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## CORONAVIRUS ALERT: WHAT YOU NEED TO KNOW ABOUT THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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By Jennifer Platzkere Snyder

On March 14, 2020, as a result of a negotiation between the White House and Democratic House leadership, the U.S. House of Representatives passed the “[Families First Coronavirus Response Act](#),” ([H.R. 6201](#)) by an overwhelming vote of 363-40. The bill now heads to the U.S. Senate where it is expected to pass, likely after some changes are made. The President has signaled his approval in concept of the bill and intent to sign it when it reaches his desk. Once signed, there will be a 15-day period before the provisions actually take effect. Until then, current legal standards remains operative.

Besides dealing with immediate public health related matters, the bill contains several provisions that will impact private-sector employers of fewer than 500 employees as well as governmental employers. This Alert provides a summary of the bill’s provisions relating to paid family medical leave, paid sick leave, unemployment insurance, and tax credits being made available to assist the subject employers in offering these now-mandatory benefits. At this time, it is unclear why the bill was drafted this way or whether additional legislation may be forthcoming applicable to private-sector employers with 500 or more employees.

### Emergency Family and Medical Leave Expansion Act

- The bill amends the Family and Medical Leave Act (FMLA) to provide for up to 12 weeks of job-protected leave related to the public health emergency.
- All employers with fewer than 500 employees – even those who would otherwise not be subject to FMLA – are covered, as well as governmental employers.
- Employees are eligible if they worked for a covered employer for 30 days – not 12 months as for other FMLA leaves.
- Emergency FMLA leave is available for employees to:
  - Respond to quarantine requirements or recommendations,
  - Care for family members who are responding to quarantine requirements or recommendations, and/or
  - Care for a child whose school has been closed as a result of the COVID-19 pandemic.
- The first 14 days of emergency FMLA leave could be unpaid, unless the employee chooses to use available accrued paid personal or sick leave time.

- After that, emergency FMLA leave will be paid at a rate not less than two-thirds the employee's regular rate of pay for the remaining duration of the leave.
- These pay requirements apply to only the COVID-19-related leave reasons listed above.
- The cost to employers of providing the paid time off will be offset by tax incentives, described below.
- Employers with fewer than 25 employees may not be required to provide job restoration if the position does not exist when the leave ends due to issues related to coronavirus.
- The Secretary of Labor may enact regulations:
  - Permitting employers of fewer than 50 employees to apply for an exemption
  - Excluding certain health care providers and emergency responders from eligibility for this leave.
- The provisions will go into effect 15 days after the date of enactment and expire on December 31, 2020.

### **Emergency Paid Sick Leave Act**

- Employers with fewer than 500 employees will be required to provide full-time employees with two weeks (80 hours) of paid sick leave at their regular rate of pay for specific circumstances during the COVID-19 crisis, with part-time employees being entitled to paid leave for the number of hours that they work in a typical two-week period.
- Employees would be eligible for this paid leave if they need to:
  - Self-isolate because of a coronavirus diagnosis,
  - Obtain a medical diagnosis if they are experiencing coronavirus symptoms,
  - Obtain preventative care for coronavirus, or
  - Comply with a recommendation or order by a public official if the physical presence of the employee on the job would jeopardize the health of others.
- Employees would also be eligible to receive leave paid at a rate not less than two-thirds of their regular rate of pay if they need to:
  - Care for a family member for such purposes, or
  - Care for a child whose school has closed, or if child care is unavailable, due to the coronavirus.
- The leave provided under the bill does not preempt existing state or local paid sick leave entitlements.

- An employer cannot require a worker to use any other available paid leave before using the sick leave under the proposal.
- The provisions will go into effect 15 days after the date of enactment and expire on December 31, 2020.

### **Unemployment Insurance**

The bill provides \$1 billion in emergency unemployment insurance (UI) relief to the states: \$500 million for costs associated with increased administration of each state's UI program and \$500 million held in reserve to assist states with a 10 percent increase in unemployment. Besides the necessary increase in unemployment, in order to receive a portion of this grant money, states must temporarily relax certain UI eligibility requirements, such as waiting periods and requirements for work search efforts.

### **Tax Credits to Pay for New Leaves**

Employers, including self-employed individuals, will be eligible for a series of refundable tax credits for providing the required paid emergency sick leave and/or paid emergency FMLA described above. Treasury Secretary Steve Mnuchin has stated that the Treasury will use its regulatory authority to advance funds to small employers enabling them to comply with the new law as enacted.

- During each calendar quarter, employers will receive a refundable tax credit in an amount equal to 100% of qualified paid sick leave wages and qualified emergency family leave wages paid by the employer.
  - The tax credits are allowed against the employer's 6.2% share of Social Security taxes paid with respect to any employees.
  - The amount of qualified family leave wages taken into account is capped at \$200 per day and \$10,000 (equivalent to 50 days or 10 weeks) for all calendar quarters for each employee.
  - The amount of emergency sick leave wages taken into account is as much as \$511 per day while the employee is receiving paid sick leave for caring for themselves, or \$200 if the sick leave is to care for a family member or child if their school is closed. The limit is ten days of sick leave.
  - If the credit exceeds the employer's total liability for its share of Social Security taxes for all employees for any calendar quarter, the excess credit is then refundable to the employer.
- Self-employed individuals will be eligible for a refundable tax credit in an amount equal to 100% of a "qualified sick leave equivalent amount" if they must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus. The credit is capped



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at \$511 per day if caring for themselves or \$200 per day if caring for a family member. It is available for ten days.

- For eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus, there will be a refundable tax credit available equal to 67% of the qualified sick leave equivalent amount.
- Likewise, a refundable tax credit equal to 100% of a qualified family leave equivalent amount (capped at the lesser \$200 per day or the average daily self-employment income for the taxable year per day) is also available for eligible self-employed individuals for up to 50 days.
- The credit is allowed against self-employment taxes and is refundable.
- Eligible self-employed individuals are individuals who would be entitled to receive paid emergency FMLA leave as if the individual were the common law employee of a covered employer.

### Next Steps

Since the situation regarding Congress' response to COVID-19 is very fluid, and we anticipate additional changes will be made before the final bill passes Congress and is signed into law, we will continue to provide you with updates as soon as additional information becomes available.

### For Further Information

If you have questions about this alert or other coronavirus preparedness steps your business should take, please contact [Marjorie Obod](#), [Jennifer Platzkere Snyder](#), [Katherine Hartman](#), [Matthew Whitehorn](#) or [Stephanie Searles](#), or any other member of our [Labor & Employment Group](#) or [Tax Group](#).