

Families First Coronavirus Response Act (H.R.6201) Signed Into Law

ISSUED 03/19/20

It did not take the House long to introduce (March 11, 2020) and pass (March 14, 2020) the bill expanding assistance to individuals, communities and programs for coronavirus-related needs. After just 40 minutes of debate, the House expeditiously suspends the rules and goes direct to a vote easily passing in a bipartisan fashion, 363-40. On its heels, however, the House creates the 90-page technical correction to the bill, refining its provisions. The Senate's passage of the bill and final enactment into law with the President's signature (March 18, 2020) finalize phase 2 of Congress's efforts to support the country during this difficult time. Allowable Health Plan Integration.

BACKGROUND

The coronavirus outbreak creates challenges to the health care system, worker's health and income, and a host of other economic and social issues for Americans. For the federal government to respond, an appropriation of funds needs to be at the ready for needs as they arise. In its duties to direct appropriations, the House introduces this bill to accomplish that goal.

The bill specifically appropriates federal funds to expand food assistance and unemployment benefits, provide paid sick leave and free coronavirus testing, and requires employers to provide additional protections to employees. All of these appropriations are available through September 30, 2020, with many extending through September 30, 2022. Monies will disburse not later than 30 days after the date of enactment.

Specifically, this second coronavirus bill designates more funding for preparedness and response and includes these provisions affecting employers and individuals:

- establishes a federal emergency paid leave benefits program to provide payments to employees taking unpaid leave due to the coronavirus outbreak;
- expands unemployment benefits and provides grants to states for processing and paying claims;
- requires employers to provide paid sick leave to employees;
- establishes requirements for providing coronavirus diagnostic testing at no cost to consumers;
- treats personal respiratory protective devices as covered countermeasures that are eligible for certain liability protections; and
- provides for paid sick and paid family and medical leave

BILL PROVISIONS AFFECTING EMPLOYEE BENEFITS

Emergency Family and Medical Leave Expansion Act (FMLA)

- **Effective Date:** Expansion provisions are effective not later than 15 days after the date of enactment and ending December 31, 2020
- **Applicability:** Private employers with fewer than 500 employees (rather than 50 or more for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year as is traditional for FMLA)



- **Eligibility:** Employees employed for 30 calendar days or more for a particular employer may request FMLA benefits for leave related to:
 - care for a son or daughter, under the age of 18, if the school or place of care is closed, or the child care provider is unavailable due to a public health emergency; AND
 - who is unable to work or telework
- **Relationship to Paid Leave:** The first 10 days may consist of unpaid leave after which the employer pays the following:
 - at least 2/3 of an employee's regular pay rate;
 - for the number of hours an employee is otherwise normally scheduled to work (for those with varying schedules, employers should use an average number of scheduled work hours over the six-month period just prior to the date of leave); and
 - up to a maximum of \$200 per day and \$10,000 in aggregate
- **Substitutions:** Employers may not require an employee to substitute any leave, but an employee can choose to substitute any accrued vacation, personal, or sick leave
- **Restoration to Position:** This provision requires an employer to restore the individual to the position they held prior to the leave, except that:
 - it does not apply to an employer who employs fewer than 25 employees if:
 - the employee takes leave based on the expanded COVID-19 eligibility and the position the employee holds at the time of the leave does not exist due to economic conditions or other changes in operating conditions of the employer that affect employment and are caused by a public health emergency during the period of leave;
 - 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 of employment and, if the reasonable efforts of the employer fail, the employer makes reasonable efforts to notify the employee if an equivalent position arises during the contact period, i.e., a 1-year period beginning on the earlier of the date on which the qualifying need related to the public health emergency concludes or 12 weeks after the date on which the employee's leave commences
- **Special Rule for Health Care Providers and Emergency Responders:** An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from this provision

Emergency Paid Sick Leave Act

- **Effective Date:** The Act is to be effective not later than 15 days after the date of enactment of the Act and expires on December 31, 2020
- **Applicability:** Private employers or individual employing fewer than 500 employees or public entities, or any other entity, that is not a private entity or individual, who has 1 or more employees
- **Requirement and Compensation:** Employers must provide paid sick time to employees who are unable to work, or telework, due to a need for leave, regardless of how long the employee has been employed by the employer.

***Employee Benefits:** all benefits provided or made available to employees by an employer including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan"



Compensation shall be the greater of the employee’s regular pay, the minimum wage in effect under FLSA, or the state/local minimum wage rate in effect. Leave must be for one of the reasons listed below and are subject to compensation guidelines below:

| NEED FOR LEAVE | COMPENSATION |
|--|---|
| <ul style="list-style-type: none"> Federal, state, or local quarantine or isolation order related to COVID-19; Advice by a health care provider to self-quarantine due to COVID-19-related concerns; Employee experiencing symptoms of COVID-19 and seeking a medical diagnosis; | <p>The greater of the employee’s regular pay, the minimum wage in effect under FLSA, or the state/local minimum wage rate in effect up to a maximum of \$511 per day and \$5,110 in aggregate</p> |
| <ul style="list-style-type: none"> Employee’s need to care for an individual who is subject to an order or who has been advised to quarantine by a health care provider; Employee’s need to care for a son or daughter if the school or place of care closes or is unavailable due to COVID-19 precautions; or The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services (HHS) in consultation with the Secretary of the Treasury and Secretary of Labor | <p>2/3 of the greater of the employee’s regular pay, the minimum wage in effect under FLSA, or the state/local minimum wage rate in effect up to a maximum of \$200 per day and \$2,000 in aggregate</p> |

- Duration:**
 - All employees, regardless of the length of employment, are entitled to:
 - 80 hours, if full-time; or
 - the average number of hours over a 2-week period, if part-time
 - Hours cannot carry over from one year to the next and paid sick time ends on the next scheduled work shift immediately following termination
 - Employers who are health care providers or employers of emergency responders may elect to exclude such employee from the application
 - Employers may not require an employee to:
 - search for a replacement employee to cover their hours as a condition of providing paid sick leave; or
 - use other paid leave provided by the employer before the employee uses sick time under this provision
- Prohibitions and Enforcement:**
 - Employers violating this Paid Leave Act will be considered to have failed to pay minimum wage under the Fair Labor Standards Act (FLSA) and be subject to fines
 - Employers may not discharge, discipline, or discriminate against an employee who takes leave or has filed any complaint or proceedings with regard to this Act – employers willfully violating this will be subject to penalties of up to \$10,000, or up to six months imprisonment, or both

- **Notifications and Disclosures**

- To the extent an employee is planning on exercising leave for this purpose, they should notify their employer as soon as is practicable. Likewise, after the start of the leave period, an employer may require the employee to follow reasonable notice procedures to substantiate continued paid sick time payments
- Notices shall be posted in conspicuous places on the premises of the employer, where notices to employees (including applicants) are customarily posted; or in employee handbooks – within 7 days of the date of enactment, the Secretary of Labor will create, and make public, a model notice
- **Exceptions:** The Secretary of Labor has the authority to issue regulations to exclude certain health care providers and emergency responders from the definition of eligible employee and to exempt small businesses with fewer than 50 employees if this provision will jeopardize the viability of the business

Coverage for COVID-19 Testing

- A group health plan and a health insurance issuer offering group or individual health insurance coverage, including grandfathered plans, shall provide coverage, with no cost-sharing, for the following items beginning on or after the date of enactment
 - In vitro diagnostic products; and
 - Items and services furnished to an individual during health care provider office visits (includes in-person and telehealth), urgent care center visits, and emergency room visits related to in vitro diagnosis
- Waiver of cost-sharing for COVID-19 testing and office visits under Medicare and Medicare Advantage, Medicaid, CHIP, Tricare, coverage for veterans and federal civilians, and Indians covered through the Indian Health Services

Tax Credit for Paid Sick and Paid Family and Medical Leave

- **Payroll Credit for Required Sick Leave**

- 100% of qualified sick leave wages paid will offset, or act as a credit against, the employer's quarterly IRS tax imposed up to a maximum of:
 - The compensation amount as provided in the Paid Sick Leave Act above, i.e., up to \$200 or \$511 per day maximum;
 - Or the actual amount of the employer's tax for that calendar quarter
 - An additional allowance is also given for qualified, corresponding health plan expenses
 - The credit does not apply to federal or state government or political subdivision
 - The Secretary of the Treasury will provide additional regulations or other guidance as may be necessary, including compliance and recordkeeping, waiver of penalties, etc.
- Effective 15 days after the date of enactment and ending on December 31, 2020
- **Credit for Paid Sick Leave and Family Leave for Certain Self-Employed Individuals**
 - Applies to eligible self-employed individuals, i.e., an individual who regularly carries on any trade or business and would be entitled to receive paid leave if the individual were an employee of an employer



- Paid sick leave credit is limited to the number of days in the taxable year for which the individual is unable to perform services in any business multiplied by the lesser of:
 - \$200 or \$511, whichever is applicable per the Emergency Paid Sick Leave Act; or
 - 100% or 67%, whichever is applicable per the Emergency Paid Sick Leave Act, of the average daily self-employment income of the individual for the taxable year [Average daily self-employment income is net earnings from self-employment of the individual for the taxable year divided by 260]
- Paid family leave credit is limited to the number of days in the taxable year for which the individual is unable to perform services in any business multiplied by the lesser of:
 - \$200; or
 - 67% or 100%, whichever is applicable per the Emergency Paid Sick Leave Act, of the average daily self-employment income of the individual for the taxable year [Average daily self-employment income is net earnings from self-employment of the individual for the taxable year divided by 260]
- **Special Rule Related to Tax on Employers**
 - Any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages or compensation for purposes of OASDI (6.2% payroll tax for old-age, survivors, and disability insurance)
 - The Medicare tax of 1.45% still needs to be taken as a normal payroll tax on wages paid as a result of these Acts. However, this tax should be included as part of the refundable credit the employer applies for each calendar quarter.

Next Steps

As implementation of these rules begins, Congress is already hard at work on Phase 3, which promises an even larger appropriations and assistance to help Americans. Stay tuned as more assistance is in progress. Visit the [OneDigital Coronavirus Advisory Hub](#) for the latest updates.

