

## Summary of Families First Coronavirus Response Act

On March 18, the President signed into law [H.R. 6201](#), the Families First Coronavirus Response Act. This bill does several things of interest to employers:

### Paid sick leave:

Requires employers with fewer than 500 employees and government employers to provide paid sick leave for circumstances related to the coronavirus pandemic.

- Length: Must provide employees with two-weeks of paid sick leave (80 hours for full-time employees and typical number of hours over two-weeks for part-time employees).
- Qualifications: any employee who has been employed for at least 30 days unable to work or telework because they are:
  - Subject to a government quarantine or isolation order related to COVID-19
  - Have been advised by health provider to self-quarantine due to COVID-19,
  - Experiencing symptoms of COVID-19 and seeking 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 due to a public health emergency
  - Experiencing substantially similar conditions as specified by the Secretary of HHS
- Rate of pay: Employees are compensated at the higher of their regular rate, the federal minimum wage, or the local minimum wage, but can't exceed \$511 per day and \$5,110 in the aggregate. However, if the employee is absent to care for a sick family member, a child unable to attend school, or because they meet the criteria for similar conditions they are compensated at 2/3 of the rate they would otherwise receive, but not to exceed \$200 per day and \$2,000 in the aggregate. (This conforms the pay to the amount of the available tax credit.)
- Small Business Exemption: In addition, the Secretary may exempt small businesses with fewer than 50 employees from the requirement to offer leave to care for a child when a school is closed when the imposition of paid sick leave would jeopardize the viability of the business as an ongoing concern.
- Relationship to Existing Programs: This paid sick leave is in addition to whatever sick leave is already offered by the employer (subject to state or local requirements). This provision is effective 15 days after enactment of the bill and sunsets on December 31, 2020.
- Funding: Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified sick leave wages paid by the employer. Qualified sick leave wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member) and 10 days. The tax credit is applied against

employer Social Security taxes, but employers are reimbursed if their costs for qualified sick leave exceed the taxes they would owe.

- **Additional Credit for Health Plan Expenses:** The amount of the tax credit is further increased by the amount of the expenses of the employer's health care plan allocable to the qualified sick leave. Employers can seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.
- **Tax on Employers:** Paid sick leave is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax, for the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax.
- **Self -Employed:** There is a similar tax credit against self -employment taxes for individuals who are self -employed but would otherwise qualify for paid sick leave if they were an employee of an employer.

### Unemployment Compensation

- The bill gives state governments flexibility with respect to waiting periods and in interpreting the "able, available and actively looking" test for Unemployment Compensation (UC) eligibility employees who lose their job or are furloughed due to the coronavirus crisis.
- Provides an additional \$1 billion for state unemployment programs.
- Authorizes extended unemployment benefits (beyond the usual 26 weeks), fully funded by the federal government, for states that experience a spike in unemployment.

### Paid Family and Medical Leave (FMLA)

Requires (with certain possible exceptions) private sector employers with fewer than 500 employees and government employers to provide employees with up to 12 weeks of paid family and medical leave (FMLA).

- **Qualifications:** available to any employee who has been employed for at least 30 days if they are out in order to care for children if schools are closed or their daycare is unavailable because of a public health emergency and they are unable to work or telework.
- **Rate of Pay:** After 10 days, during which time the employee can take unpaid or paid leave (if available), employees are compensated at 2/3 of their regular rate. Paid leave under this requirement shall not exceed \$200 per day and \$10,000 in the aggregate. (This conforms to the amount of the tax credit.)
- **Small Business and Other Exemptions:** The Secretary of Labor is authorized to exempt health care providers and emergency responders and small businesses with fewer than 50

employees if the requirement would jeopardize the business as an ongoing concern. The requirements to restore the employee to their position after the paid leave is taken do not apply to businesses with fewer than 25 employees if the position no longer exists because of the public health emergency (provided the employer takes certain actions to try and assist the employee). Employers with less than 50 employees are exempt from civil actions brought by employees for violations of this section. Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid FMLA.

- **Effective Dates:** The provision takes effect 15 days after enactment of the bill and sunsets on December 31, 2020.
- **Funding:** Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified paid FMLA wages paid by the employer. Qualified paid FMLA wages are capped at \$ 200 per day and \$10,000 overall. The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified paid FMLA exceed the taxes they would owe. The Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties on failing to deposit payroll taxes in anticipation of the credit.
- **Additional Credit for Health Plan Expenses:** The amount of the tax credit is further increased by the amount of the expenses of the employer's health care plan allocable to the qualified sick leave. This allows the employer to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.
- **Tax on Employers:** Paid FMLA is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax, for the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax.
- **Self -Employed:** There is a similar tax credit against self-employment taxes for individuals who are self-employed but would otherwise qualify for paid FMLA if they were an employee of an employer, but leave would be capped at 50 days.

Source: U.S. Chamber of Commerce