

# Families First Coronavirus Response Act: What It Means For Employers

## Labor & Employment Law Update

By Kelly Haab-Tallitsch and Suzannah Wilson Overholt and Jeffrey Risch on March 15, 2020

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. **However, the legislation does not apply to any private sector employer with 500 or more employees.** To be clear, the current legislation will regulate only those private sector employers who employ less than 500 employees. The Senate is expected to take up the bill early this week. The legislation would take effect within 15 days of enactment and expire on December 31, 2020.

HR6201 contains major changes to the FMLA as it seeks to provide job protected paid leave to any employee who has been on the job for at least 30 days – for up to 12 weeks – related to the COVID-19 pandemic. The legislation also mandates up to 80-hours of paid sick leave for reasons related to COVID-19. It also provides \$1 billion in additional funding to the Unemployment Insurance (UI) System and encourages states to relax UI eligibility requirements. Tax credits are provided to employers to help offset the financial cost of the paid leave.

Highlights of the legislation include:

### PAID TIME OFF:

**Emergency Paid Sick Leave – up to 80-hours for ALL employees working for a private employer with less than 500 employees or any public sector employer**

HR6201 requires employers with fewer than 500 employees and all government employers to provide all employees up to 80-hours of paid sick leave, paid at the employee's regular rate of pay in order to:

1. self-quarantine if diagnosed with COVID-19;
2. seek a diagnosis or care for symptoms of COVID-19; or
3. comply with an order or recommendation by a public health official or health care provider to self-isolate due to exposure to or symptoms of COVID-19.

Additionally, this paid sick leave entitlement must also be available – at two-thirds the employee's regular rate of pay – for employees to care for a family member for such purposes or to care for a child (under 18 years of age) whose school has closed or paid child care provider is unavailable due to the coronavirus.

Full-time employees are entitled to 2 weeks (80 hours) of paid leave and part-time employees are entitled to the average number of hours that they work in a typical two-week period. Paid sick leave under HR6201 must be provided in addition to any paid time off provided under an employer's existing policies and employers may not require employees exhaust existing accrued paid time off prior to using emergency paid sick leave. The bill ensures employees who work under a multiemployer collective agreement are also provided such benefits that meet the requirements of the Act.

### EXPANDED COVERAGE FOR FMLA:

**Paid Family and Medical Leave — up to 12 weeks for employees employed for 30 or more days by a private employer with less than 500 employees or any public sector employer**

Employees of employers with fewer than 500 employees or government employers, who have been on the job for at least 30 calendar days, have the right to take up to 12 weeks of job-protected leave under the Family and Medical Leave Act to be used for any of the following reasons:

- To comply with a requirement or recommendation by a public health official or health care provider that the presence of the employee in the workplace would jeopardize the health of others due to the employee's exposure to or symptoms of coronavirus;
- To care for a family member who is adhering to a requirement or recommendation by a public health official or health care provider to quarantine due to exposure to or symptoms of coronavirus; and
- To care for a child (under 18 years of age) of an employee if the child's school or place of care has been closed, or the child-care provider is unavailable, due to coronavirus

The first 2-weeks of time off for the above reasons are unpaid under the FMLA, but the Emergency Paid Sick Leave Law requires that an employee is paid during that time period, as described above. After the first 2-weeks of leave under the FMLA, employees will be entitled to receive a benefit from their employers that will be no less than two-thirds (2/3<sup>rd</sup>) of the employee's usual pay. The bill ensures employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan are provided with leave.

Certain small employers can be exempt from this expanded FMLA coverage if they meet a “viability” exception. While we can assume the general intent behind the exception, the precise mechanism and process for such an exception is subject to US DOL regulation yet to be published.

The Act also clarifies that individuals that are subject to a multiemployer collectively bargained agreement and whose employers pay into a multiemployer plan must be provided with leave and benefits on par with the benefits provided under the Act.

## PAYROLL CREDIT FOR PAID LEAVE

HR6201 provides a refundable tax credit applied to the employer portion of the Social Security payroll tax equal to 100 percent of paid sick leave and family leave wages paid by an employer for each calendar quarter, subject to the following caps: Sick leave wages paid with respect to employees who must self-quarantine, obtain a diagnosis or care for symptoms, or comply with a self-isolation recommendation or order from a public health official or health care provider are capped at \$511 per day for purposes of the payroll tax credit; Sick leave wages paid to employees caring for a family member or for a child whose school or place of care has been closed, are capped at \$200 per day; and Family leave wages under the expanded FMLA taken into account for each employee are capped at \$200 per day and \$10,000 for all calendar quarters.

If the credit exceeds the employer’s total Social Security payroll tax liability for any calendar quarter, the excess credit is refundable to the employer. Employers may elect to not have the credit apply. A similar refundable tax credit is available for self-employed individuals.

*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.*

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