

## Coronavirus and Employers

HR 6201, the “Families First Coronavirus Response Act” has been passed by the House and the Senate and signed by the President. There were some additional changes made by the House prior to the Senate vote that are incorporated in the information below.

There are three key sections of the bill of concern to employers:

- 1) **Emergency Family Leave Expansion Act**
- 2) **Emergency Paid Sick Leave Act; and**
- 3) **Tax Credits for Paid Sick and Paid Family Leave**

### Emergency Family Leave Expansion Act

The requirements of the federal Family and Medical Leave Act (FMLA) are being expanded to all employers with fewer than 500 employees for the reason below.

- In effect not later than 15 days after enactment until December 31, 2020 – expected effective date is April 2, 2020
- The employer must provide up to 12 weeks of leave for employees who:
  - Have been employed at least 30 calendar days by the employer; and
  - Are unable to work (or telework) due to a need for leave:
    - To care for a child whose school or place of care has been closed, or the child care provider is unavailable due to a public health emergency (with respect to COVID-19)
- Employer shall provide paid leave (after 10 days) during any absence that meets the requirements above

Paid leave shall be 2/3 of the employee’s regular rate of pay for the number of hours the employee would normally be scheduled to work (variable hours based on hours scheduled over the prior 6-month period; or reasonable expectation of hours to be worked if employee did not work in the last 6 months)

Payments to employee capped at \$200 per day or \$10,000 in the aggregate

- During the unpaid period (10 days) employee may (but is not required to) use other accrued paid leave. [However, payments may be made under the Emergency Paid Sick Leave Act provisions below]
- Employer is required at the end of the leave to return employee to the same or equivalent position

Restoration to same or similar position is not required for employers with fewer than 25 employees if the employee's position does not exist due to economic conditions or other changes that affect employment as a result of a public health emergency; and the employer makes reasonable efforts to restore the employee to and, if unable to do so, makes reasonable efforts to contact the employee if an equivalent position becomes available

- Employers who are health care providers or first responders may elect to exclude employees from these provisions

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

- In effect not later than 15 days after enactment until December 31, 2020 – expected effective date is April 2, 2020
- An employer (fewer than 500 employees) is required to provide paid sick time to employees who are unable to work (or telework) due to a need for leave because:
  - (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 a medical diagnosis.
  - (4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
  - (5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
  - (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services Except that an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection.

- Employer must provide 80 hours of paid sick time for full-time employees and for part-time employees the equivalent number of hours worked, on an average, over a 2-week period (same analysis for employees with variable hours as above)

No requirement that the employee has worked for the employer for 30 days or any other time period

No carryover of these hours from one year to the next

These hours are in addition to paid sick time that is already available to the employee

Employee can use these paid hours before using other paid leave time

- Employee to be paid based on regular rate of pay as employee would normally have received for working

Paid sick time for care of another ordered to quarantine/isolation, or self-quarantine (as advised by health care provider) or child care as a result of school or childcare provider closure shall be 2/3 of the employee's pay

Pay to be capped at \$511 per day (and \$5110 in the aggregate) for use as a result of the employee's own quarantine/isolation; self-quarantine as advised by a health care provider; or symptoms and seeking a medical diagnosis

Pay to be capped at \$200 per day (and \$2000 in the aggregate) for use for care of another ordered to quarantine/isolation; or self-quarantine (as advised by health care provider); or child care as a result of school or child care provider closure

- The employer must post a notice of the requirements of the Act (A model notice will be made available from the Secretary of Labor)
- Guidelines to be issued by the Secretary of Labor not later than 15 days after enactment (presumably by April 2<sup>nd</sup>)
- Secretary of Labor has the authority to issue regulations

Excluding health care workers and first responders

To exempt small businesses with fewer than 50 employees from the requirements of section 5102(a)(5) when the imposition of such requirements would jeopardize the viability of the business as a going concern

Other regulations as necessary

## **Tax Credits for Paid Sick and Paid Family and Medical Leave**

- Employer shall be allowed a credit against employer-paid social security tax quarterly payments equal to 100% of qualified sick leave or family leave wages paid by the employer during the calendar quarter
- Emergency Paid Sick Leave Act: Credits limited to the caps for each day and the aggregate for each employee
- Emergency Family and Medical Leave Expansion Act: Credits limited to \$200 per day and \$10,000 for all calendar quarters per employee
- Excess credits to be treated as an overpayment and refunded
- Allows for credits for health plan expenses that are allocable to qualified sick leave wages but only to the extent that such amounts are excluded from the gross income of employees
- Similar credits are available for self-employed individuals
- Double benefit for paid sick time or paid sick leave paid not allowed

We will continue to provide you with updates on these very important issues.