

Pandemic Led 14% Of Biz Locations To Boost Paid Sick Leave

By **Tim Ryan**

Law360 (December 8, 2020, 3:49 PM EST) -- The coronavirus pandemic caused about 14% of business establishments in the United States to increase the amount of paid sick leave they offer their employees since January, according to data the U.S. Bureau of Labor Statistics released on Monday.

According to estimates drawn from a survey the bureau conducted to evaluate how businesses responded to the pandemic, about 28% of private-sector employees, or 35 million people, worked at an establishment that expanded leave, though not all workers necessarily received the increased benefit.

As a whole, the new data reveals the broad changes the pandemic has brought to businesses and workers, including increased telework, falling demand for products and cuts to payroll and hours for workers.

The data found that 52% of establishments told their employees not to work due to the pandemic at some point since January, with 51% of those continuing to pay at least some of their workers while they were away. In addition, about 30% of establishments cut hours and 11% slashed salaries and wages, according to the survey.

Utilities establishments outpaced businesses in the other industries included in the survey on providing increased paid sick leave, with more than a quarter of establishments in the industry increasing the benefit due to the pandemic. Arts and entertainment and educational services had among the lowest marks of the surveyed industries, with 7.1% and 9.9% increasing paid sick leave, respectively.

The discrepancies in the extent to which establishments increased paid sick leave roughly mirrored which industries faced a government-mandated closure, as 48% of arts and entertainment and 40% of educational establishments were ordered closed at some point during the pandemic, compared with 5% of utilities establishments.

The survey defined establishments as a single location where a business operates. The Bureau of Labor Statistics considers an establishment to have expanded paid sick leave if it gave the benefit to workers who did not have it before the pandemic or if it increased how much paid sick leave workers could use.

Congress expanded paid sick leave in March as part of the Families First Coronavirus Response Act, requiring employers with fewer than 500 employees to offer two weeks of paid sick leave. The U.S. Department of Labor issued a regulation implementing the law, but the rule faced swift challenge from

New York, which sought to expand its reach.

In August, a New York federal judge said the agency didn't justify its decision and blocked portions of the rule, leading the agency to issue a revised version in September. The revised regulation retained the previous version's provision that employees can take the enhanced leave under FFCRA "only if the employee has work from which to take leave."

Susan Harthill, a partner at Morgan Lewis & Bockius LLP and former deputy solicitor for national operations for the U.S. Department of Labor, told Law360 that it is difficult to draw a definitive conclusion about the reason behind the variance in sick leave offered by different industries, but that the regulation could be one of a number of factors.

Sherry Leiwant, the co-president of the paid leave advocacy group A Better Balance, said the relatively small share of businesses offering expanded paid sick leave is also due to what she deemed a lack of outreach from the DOL explaining the new requirements to employers and workers.

"We've been concerned that there wasn't enough outreach and education to both employees and to employers about the provisions in that act and the Department of Labor was supposed to do that, but they didn't really," Leiwant told Law360, referring to FFCRA.

States and cities have taken their own steps to boost the number of workers eligible for paid leave, including Philadelphia and California.

The boosted paid sick leave in FFCRA is set to expire at the end of the year, and Harthill noted that beyond the legal requirements, some businesses have provided leave on their own.

"We talk about the government mandate leave, but some employers are offering COVID-related leave without being required to without a state or local or federal law," Harthill said.

--Editing by Haylee Pearl.

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