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Congress Passes Major COVID-19 Legislation Providing Emergency Family Medical and Sick Leave Rights to Employees

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Congress Passes Major COVID-19 Legislation Providing Emergency Family Medical and Sick Leave Benefits to Employees

By Ali P. Hamidi, Dwayne P. McKenzie and Cathy T. Moses

The Senate passed yesterday the Families First Coronavirus Response Act, following an earlier version of the bill (H.R. 6201) which passed the House on March 14. This economic stimulus legislation seeks to address the impact of COVID-19 in part by requiring that employers provide paid medical leave and sick leave benefits to employees affected by the pandemic. The law, which the President signed yesterday evening, goes into effect on April 2 and will stay in effect through December 31, 2020.

Among the various forms of relief provided – such as free coronavirus testing, enhanced unemployment insurance and funding for state unemployment insurance benefits, additional funding for Medicaid and providing protection for health care workers and employees responsible for cleaning at risk places – the legislation makes significant changes to the existing Family and Medical Leave Act (“FMLA”) by including paid emergency family leave and provides paid sick leave benefits under the Emergency Paid Sick Leave Act.

The paid medical and sick leave provisions apply to private employers with fewer than 500 employees. Employers with fewer than 50 employees can apply for an exemption from providing the emergency paid family leave and sick leave if it would jeopardize the viability of their business. Employers that are required to offer the

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Ali P. Hamidi

Dwayne McKenzie

Cathy T. Moses

emergency paid FMLA or sick leave will be eligible for refundable tax credits equal to 100% of qualified leave amounts.

The following is a summary of the key elements of the emergency paid family leave and sick leave requirements.

Emergency Family and Medical Leave Expansion Act

The family leave provisions expand coverage and eligibility under the FMLA. In addition to applying to employers with less than 500 employees, the new law expands coverage to employees who have worked for the employer for at least 30 days prior to the designated leave. Thus, many employers who were not previously subject to FMLA requirements are now subject to emergency family medical leave obligations.


Paid, job-protected emergency family medical leave may be taken by eligible employees, who are unable to work or telework, for up to 12 weeks to care for a son or daughter (under 18 years of age) 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. A “public health emergency” is an emergency with respect to COVID-19 declared by a Federal, State, or local authority. The previous House version of the bill contained several other COVID-19-related reasons to provide emergency FMLA, but these other grounds were not included in the final bill.

The first 10 days of emergency FMLA leave may be unpaid. Employees can elect to substitute any accrued paid leave (such as vacation, sick or paid time off leave) to cover some or all of the 10-day unpaid period. After the 10-day period, employers must generally pay full-time employees at 2/3 the employee’s regular rate for the number of hours the employee would otherwise be normally scheduled, subject to a limit of \$200 per day and \$10,000 in the aggregate per employee.

For employees other than full time employees, paid leave is based on the average number of hours the employee worked for the six months before taking emergency leave. For employees who have not worked for six months prior to leave, emergency FMLA pay is based on the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

Employers will continue to be required to provide job reinstatement to employees as generally required under the FMLA. However, employers with 25 employees or less are generally excluded from this requirement if the following conditions are met:

- The employee’s position does not exist due to economic conditions or other changes in the operating conditions of the employer which are caused by a public health emergency during the period of leave; and
- The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment; except that if such efforts fail, the employer must make reasonable efforts to contact the employee if an equivalent position becomes available during the one-year period beginning on the earlier of (1) the date on which the qualifying need related to a public health emergency concludes or (2) the date that is 12 weeks after the date on which the employee’s leave commences.



Employers with workers subject to multiemployer collective bargaining agreements may provide for benefits under their multiemployer plans.

Emergency Paid Sick Leave

Private employers are required to provide up to two weeks (80 hours) of paid sick leave (pro-rated for part-time employees) to any employee who is unable to work because:

- 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 due to concerns related to COVID-19.
- 3.The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- 4.The employee is caring for an individual who is subject to either (1) or (2).
- 5.The employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

The Secretary of Health and Human Services may specify additional conditions under which sick leave may be required.

Employers must provide this emergency paid sick leave in addition to leave already provided under the employer's existing leave policies. Employees are immediately eligible for emergency paid sick leave.

Paid sick leave must be provided at the employee's regular rate of pay, unless it is taken for reasons 4 and 5 above, in which case it is to be paid at 2/3 the regular rate. Sick leave pay is limited to \$511 per day and \$5,110 in the aggregate if leave is taken for reasons 1, 2 and 3 above, and \$200 per day and \$2,000 in the aggregate in the event that leave is taken for reasons 4 and 5.

Employers must not retaliate against any employee who takes leave in accordance with the new law. Failure to pay the required sick leave will be treated as a failure to pay wages under the Fair Labor Standards Act. Employers will have to post a notice informing employees of their emergency sick leave rights. The Labor Department is directed to create a model notice no later than March 25.

As with emergency FMLA leave, employers with workers subject to multiemployer collective bargaining agreements may provide for sick leave benefits under their multiemployer plans.