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Paid leave for coronavirus-related reasons passes House and has bipartisan support

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The U.S. House of Representatives has passed **H.R. 6201, the “Families First Coronavirus Response Act.”** The bill, passed by a vote of 363-40 (with one abstention and 26 not voting), includes two key employment-related provisions: (1) temporary amendment of the Family and Medical Leave Act to allow employees to take leave for coronavirus-related reasons; and (2) a temporary paid leave requirement that applies to leave for coronavirus-related reasons. In addition, the House bill provides for funding to state unemployment agencies and a refundable tax credit for employers providing paid sick leave. The legislation has bipartisan support, and President Trump has advocated for its passage.

Because this legislation has not yet been enacted, and could be amended by the Senate, we are providing only a general summary of the House bill. We will follow up with a more detailed bulletin if and when the legislation is enacted.

Emergency Family and Medical Leave Expansion Act

The bill would amend the FMLA to create a new form of qualifying leave “related to a public health emergency.” The amendments would take effect 15 days after enactment, and would remain in effect through December 31, 2020.

Unless otherwise indicated, the following changes would apply only to public health emergency leave, and not to other forms of FMLA leave:

The bill defines “covered employer” to be an employer with fewer than 500 employees. This appears to apply to all employees of the employer, not just employees at a single site. The Secretary of Labor is authorized to issue regulations to exclude health care providers and emergency responders, and to exempt employers with fewer than 50 employees.

Employees would be eligible for public health emergency leave if they were employed by the employer for only 30 or more days.

The legislation would also change a number of definitions in the FMLA. In addition to biological, adoptive, and foster parents, the definition of “parent” would include stepparents, in-laws, the parents of an employee’s domestic partner, and an *in loco parentis* relationship when the employee “was a



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child.” In addition to spouses, parents, and sons or daughters, the legislation would expand “family member” to include sons or daughters, next of kin, and grandparents or grandchildren of the employee if the individual was pregnant, a senior citizen, an individual with a disability, or had “access or functional needs.”

Eligible employees of covered employers would be allowed to take FMLA leave if there is public health emergency declared by federal, state, or local authorities related to coronavirus in a location that includes the employee’s work (including the employee’s commuting routes), residence, or community. In addition, the employee would have to need the time off work to

- Comply with a recommendation or order by the health authority or health care provider that the employee’s presence would jeopardize the health of others because of exposure to coronavirus or symptoms of coronavirus, if the employee would not be able to both perform the job and comply with the recommendation or order.
- Care for a family member if the health authority or health care provider determines that the family member would jeopardize the health of others in the community because of exposure to coronavirus or symptoms of coronavirus.
- Care for a son or daughter because of a school closing or unavailability of child care because of a public health emergency.

The first 14 days of leave would be unpaid, but employees would have the option to substitute accrued paid leave, including vacation, personal leave, or medical/sick leave. (The employer would not be allowed to *require* substitution.) After the first 14 days, the employer would be required to pay two-thirds of the employee’s regular rate for the hours that the employee would normally be scheduled to work. (Special provisions apply to employees who work variable hours.)

As with other provisions of the FMLA, the employee seeking leave would be required to give the employer as much advance notice as practicable.

Generally, employees taking public health emergency leave would be entitled to restoration to their former position or a substantially equivalent position. However, if the employer has fewer than 25 employees, restoration would not be required if the position no longer exists because of

- Changed economic conditions or other changes that affect employment and are caused by a public health crisis during the period of leave.

Even in these circumstances, the employer would be required to make “reasonable efforts” to restore the employee to his or her job or a substantially equivalent one. If restoration is not possible, the employer would have to make “reasonable efforts” to contact the employee if a position becomes available during the earlier of the following:

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- The date on which the qualifying need because of a public health emergency concludes, or
- Twelve weeks after the “public health emergency” leave begins.

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act would require employees to provide paid leave for the employee

- To self-isolate because of a diagnosis of coronavirus.
- To get a diagnosis or care because of symptoms of coronavirus.
- To comply with a recommendation or order by a public official or health care provider that the employee would jeopardize the health of others because of exposure to, or symptoms of, coronavirus.
- To care for or assist a family member who is self-isolating because of a diagnosis of coronavirus, or has symptoms of coronavirus “and needs to obtain medical diagnosis or care,” or who is subject to an order from a public official or health care provider that the family member would jeopardize the health of others in the community because of exposure to, or symptoms of, coronavirus.
- To care for a child if the child’s school or child care facility is closed, or if the care provider is unavailable, because of coronavirus.

The paid leave entitlement would be 80 hours for full-time employees. For part-time employees, the entitlement would be based on the average hours worked over a two-week period. There would be no carryover of unused paid leave from year to year.

If the employer already provides paid leave, then the leave mandated by the Act would have to be provided in addition to the employer-provided leave.

There would be no minimum period of time that the employee had to be employed to be eligible for paid leave. In addition to public sector employers, “covered employers” would be persons engaged in commerce who employ fewer than 500 employees.

“Parent” and “family member” are, for the most part, defined in the same way that they are defined in the Emergency Family and Medical Leave Expansion Act. However, if the family member is pregnant, a senior citizen, an individual with a disability, or someone with access or functional needs, “family member” would include siblings of the employee for paid leave purposes. The definition of “spouse” would include domestic partners.

The pay rate would be the employee’s regular rate or the state or federal minimum wage, whichever is greater. However, if the leave is to care for the employee’s family member, the employee would be compensated at

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two-thirds of these amounts.

The Secretary of Labor would be required to issue a posting no later than seven days after enactment and to issue “guidelines” for calculating paid sick time no later than 15 days after enactment.

As with the Emergency Family and Medical Leave Expansion Act, the Emergency Paid Sick Leave Act would “sunset” on December 31, 2020.

We will follow up with more after the Senate acts on this legislation.

These new federal requirements would be in addition to applicable leave and paid leave requirements under state or local law.

For more information, check out our Resource Center for FAQs and updates about the coronavirus.

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