

BREAKING NEWS: FEDS PASS REVISED PAID LEAVE & OTHER EMPLOYER MANDATES IN RESPONSE TO COVID-19

Labor & Employment Law Update

on March 18, 2020

As we previously reported, on March 14, 2020, the U.S. House of Representatives passed House Bill 6201 (HR6201). The legislation seeks to protect private sector workers and government employees during the COVID-19 pandemic. In the face of some pushback from the “small business community” and other “special interests,” the House subsequently revised the original legislation and delivered it to the U.S. Senate on March 16, 2020. **Today, March 18, 2020, the U.S. Senate passed a modified bill for the President’s signature.** The mandates focus on three (3) primary areas that employers must IMMEDIATELY pay close attention to: 1) PAID LEAVE; 2) EXPANSION OF FMLA LEAVE; and 3) EXPANSION OF UI BENEFITS (including the possible extension of UI benefits beyond 26-weeks). Once signed into law, the mandates are set to expire on December 31, 2020.

1. Paid Sick Leave:

- All private sector employers with LESS THAN 500 employees and all government employers must pay any employee 2-weeks of paid leave (up to 80 hours for full-time workers, and the average number of hours over a standard 2-week period of time for part-time workers).
- All private sector employers with 500 OR MORE employees (regardless of location) are exempt.
- Paid sick leave will be provided to any employee who is not able to work or able to work remotely (“telework”) under the following circumstances:
 - Subject to a government quarantine or isolation order related to COVID -19;
 - Been advised by health provider to self -quarantine due to COVID -19;
 - Experiencing symptoms of COVID -19 and seeking a medical diagnosis;
 - Caring for an individual subject to quarantine order or self -quarantine;
 - Caring for children if schools are closed or their caregiver is unavailable because of a public health emergency ; or
 - A “catch all” category for *other substantially similar conditions* as may be specified by the Secretary of Health and Human Services in consult with other federal agencies.

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- Employers with less than 50 employees may be exempt from this paid sick leave mandate. The U.S. DOL will publish regulations that will guide small employers on the exemption process. The exemption will be triggered if the “viability” of the business is in jeopardy — due to the mandates. There is also an exemption for health care workers and emergency responders.
- Such paid sick leave appears to be NOT *in addition to* other paid sick leave policies or local/state mandates. Also, there is nothing prohibiting an employer from changing its voluntary paid time off policies after the effective date.
- The amount of paid leave is capped. Employees are compensated at the higher of their regular rate of pay, the federal minimum wage, or the local minimum wage, but not to exceed \$511 per day and \$5,110 in the total.
- However, if an employee must care for a sick family member, a child unable to attend school, or because they meet the criteria for “similar conditions,” then they are to be paid 2/3rds of the rate of their regular rate of pay, but not to exceed \$200 per day and \$2,000 in total.
- Each quarter, private sector employers are entitled to a tax credit equal to 100% of the qualified sick leave wages paid.
- The tax credit will be applied against the employer’s Social Security taxes.
- Due to concerns over an employer’s cash flow, the U.S. Treasury Secretary has broad regulatory authority to help employers meet their financial obligations while awaiting the tax credit.
- The employer can also seek a tax credit to offset any costs of continuing to provide health insurance while the worker is utilizing this benefit.
- The payments made under these mandates are not considered wages for Social Security payroll tax purposes.
- Interestingly, the self-employed can also receive the same tax credits as if they were employed by an employer under the new paid sick leave mandate.

2. Paid Family and Medical Leave (FMLA):

- All private sector employers with LESS THAN 500 employees and all government employers must provide any employee (who has been employed for 30 calendar days or more) up to 12 weeks of paid family and medical leave (FMLA) in order to care for children (under 18), if and when: a) schools are closed or daycare is unavailable because of the current emergency and b) the employee is unable to work or work remotely (“telework”).
- There is no 75 mile radius or hours worked requirement.
- All private sector employers with 500 OR MORE employees (regardless of location) are exempt.
- After 10 days (or what would likely be the equivalent of the paid sick leave mandate as summarized above), an eligible employee would be entitled to additional pay at the rate of 2/3rds his or her regular rate of pay.

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- Employers with less than 50 employees may be exempt from this paid leave mandate. The U.S. DOL will publish regulations that will guide small employers on the exemption process. The exemption will be triggered if the “viability” of the business is in jeopardy — due to the mandates. Further, such employers will not be subject to civil penalties for violating this leave mandate. There is also an exemption for health care workers and emergency responders whereby their employers may exclude them at the employer’s discretion.
- Such leave appears to be NOT *in addition to* other sick leave policies or local/ state mandates. Also, there is nothing prohibiting an employer from changing its voluntary leave policies after the effective date.
- The paid leave component here is also capped. The caps are \$200 per day and \$10,000 in total.
- Each quarter, private sector employers will be entitled to a tax credit equal to 100% of any paid FMLA benefits.
- Again, due to concerns over an employer’s cash flow, the U.S. Treasury Secretary has broad regulatory authority to help employers meet their financial obligations while awaiting the tax credit.
- The employer can also seek a tax credit to offset the costs of continuing to provide health insurance while the employee is on this leave.
- Paid sick leave is not considered wages for Social Security payroll tax purposes.
- Self-employed individuals can also receive the same tax credits as if they were employed by an employer under the new paid sick leave mandate for up to 50 days.

3. Unemployment Compensation:

- The federal government is allowing and encouraging states to be more flexible with respect to eligibility.
- The federal government will provide states \$1 billion in additional funding for UI benefits.
- HR6201 also authorizes states to extend unemployment benefits beyond 26 weeks should they experience higher levels of unemployment.

President Trump is expected to sign this any moment!

Amundsen Davis’s Labor & Employment COVID-19 Task Force is continuing to monitor all local, state and federal orders and legislative initiatives in these unprecedented times. Be assured that we will continue to provide updates where and when warranted. We will also be providing ongoing webinars on the subject to try and help employers operate as effectively and safely as possible. With that in mind, please do not hesitate to contact your SA relationship attorney in the days and weeks ahead for direct guidance. We are here 24/7.