

# How the Families First Coronavirus Response Act Could Impact Employers

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**March 16, 2020**

On March 13, 2020, House Speaker Nancy Pelosi and Treasury Secretary Steve Mnuchin, acting on behalf of the White House, reached a deal for a coronavirus economic relief deal, and the House passed it that evening. H. R. 6201, named the "Families First Coronavirus Response Act" could affect employers with less than 500 employees in a number of ways, including requiring paid FMLA and sick leave. (Employers with 500 or more employees will not be affected.)

The bill creates a type of coronavirus-specific FMLA leave that would apply to absences associated with coronavirus quarantine, coronavirus care for the employee or a family member, or to stay home due to a child's school or the unavailability of a child's care provider due to coronavirus. The law provides for up to 12 weeks of job-protected and paid leave at a rate of no less than two-thirds the employee's regular rate of pay. The first 14 days may be unpaid, but an employee may elect to use available sick leave, PTO or vacation during that time. However, employers may not require employees to use sick leave, PTO or vacation during the initial 14 days. Notably, it would cover employees who have worked as little as 30 calendar days for the employer (as opposed to the one-year requirement for traditional FMLA). Currently, there are only two breaks for small employers. First, the Secretary of Labor would have discretion to exempt businesses with less than 50 employees if the imposition of these requirements would jeopardize it. Second, the job-protection requirement would not apply to businesses with less than 25 employees if the business had to eliminate the employee's position due to an economic downturn because of the public health emergency. This coronavirus FMLA amendment would sunset on December 31, 2020.

Similarly, the Families First Coronavirus Response Act would require employers to provide full-time employees with 80 hours (two weeks) of paid sick leave for the same coronavirus reasons described above. As to part-time employees, the bill requires paid sick leave in the number of hours the part-time employee typically works in a two-week period. If the leave is for the employee's self-care, leave would be paid at the employee's regular rate of pay, but if it is for the care of a family member or due to a school closing or loss of childcare, it would be paid at a rate of two-thirds the employee's regular rate of pay. The new paid sick leave would apply to all employees regardless of how long they have been employed. Like the FMLA amendments, the paid sick leave provisions of the bill would expire on December 31, 2020.

To offset the financial burden that the legislation would impose on businesses, particularly small ones, the bill provides employers with

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various tax credits. For sick leave, the tax credit would be a 100% per quarter refundable credit, but only up to \$511 per day per employee if the leave is for an employee's own coronavirus issues, or up to \$200 per day if the employee is caring for a family member or attending to a child with an interruption in childcare due to coronavirus. Similarly, for the coronavirus FMLA leave, the tax credit would be 100%, up to \$200 per employee per day, but with an aggregate cap of \$10,000 for all quarters. Self-employed individuals would also receive a variety of similar tax credits under the bill.

Two other measures indirectly affecting employers include: (a) a mandate for OSHA to issue an emergency, temporary standard that requires certain employers to develop and implement a comprehensive infectious disease exposure control plan to protect health care workers; and (b) funding to assist the states in processing unemployment claims and expand benefits. Generally, the bill also includes measures for free coronavirus testing, additional funding for several food assistance programs, and Medicaid supplements.

The bill passed the House on a 363-40 vote and the President has already expressed support for it. While it was initially expected to be passed promptly by the Senate, a few technical corrections are expected to result in changes and a return to the House. Consequently, it could be another week before a final bill is enacted. This bill comes on the heels of a \$8.3 billion emergency spending bill already passed by Congress last week and the President's national emergency declaration, which freed up funds to address the COVID-19 crisis. Both parties expressed that they are committed to work together as the crisis continues, including working on the payroll tax cut sought by the President.