Employer Notice: Families First Coronavirus Response Act Becomes Law

by Sandra L. Rappaport & Emily Leahy

On March 18, 2020, the Senate approved, and President Trump signed H.R. 6201, the “Families First Coronavirus Response Act.” The legislation contains a number of provisions related to employees’ rights to time off and pay, provides tax credits to employers, and includes expanded health services and unemployment provisions. The provisions related to employees’ rights to time off and pay, tax credits, and unemployment are summarized here:

Family Medical Leave Act Expansion (H.R. 6201)

H.R. 6201 expands the FMLA to provide 12 weeks of job-protected paid leave, to be used when an employee is unable to work (or telework) due to a need for leave to care for the employee’s child under 18 years of age, because the child’s school or place of care has been closed, or the care provider of the child is unavailable, due to a public health emergency. “Public health emergency” is an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

Application to Employers: Applies to employers with fewer than 500 employees, and all public employers otherwise covered by the FMLA. The DOL is empowered to issue regulations to exempt employers with fewer than 50 employees if the imposition of the requirements would jeopardize the viability of the business as a going concern.

Eligibility: Employees must have been on the job for at least 30 calendar days. An employer of an employee who is a health care provider or an emergency responder may elect to exclude those employees.

Pay: First 10 days of leave are unpaid. Employees may choose to use accrued vacation, personal or sick leave during the first ten days, but employers may not require employees to do so. After ten days, employer must provide paid leave that will be no less than two-thirds of the employee’s usual pay, based on the number of hours that the employee would otherwise be normally scheduled to work, up to a maximum of $200 per day and $10,000 in the aggregate.

Job Restoration: Employers of fewer than 25 employees are not
required to restore an employee to his or her position if the position held by the employee does not exist due to economic conditions or other changes in operating conditions that affect employment and are caused by a public health emergency during the period of leave. In that situation, the employer must make reasonable efforts to restore the employee to an equivalent position and if none are available, notify the employee over the next year if an equivalent position becomes available.

**Effective Date:** Takes effect not later than 15 days after the date of enactment, so by April 2, 2020.

**Emergency Paid Sick Leave**

H.R. 6201 requires employers to provide employees two weeks (80 hours) of emergency paid sick leave to be used for time off in specific circumstances.

**Uses**

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- The employee is caring for an individual who is subject to a quarantine or isolation order or has been advised to self-quarantine;
- The employee is caring for the employee’s child if the child’s school or place of care has been closed, or the child care provider of the child is unavailable, due to COVID-19 precautions;
- The employee is experiencing any other "substantially similar condition" specified by the Secretary of Health and Human Services.

**Application to Employers:** Applies to private employers with fewer than 500 employees and public employers with at least one employee. The DOL is empowered to issue regulations to exempt employers with fewer than 50 employees if the imposition of the requirements would jeopardize the viability of the business as a going concern.

**Eligibility:** The emergency paid sick time must be available for immediate use by the employee, regardless of how long the employee has been employed by an employer. An employer may elect to exclude any employee who is a health care provider or an emergency responder.

**Rate of Pay**

Paid at the employee’s regular rate where the employee needs the leave for themselves, to a maximum of $511 per day and $5,110 in the aggregate.

Paid at two-thirds the employee’s regular rate where the employee needs the leave to care for another individual who is isolating, or to care for their child due to the closure/unavailability of the school or care provider, to a maximum of $200 per day and $2,000 in the aggregate.

**Amount**

Full-time employees are entitled to 2 weeks (80 hours).

Part-time employees are entitled to the average number of hours that they work in a two-week period.

**Sequencing:** An employee may first use the emergency paid sick time for the purposes described in the
Act.

Prohibition: An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the emergency paid sick time.

An employer cannot require the employee to find a replacement employee as a condition of receiving the paid sick time.

Effective Date: Takes effect not later than 15 days after the date of enactment, so by April 2, 2020.

Expires on 12/31/20

Penalties (under 29 U.S.C. 216; 217)

Tax Credits

H.R. 6201 provides a refundable tax credit equal to 100 percent of qualified paid sick leave wages and qualified family leave wages paid by an employer for each calendar quarter. These credits are only available to those employers that are required to offer these benefits under the bill.

The tax credit is allowed against the tax imposed by section 3111(a) (the employer portion of Social Security taxes). Qualified sick leave wages are wages required to be paid by the Emergency Paid Sick Leave Act, and qualified family leave wages are wages required to be paid by reason of the Emergency Family and Medical Leave Expansion Act.

If the credit exceeds the employer’s total liability under section 3111(a) for all employees for any calendar quarter, the excess credit is refundable to the employer. Employers may elect to not have the credit apply. To prevent a double benefit, no deduction is allowed for the amount of the credit. In addition, no credit is allowed with respect to wages for which a credit is allowed under section 45S.

H.R. 6201 also allows certain qualified health plan expenses that are allocable to qualified sick leave wages or qualified family leave wages to qualify for the tax credits.

Unemployment Insurance

H.R. 6201 provides $1 billion in 2020 for emergency grants to states for unemployment insurance. Half will be transferred to each state 60 days after the enactment of H.R. 6201, if the state meets the following requirements:

- Requires employers to provide notification of potential UI eligibility to laid-off workers
- Ensures that workers have at least two ways (for example, online and phone) to apply for benefits
- Notifies applicants when an application is received and being processed and if the application cannot be processed, provide information to the applicant about how to ensure successful processing.

The remainder will be transferred to states which experience at least a 10 percent increase in unemployment, under the following conditions:

- The State has expressed its commitment to maintain and strengthen access to the unemployment compensation system, including through initial and continued claims.
• The State has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements and the waiting week, and noncharging employers directly impacted by COVID–19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.

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