

H.R.6201 – Families First Coronavirus Response Act Summary

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Congress responded to the current COVID-19 pandemic crisis by passing the Families First Coronavirus Response Act, House Bill 6201 (the “Act”) on March 18, 2020, and it has been signed into law. The Act is effective 15 days from enactment, on April 2, 2020. The new Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act provisions generally apply to private-sector employers with less than 500 employees, unless the Secretary of Labor decides to exempt those with fewer than 50 employees (no current decision). This summary discusses the impact the Act has relative to the leave that must be given to employees in certain circumstances, the tax credits employers are entitled to, and also provides a short summary of IRS authority delaying tax payments otherwise due April 15, 2020.

I. Emergency Paid Sick Leave Act

If the employee is unable to work or telework due to COVID-19 because they are: quarantined as mandated by Federal, State, or local authorities related to COVID-19 (or caring for such an individual); advised by a health care provider to self-quarantine due to COVID-19 (or caring for such an individual); experiencing symptoms of COVID-19 and seeking medical diagnosis; caring for a child whose school or place of care has closed; or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, then an employer must provide paid sick leave to the employee.

a. Calculation of Hours

The amount of sick leave required is 80 hours for full-time employees, and the 2-week average number of hours the employee works for part-time employees. If the employee’s scheduled hours vary from week to week, the employer must calculate the number of hours based on the number of hours the employee was scheduled, on average, over the 6-month period preceding the beginning of leave. If the employer does not have the information to make this calculation, the employer must calculate the amount of hours based on the reasonable expectation of the employee at the time of hiring regarding the average number of hours per day the employee would be scheduled to work.

b. Calculation of Pay

The pay the employee receives during sick leave is determined by the reason for taking such sick leave. The pay during such sick leave must be the employee's regular rate of pay (of at least the minimum wage rate) or 2/3 the employee's regular rate of pay, subject to the following caps and limitations:

2/3 the regular rate of pay, up to \$200 per day (up to \$2,000 in aggregate)

- Employee is caring for an individual ordered by authorities to quarantine due to COVID-19
- Employee is caring for an individual advised by a health care provider to self-quarantine due to COVID-19
- Employee is caring for a child if the school or place of care has closed due to COVID-19
- Employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services

Full regular rate of pay, up to \$511 per day (up to \$5,110 in aggregate)

- Employee is ordered by authorities to quarantine due to COVID-19
- Employee is advised by a health care provider to self-quarantine due to COVID-19
- Employee is experiencing COVID-19 symptoms and seeking a medical diagnosis

c. Violations

Employers who violate payment provisions under this Act will be considered to have failed to pay minimum wages and the Fair Labor Standards Act and subject to respective penalties.

d. Posted Notice Requirement

Employers must post a notice of requirements for employees in a place where notices to employees are traditionally posted. A model notice is to be made by the federal government.

e. Miscellaneous

Additionally, employers may not require the employee to search for a replacement employee to cover their scheduled hours and may not require employees to use other paid leave before using sick leave.

Employers may not discharge, discriminate, or discipline any employee for taking sick leave under this Act. Sick leave under this Act may not be carried over from year to year and expires at the end of 2020.

f. Exempted Organizations

The Secretary of Labor may issue regulations for good cause to exempt businesses with fewer than 50 employees if compliance would jeopardize the viability of the business as a going concern. This provision does not mean businesses with fewer than 50 employees are automatically exempted from compliance.

Certain health care providers and emergency responders can be excluded by the employer.

II. Emergency Family and Medical Leave Expansion Act

Employers with fewer than 500 employees must provide employees who have been employed for at least 30 calendar days with 12 weeks of leave if the employee is unable to work due to a need for leave to care for their minor children if the child's school or place of care has closed or the childcare provider is unavailable due to a COVID-19 related public health emergency. The childcare provider must receive compensation for providing childcare on a regular basis to qualify.

a. Calculation of Pay

This section of the Act does not require payment for the first 10 days of leave, and an employee must qualify under the Emergency Paid Sick Leave Act (discussed above) to be paid for these days. Alternatively, the employee may take accrued vacation, personal, medical, or sick leave in lieu of unpaid leave. The remainder of the leave (weeks 3-12) is partially paid, and the pay the employee receives is $\frac{2}{3}$ the employee's regular rate of pay of up to \$200 per day (up to \$10,000 in aggregate).

b. Calculation of Hours

The amount of leave required is based on the number of hours the employee is normally scheduled to work. If the employee's scheduled hours vary from week to week, the employer must calculate the number of hours based on the number of hours the employee was scheduled, on average, over the 6-month period preceding the beginning of leave. If the employer does not have the information to make this calculation, the employer must calculate the amount of hours based on the reasonable expectation of the employee at the time of hiring regarding the average number of hours per day the employee would be scheduled to work.

c. Reinstatement to Position Equivalent

The employer must make reasonable efforts to restore the employee to a position equivalent (including benefits, pay, and other terms and conditions of employment) to the one held before taking leave. If those restoration efforts fail, the employer must otherwise contact the employee if a position becomes available.

Employers with fewer than 25 employees will be exempted if there are changes caused by a public health emergency during the period of leave, including that the position held by the employee no longer exists due to economic conditions, or changes in operating conditions of the employer.

d. Exempted Organizations

The Secretary of Labor may issue regulations for good cause to exempt businesses with fewer than 50 employees if compliance would jeopardize the viability of the business as a going concern. This provision does not mean businesses with fewer than 50 employees are automatically exempted from compliance unless and until such determination is issued.

Certain health care providers and emergency responders can be excluded by the employer.

e. Employee to Provide Notice of Leave

The employee must provide notice of leave if practicable and the need for leave is foreseeable, but no other guidelines have been set out related to required notice to employers.

III. Health Provisions

Health insurance is mandated to cover in vitro diagnostic products related to the diagnosis of COVID-19 and COVID-19 testing-related services including: office and outpatient, hospital observation, emergency department, nursing facility, rest home or custodial care, home, or online digital evaluation and management services.

IV. Tax Credits (I.E. reimbursement to the employer)

In order to alleviate the stress brought on by the increase in business costs from these new requirements, the bill provides tax credits to employers for both paid sick and paid family and medical leave. (Division G). These credits apply to days beginning on the date selected by the Secretary of Treasury, which will be shortly after the enactment of this Act, and ending on December 31, 2020.

- Employers are eligible for a refundable tax credit for 100% of the wages paid under qualified sick leave and family leave for each calendar quarter. (§§ 7001, 7003). This credit will be against their employer-side payroll tax liability.
- Credits for Required Paid Sick Leave (§ 7001)
 - Credit is limited to \$511 per employee per day for workers taking leave because they are sick or quarantined.
 - Credit is limited to \$200 per employee per day for workers taking leave to care for another person.
 - There is a 10-sick-days-per-worker limit.
- Credits for Required Paid Family Leave (§ 7003)
 - Credit is limited to \$200 per employee per day. This credit may not exceed \$10,000 in total for any worker.
- There is also an allowance of credit for group health costs paid by the employer for workers on coronavirus sick or family leave.

1. *Self-Employers*

Self-employed individuals are also eligible to receive refundable tax credits.

- Credit for Sick Leave (§ 7002)
 - Credit is limited to the amount equal to the qualified sick leave equivalent amount for the individual. The amount per day is the lesser of \$200 or \$511 (depending on who is sick) and 67% of the average daily self-employment income of the individual.

- Credit for Family Leave (§ 7004)

- Credit is limited to the number of days, not to exceed 50, the individual is unable to work. The amount is \$200 per day or 67% of the daily income of the employee, whichever is less.

V. Deferred Filing and Payment Deadline for Income Taxes Due 4/15/20

IRS Notice 2020-17 and Notice 2020-18 confirm the deferred deadline for filing of returns and payment of 2019 federal income tax amounts otherwise due April 15, 2020, until July 15, 2020. Specific provisions are:

- individual taxpayers (those filing as single, married filing jointly or separately) can defer payment up to \$1 million of income tax;
- “C” corporations or consolidated corporate groups can defer up to \$10 million of corporate income tax;
- tax on self-employment income can be deferred;
- returns are automatically extended until July 15, 2020); and
- non income tax amounts are not deferred.

This is estimated to defer payment of approximately \$300 billion of income taxes for the deferred period.

VI. Suggestions to Our Business Clients

The new economic challenges now affecting our business clients makes it imperative for clients to be proactive in financial forecasting and strategic planning. In particular, we strongly recommend that each of our operating business clients actively engage in the following specific steps:

1. An ongoing 90-day cash flow analysis, with detail;
2. Management Team Covid-19 Strategic Analysis, with a high and ongoing Communication level and frequency among executive leadership and managers;
3. Review of available credit facilities and terms;
4. Frequent and forthright Communications with employees, suppliers, and customers.

Conclusion

The Families First Coronavirus Response Act contains many other provisions addressing public benefits, including relative appropriations. A full text of the Act may be read at: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>. A full text of IRS Notice 2020-17 may be found at <https://www.irs.gov/pub/irs-drop/n-20-17.pdf>. As legislation and regulations are moving at a quickened pace in response to this pandemic, it is always wise to consult with an attorney if you believe your business will be affected.

If you have any questions related to COVID-19 and the impact it has on you or your business, please contact Attorney Douglas Whitlock at (314) 446-4396, or any of our Business or Employment attorneys.