



The Council of School Attorneys (COSA) is a program of NSBA, supporting school attorneys in their representation of public school boards by providing leadership in legal advocacy for public schools.

COSA provides a national forum for the discussion of legal issues and problems encountered by school attorneys in providing legal counsel, advice, and representation to school boards and school boards associations. It also promotes and helps develop a closer relationship and better understanding between school attorneys and their clients, school boards and school boards associations. For more information on COSA and the benefits of membership, visit <https://www.nsba.org/Services/Council-of-School-Attorneys/Member-Benefits>.

Families First Coronavirus Response Act (H. R. 6201) FAQ

<https://www.congress.gov/bill/116th-congress/house-bill/6201/text/eh>

MEALS FOR STUDENTS

1. How can we help our students be food-secure while our schools are closed?

The United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) says that all USDA/FNS nutrition assistance programs, including SNAP, WIC, and the child nutrition programs, have flexibilities that allow them to respond to on-the-ground realities and support response and recovery efforts. See, <https://www.fns.usda.gov/disaster/pandemic/covid-19>.

These programs are primarily administered at the state level and operated locally. States have a number of flexibilities that they may use without further approval from USDA to address the needs of participants during a public health emergency including:

- *In SNAP*, state agencies can allow applications online (including via mobile app), by mail, or telephone, can extend certification periods to the maximum available, and can streamline the program by exempting households from certain requirements for good cause.
- *In WIC*, states may postpone certain lab tests for up to 90 days, extend certification periods for up to 30 days, and provide up to three months of benefits in advance.
- *In school meals and other child nutrition programs*, states may combine operations from multiple entities to serve and claim meals at a centralized location and expedite approval of summer feeding sites that may operate during unanticipated school closures.

- *In the food distribution programs*, states have flexibility to adjust for the types of commodities provided in The Emergency Food Assistance Program (TEFAP), and to provide deliveries to homes or other convenient pick-up points, or allow participants to have a trusted representative pick up their food packages from the Food Distribution Program on Indian Reservations (FDPIR) or the Commodity Supplemental Food Program (CSFP).

2. What flexibility do the new provisions (HR 6201) passed by Congress allow for school meals?

The Act provides the Secretary of Agriculture the authority to issue waivers for state plans that increase costs to the federal government.

Child and adult care centers may provide non-congregate meals (Food may be taken to go).

The Secretary of Agriculture may waive meal pattern requirements in child nutrition programs if there is a disruption to the food supply as a result of the COVID-19 emergency.

The Secretary of Agriculture may issue nationwide school meal waivers during the COVID-19 emergency, eliminating paperwork for states and helping more schools quickly adopt and utilize flexibilities.

3. Are there additional school meals program requirements that can be waived with permission from the USDA?

Yes. States can apply for waivers allowing additional flexibility in delivering meals. Most states have applied for and received waivers. These waivers enable “Summer Food Service Program (SFSP) and National School Lunch Program Seamless Summer Option (SSO) sponsors to serve meals in a non-congregate setting and at school sites during school closures related to the coronavirus.” The list of states and territories who’ve already received waivers is available on the USDA website at <https://www.fns.usda.gov/disaster/pandemic/covid-19>.

4. What flexibility might a waiver provide?

Waivers are currently being handled on a case-by-case basis. Generally, schools may leverage participation in one of USDA’s summer meal programs to provide meals at no cost to students. The law also allows USDA to waive the group-setting meal requirement during a public health emergency.

According to the USDA, it may grant waivers from certain program requirements. These options are even more robust in the event of a Major Presidential Disaster Declaration allowing individual assistance:

- *In SNAP*, USDA/FNS can explore additional opportunities and flexibilities to help states streamline program administration and provide access for SNAP participants.
- *In WIC*, USDA can allow states to conduct certification online or by phone, waive certain documentation requirements when they present an unreasonable barrier to participation, and allow states the option to substitute certain food package items with similar items when WIC-approved foods are unavailable.

- *In school meals and other child nutrition programs*, USDA can waive the requirements that meals are served in group settings, allow meals to be served at school sites during unanticipated school closures, allow school program operators to modify meal components or service times, and waive certain administrative requirements. When a Federal Major Disaster Declaration has been issued, USDA can allow summer and child care operators to modify meal components, and waive additional administrative requirements.
- *In the food distribution programs*, USDA can allow state flexibility to set TEFAP income eligibility, certification duration, method of certification, and residency requirements, allow flexibility in the foods included in the CSFP and FDIIR food packages when approved foods are unavailable, and in major Presidential disaster declarations allowing individual assistance and certain other emergency situations, allow states to provide a household commodity distribution program without verification of residency or income.

5. What are other school districts doing to provide meals for students?

- Providing grab-and-go meals (breakfast and lunch) at selected school sites for all children under the age of 18
- Making grab-and-go meals available to adults for a small fee (\$2)
- Providing drive-through pick-up service for grab-and-go meals
- Community organizations are helping by providing breakfast and lunch, as well as bags of non-perishable food items to prepare at home (New Rochelle, NY).
- Florida has set up a website identifying locations where children under the age of 18 can find free meals.
- Numerous restaurants across the country are providing free meals to kids under the age of 18.
- In one Oregon school district (North Marion), buses are being used to deliver grab-and-go meals.
- County public school districts throughout West Virginia are set to provide free meals to students who are on an extended break in response to the coronavirus pandemic. Counties are making food pickups available to schoolchildren at schools or designated locations. The state Department of Education reports that more than 500 sites are being used for meal distribution. Some counties also are using school buses to deliver the meals at stops along regular bus routes.
- The Louisiana Department of Education published a parish-by-parish list of school meal sites to inform families where, when and how free food can be accessed. The [list](#), which is accessible on the LDOE's dedicated Coronavirus Disease 2019 (COVID-19) webpage on its website and on its Child Nutrition Program (CNP) website, will be continually updated as more information is received. School systems operating meal programs that are not listed should update their CNP application.
- Danville Area School District (PA) announced a full plan to feed students. According to superintendent Ricki Boyle, pickup for breakfast and lunch will be available each day for students receiving free or reduced lunches.
- Montgomery County Public Schools (MD) offers 20+ sites that provide 3 "Grab-N-Go" meals per weekday for children under 18.

6. Is further assistance available?

The USDA encourages states to work with local public health officials, in coordination with other federal, state, and local programs, to understand the conditions and constraints under which these may be most appropriate and effective.

In addition, many USDA nutrition assistance programs have contingency funds and other reserve funding to cover any increases in enrollment that may result from an outbreak or pandemic.

The USDA announced a private partnership with the Baylor Collaborative to help feed students in rural areas. More information is available online at <https://www.fns.usda.gov/news-item/usda-019520>.

LEAVE FOR SCHOOL EMPLOYEES

1. What sick leave does the Act require, and how is it calculated?

There are new provisions that apply to emergency sick leave and make temporary changes to the Family and Medical Leave Act of 1993 (FMLA).

Local, state, and federal government employees, employees at companies with fewer than 500 employees, and employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan are eligible for the new sick leave benefits. These full-time employees are entitled to 80 hours (two weeks) of paid sick leave to self-quarantine, seek preventive care or a diagnosis, or receive treatment for COVID-19. The benefit for full-time employees is capped at \$511.00 per day. Part-time employees are also entitled to paid time off to self-quarantine, seek preventive care or a diagnosis, or receive treatment for COVID-19. The paid time off for part-time employees is capped at \$511.00 per day for the average number of hours that they work in a typical two-week period.

If a full-time employee needs to care for a family member, or a child whose school or childcare provider is closed due to COVID-19, that employee is entitled to 80 hours (two weeks) of paid sick leave at two-thirds of their regular pay (capped at 200.00 per day). Part-time employees are entitled to the average number of hours they work in a typical two-week period at two-thirds of their typical pay (capped at \$200.00 per day).

The bill also addresses temporary changes to FMLA that would require government employers or those employers who have 50 or more employees to provide employees with an initial 10-days of unpaid sick leave if they are affected by the Coronavirus. This would be followed by paid leave equal to at least two-thirds of their normal pay. There are caps on this of \$200 per day or \$10,000 in the aggregate.

Within 15 days after the date of the enactment of the Act, the Secretary of Labor will issue guidelines to assist employers in calculating the amount of paid sick time.

2. Does it apply to school districts?

Yes. The emergency sick leave provision and FMLA changes apply to state and local governments. Because school districts are either political subdivisions, part of a city government or an arm of state government, they are covered by the Act.

3. Who bears the financial burden?

Employers will initially front the costs of sick leave wages; however, they will be reimbursed for 100% of those costs through a tax credit by the federal government within three months. The costs will be paid through a refundable tax credit against the Social Security payroll tax imposed on employers. The reimbursement will cover not only wages paid, but also the employer's contribution to employee's health insurance premiums. If the sick leave payments costs exceed the Social Security tax bill, the federal government will reimburse the employer to cover the remaining costs.

The United States, state governments and local governments are specifically excluded from the tax credit. As things now stand, there is nothing in place to provide federal, state and local governments, including school districts, with any reimbursement for the cost of the additional paid leave required by the bill.

Private employers will receive tax credits against the tax imposed by section 3111(a) or 3221 (a) of the Internal Revenue Service Code of 1986 (payroll) for each calendar quarter an amount equal to the 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter. However, this credit does not apply to the Government of the United States, the Government of any State or a political subdivision thereof, or any agency or instrumentality of the foregoing. Therefore, it does not apply to public school districts.

4. Is this above and beyond the sick leave employees already have?

Yes. This provides benefits above and beyond what employers already provide to employees.

5. How does it apply to part time employees?

It applies to part-time employees as described in FAQ #1.

6. When will funds be made available?

Sick leave benefits will be made available immediately to employees and funds should be available within 15 days of enactment of the bill.

7. What are the effective dates?

This program will become effective within 15 days of enactment and remain in effect until December 31, 2020.

8. Does the federal grant sunset? When? How?

Yes. The provisions will sunset on December 31, 2020. The bill does not specifically say how.

9. Does there need to be a state declaration of emergency to access the funds?

The bill does not specifically say whether a state needs to make a declaration of emergency to receive assistance for paid sick leave benefits. However, the bill includes terms for the Department of Labor to allocate \$1 billion of emergency unemployment insurance (UI) benefit funding to the states. \$500 million will be allocated to states for increased staffing, administrative, and technology costs associated with providing UI funding to states. The remaining \$500 million will be used for emergency grants to states that may have at least a 10% increase in unemployment. To receive these emergency grants, states must demonstrate that they have or are willing to ease eligibility requirements and access to unemployment compensation for workers impacted by COVID-19.