

“FAMILIES FIRST CORONAVIRUS RESPONSE ACT” (H.R. 6201)

On March 18, 2020, the U.S. Senate passed the House’s “Families First Coronavirus Response Act,” by a vote of 90-8. The bill now heads to President Trump to sign. Next up will be “Phase 3” of Congress’ response to COVID-19, which will likely center around a massive economic stimulus.

Big Picture

The paid leave structure of the legislation is designed to achieve the following:

- Require small employers (those with fewer than 500 employees) to provide emergency paid sick leave and family leave to employees grappling with the impacts of COVID-19.
- In order to avoid burdening these small employers, the bill caps the amounts to be paid to employees, in addition to making them 100% reimbursable via tax credits.
- There are no obligations on employers with more than 500 employees, but there will be political and popular pressure on such employers to provide paid leave voluntarily (with no reimbursement from the federal government).

Emergency Family and Medical Leave Expansion Act

- What it does. The legislation provides 12 weeks of job-protected paid leave for employees who are unable to work or telework so that they may care for children if schools are closed or their daycare is unavailable because of a public health emergency (this is the only reason that this form of leave is permissible).
- Who is covered? Employers with fewer than 500 employees.
- Eligibility. This leave benefit covers employees who have been working for at least 30 calendar days.
- Rate of Pay:
 - After 10 days, employees are paid at 2/3 of their regular rate.
 - Employees may use accrued personal or sick leave during the first 10 days.
 - This is capped at \$200 per day and \$10,000 in the aggregate.
- Tax Credits: Each quarter, 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.
- Exemptions.
 - Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid leave (these terms aren’t defined).
 - DOL is empowered to exempt small businesses with less than 50 employees in certain circumstances.
- Effective Date. The provisions will go into effect 15 days after the date of enactment and expire on December 31, 2020.

Emergency Paid Sick Leave Act

- **What it Does.** Covered employers will be required to provide full-time employees with 10 days (80 hours) of paid sick leave when the employee cannot work or telework for the following circumstances related to COVID-19 (part-time employees are entitled to the number of hours of paid sick time equal to the number of hours they work, on average, over a 2-week period):
 - 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 because of a public health emergency, or
 - Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.
- **Who is covered?** Employers with fewer than 500 employees.
- **Eligibility.** All employees, regardless of length of employment.
- **Rate of Pay.** Employers must compensate employees for any paid sick time they take at the higher of their regular rate, the federal minimum wage, or the local minimum wage.
 - Payments are capped at \$511 per day and \$5,110 in the aggregate.
 - Employees absent to care for a sick family member or a child unable to attend school are compensated at 2/3 of the rate they would otherwise receive, capped at \$200 per day and \$2,000 in the aggregate.
- **Employers with Existing Leave Policies.** This paid sick leave is in addition to whatever sick leave is already offered by the employer (including subject to state or local requirements).
 - An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under the Act.
 - Nothing prohibits employers from changing their leave programs after the bill is enacted.
- **Tax Credits:** Each quarter, employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified paid sick leave wages paid by the employer.
- **Exemptions.**
 - Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid leave (these terms aren't defined).
 - DOL is empowered to exempt small businesses with less than 50 employees in certain circumstances.
- **Effective Date.** The provisions will go into effect 15 days after the date of enactment and expire on December 31, 2020.