

Attention Employers: Federal Legislation Appears Imminent Expanding Employee Paid Sick Leave in Response to Coronavirus

By Arthur Brumett II

In the early morning hours of March 14, 2020, the U.S. House of Representatives passed H.R. 6201 the “Families First Coronavirus Response Act” by a vote of 363 to 40. House Speaker Nancy Pelosi announced that a deal had been reached with the Trump Administration regarding the details of the legislation. The Senate is scheduled to begin considering the bill on Monday.

The bill would go into effect 15 days after the date of enactment and expire 1-year after enactment – except the Emergency Paid Sick Leave portion, which would expire on December 31st.

There are several provisions in the bill of great interest and potential impact to employers:

Emergency Family & Medical Leave Act

As characterized by the summary released by the House Appropriations Committee later in the day on March 14th, the bill provides “up to 12 weeks of job-protected leave under the Family and Medical Leave Act.” Only employers of fewer than 500 employees and government employers are covered, and only employees who have been employed for at least 30 calendar days are eligible. In addition, the Secretary of Labor is authorized to exempt health care providers and emergency responders, and to exempt employers with fewer than 50 employees whose business viability would be jeopardized by the bill’s provisions.

The first 14 days may be unpaid (although unpaid leave is essentially eliminated by the Emergency Paid Sick Leave provisions below), but employees have the option to use accrued paid time off during that time. After the first 14 days, employers must compensate employees in an amount that is not less than two-thirds of the employee’s usual pay.

Employees will only be eligible for such pay if on leave for coronavirus-related reasons, which are defined in the statute as:

- To adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus;
- To care for an at-risk family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus; and

- To care for a child of an employee if the child's school or place of care has been closed, or the child-care provider is unavailable, due to a coronavirus.

Emergency Paid Sick Leave Act

This provision requires employers with fewer than 500 employees and government employers to provide employees two weeks of paid sick leave, paid at the employee's regular rate, to quarantine or seek a diagnosis or preventive care for coronavirus.

For other coronavirus leave, emergency sick leave is paid at 2/3 the employee's regular rate of pay. That 2/3 pay leave can be taken to care for a family member for such coronavirus-related purposes or to care for a child whose school has closed, or child care provider is unavailable, due to the coronavirus.

In calculating the 2 weeks of paid leave, full-time employees are entitled to 80 hours, and part-time employees are entitled to the typical number of hours that they work in a typical two-week period.

The bill states that both Acts would go into effect 15 days after the date of enactment and expire on December 31, 2020. Employers would be required to provide employees with notice of the right to leave. Employers should proactively review their policies with an employment law attorney in preparation for making necessary changes to ensure compliance if the bill is enacted.

Tax Credits for Emergency Paid Sick Leave and Paid FMLA

This section provides tax credits for employers paying Emergency Paid Sick Leave or Paid FMLA, including:

- A 100% tax credit, each calendar quarter, for Emergency Paid Sick Leave – credited against quarterly employer taxes. With self-employed individuals, the tax credit is limited to 2/3 in cases of caring for a quarantined family member or a child whose school or child care is closed due to coronavirus. If the credit exceeds quarterly employment taxes, the employer can keep the excess.
- A 100% tax credit, each calendar quarter, for Emergency FMLA Leave – credited against quarterly employer taxes. This credit is capped at \$200 per employee per day and \$10,000 per quarter. With self-employed individuals, the credit is capped at the lesser of \$200 per day or average daily taxable income. If the credit exceeds the employer's quarterly employment taxes, the employer can keep the excess.

Emergency Unemployment Insurance Stabilization and Access Act of 2020

This section provides \$1 billion in 2020 for emergency grants to states for activities related to processing and paying unemployment insurance (UI) benefits, under certain conditions.

\$500 million would be used to provide immediate additional funding to all states for staffing, technology, systems, and other administrative costs, so long as they meet basic requirements about ensuring access to earned benefits for eligible workers. Among them is that states must require employers to (1) provide notification of potential unemployment eligibility to laid-off workers; (2) ensure workers have multiple methods to apply for benefits (e.g., by phone and electronically); and (3) provide notice of application status and how to ensure processing of the employee's application.

Another \$500 million would be reserved for emergency grants (in the same amount as the grant above) to states which experienced at least a 10 percent increase in unemployment. To be eligible a state must demonstrate "steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements and waiting periods, and non-charging employers directly impacted by the coronavirus due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.

If the bill is enacted, it still remains to be seen which states will adopt the necessary changes to receive the additional funding.

Roetzel will continue to monitor the status of this bill closely. Employers should do the same and be prepared to act promptly and accordingly.

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