

BY TIMOTHY NOAH AND CRISTINA RIVERO

PRO POINTS

- **The coronavirus pandemic created an urgent need for workers to stay home if they get sick from Covid-19, or if one of their family members gets sick from the virus and needs care, or if their young child's school is closed due to the virus and they need looking after.**
- **Nearly all businesses have been required since 1993 to offer their workers 12 weeks' unpaid leave. A coronavirus bill signed into law in mid-March added, on a temporary basis, an obligation that small businesses (fewer than 500 workers) extend to their employees two weeks' coronavirus-related sick leave at full pay and 10 weeks' family leave at two-thirds pay.**
- **The bill allows these small businesses to recoup whatever they spend to fulfill these paid leave mandates by suspending employee tax withholding and, if that's insufficient, by receiving accelerated IRS payments.**

HOW WE GOT HERE

A handful of states, including California and New York, require employers to provide their employees paid leave, but the federal government ordinarily does not. Democrats have been clamoring for years to legislate a paid leave mandate for businesses large and small.

President Donald Trump, at the prodding of his daughter and White House aide, Ivanka Trump, has also endorsed a paid leave mandate, and Ivanka helped craft a succession of legislative proposals that never moved forward in Congress, usually because of their cost to businesses or taxpayers. An exception was a paid leave mandate for federal workers that was added to a must-pass Pentagon spending bill in December.

That provision came as an end-of-the-year surprise, and likely made it incrementally harder for Congress to deny private-sector workers some form of paid leave during the coronavirus crisis.

Expanded access to paid leave

The Department of Labor estimates that as many as 61 million workers may be eligible for paid coronavirus leave under Congress' Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act, effective April 1 through Dec. 31, 2020.

Businesses with fewer than 500 employees are required to offer:



2 weeks

PAID SICK LEAVE if quarantined or ill with Covid-19; to care for ill or quarantined family members; to care for kids due to school closures.



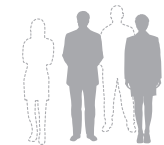
10 weeks

PAID FAMILY LEAVE to workers who are caregivers due to school or child care closures.

Employer exemptions from providing paid leave to workers during Covid-19



Businesses with 50 or fewer workers that can demonstrate providing paid leave, absent other financial struggles, would put them out of business.



Employers who furloughed workers because no work existed for employees to perform.



Employers closed for lack of business or directed to close by local, state or federal government.



Employers may exclude health care providers and emergency responders from expanded leave requirements.

Sources: Department of Labor, Federal Register, POLITICO staff reports

WHAT CONGRESS DID

The paid leave mandate in the coronavirus bill signed into law on March 18 is different from these prior efforts because it's temporary (it's set to expire Dec. 31); because the paid leave in question must be connected to coronavirus; and because the federal government will pick up the tab, with no plan to increase taxes to cover the cost. Another difference is that the bill applies only to businesses with fewer than 500 employees, on the theory that large businesses already provide paid leave. (In truth, although 89 percent of all businesses of that size offer their employees sick leave, less than one-third offer paid family leave.)

The bill requires employers to offer two weeks' paid sick leave to workers who are sick or quarantined with coronavirus (at full pay) or who are taking care of family members who are sick or quarantined with the virus, or who are taking care of young children whose schools have been closed (at two-thirds' pay). It also requires employers to offer 10 weeks' paid family leave (at two-thirds' pay) for workers who must look after young children whose schools are closed or whose child care is unavailable due to coronavirus.

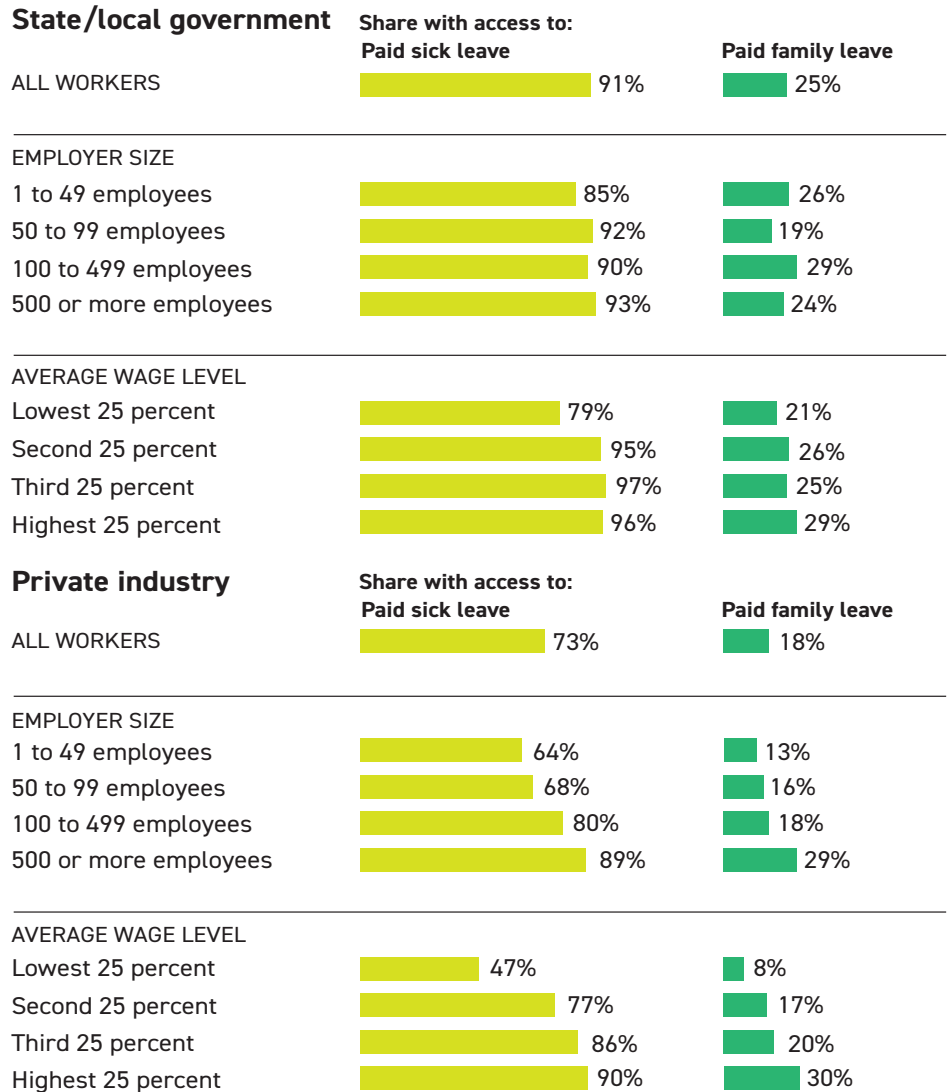
Under the bill, employers can pay for the leave by suspending employee tax withholding and, if that isn't enough to cover the cost, by receiving an accelerated payment from the IRS.

Government workers more likely to receive paid leave

The U.S. Bureau of Labor Statistics' March 2019 National Compensation Survey reported that state and local government workers were more likely to receive paid leave and paid family leave to take care of themselves and family members during illness than employees in private industry.

The data also found that the larger the employer and higher the average wage level, the greater the share of workers with access to paid sick leave and family leave benefits.

The National Defense Authorization Act for 2020 signed by President Donald Trump in December 2019 grants federal workers 12 weeks' paid leave for the birth, adoption, or foster care of a new child, starting Oct. 1, 2020.



Sources: Bureau of Labor Statistics, 2019 National Compensation Survey, U.S. Office of Personnel Management

WHAT'S NEXT

Congressional Democrats say the paid-leave bill, and in particular Labor Department guidance implementing it, are too restrictive, and they will push to expand it in various ways.

Sen. Elizabeth Warren (D-Mass.) on April 13 introduced an “essential worker bill of rights” that would extend emergency paid-leave coverage to health care workers, who were excluded from the March bill. Sen. Patty Murray (D.-Wash.) and Rep. Rosa DeLauro (D.-Conn.) complained that the Labor Department, in its guidance interpreting the health-care worker exclusion, defined health care workers too broadly, sweeping in “nearly any employee who happens to work for an employer who also employs a health care provider, works at any type of quasi-medical facility, works as an employee contracted for non-healthcare services in a facility that houses a health care provider, or merely works in the medical supply chain.”

Murray and DeLauro have called for paid leave to be established on a permanent basis for workers in small and large businesses alike, and they can be expected to press the matter when emergency paid leave expires at the end of the year. The Republican-controlled Senate won't likely be hospitable to such an effort, but Ivanka Trump's advocacy for paid leave makes the outcome at least a little bit unpredictable.

POWER PLAYERS



Eugene Scalia

Scalia has come in for some criticism from congressional Democrats for guidance his department issued that limited eligibility for paid leave in various ways.



Sen. Patty Murray (D-Wash.)

Murray is, along with Rep. Rosa DeLauro (D-Conn.), a longstanding advocate for paid family leave. Expect Murray and DeLauro to press to add larger businesses to the paid leave mandate, or to seek ways to make some version of it permanent.



Ivanka Trump

The Trump administration's most impassioned advocate for paid family leave, an idea about which most congressional Republicans are skeptical. If Ivanka weren't pressing for it, it's doubtful her father would advocate it, given his distaste for regulations.