



Paid Family Leave and Emergency Sick Leave to Take Effect

On Wednesday March 18th, the President signed the [Families First Coronavirus Response Act](#) (HR 6201). The bill is set to go into effect within 15 days of enactment.

The two primary considerations for employers are the Emergency Paid Sick Leave and the Emergency Family and Medical Leave. Both of these provisions provide paid benefits to employees who are unable to work due to COVID-19. Both programs include a funding mechanism to reimburse employers for the paid leave.

Emergency Paid Sick Leave

Covered Employers: All U.S. companies with fewer than 500 employees.

Employee Eligibility: All employees of a covered employer, including self-employed individuals such as owners and members of an LLC.

Amount of Leave: 80 hours for full time employees, a prorated amount for part time employees based on the average number of hours the employee works over a two-week period.

Pay: The amount of pay depends on the reason for leave. If an employee is subject to quarantine, has been advised to self-quarantine or are experiencing COVID-19 symptoms, they are entitled to full wage replacement up to a maximum of \$511 per day. If they are caring for someone else or unable to work because of school closings or childcare issues, they are entitled to 2/3 of their normal pay up to a maximum of \$200 per day.

Use of Leave: An employee must be unable to work (or telework) due to one of the following reasons:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis;
4. The employee is caring for an individual who is subject to a federal, state or local quarantine order, or the individual has been advised to self-quarantine due to concerns related to COVID-19;
5. The employee is caring for the employee's son or daughter, if the child's school or childcare facility has been closed or the child's care provider is unavailable due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar condition specified by Health and Human Services in consultation with the Department of the Treasury and the Department of Labor.

Emergency Family and Medical Leave

This provision expands the reasons an employee may take FMLA to include COVID-19 related childcare needs. It also changes the definition of a covered employer for this type of leave to include many smaller firms that would not otherwise be covered by FMLA.

Covered Employers: All U.S. companies with fewer than 500 employees. The DOL may exempt employers with less than 50 employees if providing the leave would jeopardize the viability of the business. Certain healthcare providers and emergency responders may also be exempted.

Employee Eligibility: Any employee who has worked for the company for at least 30 calendar days, including self-employed individuals such as owners and members of an LLC.

Amount of Leave: 12 weeks.

Pay: The first 10 days of leave are unpaid, but an employee may substitute any available paid leave. The remaining 10 weeks are paid at 2/3 the employees normal daily pay up to a maximum of \$200 per day (\$10,000 total).

Use of Leave: The bill originally included a variety of reasons an employee could use leave, but the final version only covers circumstances where “the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”

Tax Credits

Employers are entitled to reimbursement for the costs of both new paid leave programs. This reimbursement takes the form of a refundable tax credit against quarterly payroll taxes. The credit for each employee cannot exceed the daily and cumulative caps described above. Employers may also seek reimbursement for qualifying health plan expenses attributable to the period of time an employee was on leave.

Since this is a refundable credit, if the cost of these programs exceeds the payroll taxes due, an employer will receive the remaining credit via a refund from the IRS.

We expect that many employers will face challenges in implementation and cash flow. First, many firms utilize payroll processing companies who collect and impound payroll taxes each time the employer submits a payroll. Firms should reach out to their payroll processors to find out how they plan to handle these tax credits. It seems likely that companies will need to setup separate payroll codes for this new leave and coordinate with their payroll processor to manage the offset.

Even where a company handles all tax filings internally, they may simply not have sufficient cash on hand to provide a large number of employees with these paid benefits. We have fielded dozens of calls from companies all over the country in recent days who have already seen their businesses severely impacted by COVID-19, whether they are effectively shut down by “shelter in place” orders or have seen revenues fall while consumers voluntarily stay home. The Treasury Department has indicated a willingness to refund previously deposited payroll taxes to help fund these programs, but we haven’t seen any details yet.

More to Come

HR 6201 was the second coronavirus response package and a third is already under discussion. At present, it appears that the third bill will include direct cash payments to nearly all Americans as well as various measures to support businesses. While we don’t yet know exactly what that business support will be, it seems likely to be in the form of a massive low interest loan program intended to rapidly provide liquidity to small firms. We will continue to monitor developments and update you accordingly.