

HOUSE PASSES COVID-19 CORONAVIRUS LAW: PREPARE FOR PAID SICK LEAVE

Insights

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In an effort to boost the government's response to the COVID-19 coronavirus outbreak, the U.S. House of Representatives passed the [Families First Coronavirus Response Act](#) yesterday, an economic stimulus plan aimed at addressing the impact of COVID-19 on Americans. It includes many provisions which apply to employers, such as paid sick leave for employees impacted by COVID-19 and those serving as caregivers for individuals with COVID-19.

The Act (H.R. 6201), which passed on a bipartisan 363-40 vote, will be presented to the Senate on Monday at 3:00 p.m. EST and is expected to pass the Senate with few revisions. President Trump [has publicly supported the bill](#), and it will likely be signed into law late Monday, March 16, or Tuesday, March 17.

While the Act also contains several provisions to increase funding for familiar benefit programs, like WIC and SNAP, this legal alert summarizes the key benefit provisions of the Act which affect employers. **Please note the Act has not yet been finalized and the enacted law may vary from the below summary**, so be sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information.

PAID AND UNPAID LEAVE FOR CORONAVIRUS-RELATED REASONS

There are three provisions relating to employees being forced to miss work because of the COVID-19 outbreak: an emergency expansion of the Family Medical Leave Act (FMLA), a new federal paid sick leave law, and expanded unemployment insurance benefits.

Related People



Benjamin M. Ebbink

Partner

[916.210.0400](tel:916.210.0400)



Samantha J. Monsees

Partner

[816.842.8770](tel:816.842.8770)

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

- **Expanded Coverage And Eligibility** – The Act significantly amends and expands the FMLA on a temporary basis. The current employee threshold for coverage would be changed from only covering employers with 50 or more to employers covering any workplace with **fewer than 500 employees**. It also lowers the eligibility requirement such that an employee who has worked for the employer for at least 30 days prior to the designated leave is eligible to receive paid family and medical leave. This means that thousands of employers not previously subject to the FMLA must provide job-protected leave to employees for a COVID-19 coronavirus-designated reason.
- **Reasons For Emergency Leave** – Specifically, any individual employed by the employer for at least 30 days (before the first day of leave) may take up to **12 weeks of paid, job-protected leave** to allow the employee to (1) comply with a requirement or recommendation to quarantine due to exposure to, or symptoms of, coronavirus; (2) to care for an at-risk family member who is adhering to requirement or recommendation to quarantine due to exposure to, or symptoms of, coronavirus; or to (3) to care for the employee's child if the child's school or place of care (including if the childcare provider is unavailable) has been closed due to a public emergency.
- **Paid Leave** – The first 14 days of Emergency FMLA may be unpaid, but an employee may elect to substitute any accrued paid time off, including vacation or sick leave, to cover some or all of the 14-day unpaid period. After the 14-day period, the employer must pay full-time employees **at two-thirds the employee's regular rate** for the number of hours the employee would otherwise be normally scheduled. Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work. Employers with bargaining unit employees would apply the Emergency FMLA provisions consistent with the bargaining agreement.
- **Expanded Definitions** – The Act also expands the definition of who is eligible as a "parent" under FMLA,

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which includes a parent-in-law of the employee, a parent of a domestic partner of the employee, and a legal guardian or other person who served as the employee's parent (also known as *in loco parentis*) when the employee was a child.

- **Small Business And Other Exemptions** – The bill also gives the Secretary of Labor the authority to issue regulations to exempt some small business with **fewer than 50 employees** (when the imposition of such requirements would jeopardize the viability of the business as a going concern), and to exclude certain healthcare providers and emergency responders from the list of those employees eligible for leave.
- **Effective Date And Expiration** – This program will become effective within 15 days of enactment and remain in effect until December 31, 2020.

EMERGENCY PAID SICK LEAVE ACT

This provision requires employers with fewer than 500 employees to provide employees (regardless of the employee's duration of employment prior to leave) with **80 hours of paid sick leave** at the employee's regular rate (or two-thirds the employee's regular rate to care for a child whose school or daycare has closed due to coronavirus, or to care for a family member who is self-isolating due to a coronavirus diagnosis, who is exhibiting symptoms and needs to obtain medical care, or who is complying with a requirement or recommendation to quarantine).

- **Reasons For Paid Sick Leave** – This portion of the new law would allow the employee to (1) comply with a requirement or recommendation to quarantine due to exposure to, or symptoms of, coronavirus; (2) self-isolate because the employee is diagnosed with coronavirus; (3) obtain a diagnosis or care because the employee is exhibiting symptoms; (4) to care for or assist an at-risk family member who is self-isolating due to a diagnosis, who is exhibiting symptoms of coronavirus and needs to obtain medical care, or who is adhering to requirement or recommendation to quarantine due to a exposure to, or symptoms of, coronavirus; or (5) to take care of the employee's child if the child's school or place of care has been closed due to the COVID-19 coronavirus (including if the childcare provider is unavailable).

- **Carryover** – This paid sick leave will not carry over to the following year and is in addition to any paid sick leave currently provided by employers.
- **Calculating Rate Of Pay** – Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work. A business employing fewer than 500 employees is required, at the request of the employee, to pay the employee for 14 days of mandated emergency paid leave instead of the initial 14 days of unpaid leave required by the Emergency Family and Medical Leave Expansion Act (summarized above).

An employer may not change its current paid leave policy after enactment to avoid the obligations of the additional leave mandated by the Emergency Paid Sick Leave Act. This program will be administered by the Social Security Administration over the next year until these requirements expire on December 31, 2020.

EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION AND ACCESS ACT OF 2020

This section provides \$1 billion in 2020 for emergency grants to states for activities related to unemployment insurance benefit processing and payment, under certain conditions.

Half of the resources are to be allocated to provide immediate funding to all states for administrative costs so long as they meet some basic requirements, including: (1) requiring employers to provide notification of the availability of unemployment compensation at the time of separation; (2) ensuring applications for unemployment compensation and assistance with the application process are accessible in at least two ways (in-person, by phone, or online); and (3) notifying applicants when their application is received and being processed, as well as providing information about how to ensure successful processing if the application cannot be processed.

The other half would be reserved for emergency grants to states which experience an increase of unemployment

compensation claims of at least 10% in comparison to the same quarter in the prior calendar year. Those states would be eligible to receive an additional grant to assist with costs related to such an unemployment spike if they meet additional requirements, including: (1) expressing of commitment to maintain and strengthen access to unemployment compensation; and (2) taking or planning to take steps to ease eligibility requirements and access (like waiving work search requirements and the waiting period). This provision will remain in effect until December 31, 2020.

TAX CREDITS FOR PAID SICK AND PAID FAMILY AND MEDICAL LEAVE

This section provides a series of refundable tax credits for employers who are required to provide the Emergency Paid Sick Leave and Emergency Paid Family and Medical Leave described above. These tax credits are allowed against the tax imposed by Internal Revenue Code Section 3111(a), which deals with the employer portion of Social Security taxes. While this limits application of the tax credit, employers will be reimbursed if their costs for qualified sick leave or qualified family leave wages exceed the taxes they would owe.

Specifically, employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages paid by employers for each calendar quarter in adherence with the Emergency Paid Sick Leave Act. The qualified sick leave wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member or child) for up to 10 days per employee in each calendar quarter.

Similarly, employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid by employers for each calendar quarter in accordance with the Emergency Family and Medical Leave Expansion Act. The qualified family leave wages are capped at \$200 per day for each individual up to \$10,000 total per calendar quarter.

COVERAGE FOR TESTING FOR COVID-19

This section requires private health plans to provide coverage for COVID-19 diagnostic testing, including the cost of a provider, urgent care center and emergency room visits in order to receive testing. Coverage must be provided at no cost to the employee and any others covered under the employee's health plan.

NEXT STEPS

As mentioned above, the Senate is expected to pass the legislation on Monday, and the president is expected to sign it shortly thereafter. There may be changes made by the Senate before the legislation is finalized, and there may be follow-up “clean-up” legislation. In addition, many states are proposing similar emergency legislation to enact or expand their own paid sick leave or family and medical leave laws to cover coronavirus-related issues. Some of these state laws may be in addition to any new requirements at the federal level.

We will continue to monitor this rapidly developing situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. For further information, contact your Fisher Phillips attorney or any member of [our COVID-19 Taskforce](#), or review our [Comprehensive and Updated FAQs](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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