States Secretary of Labor has authority to exempt the following from the Emergency FMLA Leave:
 - a) Certain health care providers and emergency responders from the definition of eligible employee;
 - b) Employers with fewer than 50 employees if the requirements of the Emergency FMLA Leave would jeopardize the viability of the business as a going concern.
- 4) Employers with fewer than 25 employees are not required to restore the employee to their position upon completion of emergency FMLA leave if:

- a) the position does not exist due to economic conditions caused by the public health emergency;
- b) the employer makes reasonable efforts to restore the employee to an equivalent position; and,
- c) an equivalent position does not become available in the following year.

Will my business be eligible for assistance through the Small Business Administration Disaster Loan Assistance Program in response to the Coronavirus?

The U.S. Small Business Administration is offering designated states and territories low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of the Coronavirus (COVID-19). At Governor Cooper's request, the entire state of North Carolina has been designated as a disaster area which means NC businesses who have been adversely impacted are eligible to apply for assistance. [Click here for more info on these SBA loans.](#)

Please note that while this document is intended to help you comply with North Carolina and Federal law, it is in no way intended to serve as legal advice. Please consult a licensed attorney to address more specific questions that may arise concerning this issue.