

Federal Response to Covid-19¹

The House of Representatives and Senate are working on legislative responses to the evolving COVID-19 pandemic, addressing a variety of public health and economic concerns. On March 6 the President signed into law [H.R.6074, the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020](#). This legislation, commonly referred to as Phase One, appropriated \$8.3 billion in emergency funding for a number of federal agencies to respond to the Covid-19 outbreak. Specifically, the funding is to be used for developing, manufacturing, and procuring vaccines and other medical supplies, grants for state, local, and tribal public health agencies and organizations; loans for affected small businesses; evacuations and emergency preparedness activities at U.S. embassies and other State Department facilities; and humanitarian assistance and support for health systems in the affected countries

On March 18th, the U.S. Senate overwhelmingly passed, the Families First Coronavirus Response Act, H.R. 6201, which the U.S. House of Representatives had passed in a bipartisan vote on March 14. President Trump signed the bill shortly after it cleared Congress. Now that the legislation has been signed into law, its provisions become effective within 15 days.

Here are the key provisions of the legislation that are likely to impact employers:

Emergency Sick Leave

- Private sector employers with fewer than 500 workers (and governmental entities) will have to provide employees who cannot work or telework with paid sick time off if the employee is: (i) an employee subject to a coronavirus quarantine or isolation order; (ii) an employee who has been advised by a health care provider to self-quarantine due to coronavirus concerns; (iii) an employee who is experiencing symptoms of coronavirus and is seeking a medical diagnosis; (iv) an employee caring for an individual described in (i) or (ii) above; (v) an employee caring for a child whose school or place of care is closed, or the child care provider of the child is unavailable, due to coronavirus precautions; or (vi) an employee who is experiencing any other substantially similar condition specified by HHS in consultation with the Treasury and Labor Departments.
- Employers of employees who are health care providers or emergency responders may elect to exclude those employees from the emergency sick leave provisions.
- Full-time employees are to receive 80 hours of sick leave, and part-time workers are granted leave equivalent to their average hours worked in a two-week period, with the sick leave in either instance being available for immediate use regardless of the employee's tenure at the employer.
- Paid sick time will not carry over from year to year.
- Workers taking leave for themselves will have to be paid at least their normal wage or the applicable federal, state, or local minimum wage, whichever is greater. Workers taking time off to care for family members must be paid at two-thirds of the foregoing rate. Sick

¹¹¹ This summary is from The National Law Review

leave is capped at \$511 per day and \$5,110 in the aggregate for leave taken in categories (i) through (iii) described in the first bullet point above (i.e., on one's own behalf), and capped at \$200 per day and \$2,000 in the aggregate for leave taken in categories (iv) through (vi) (i.e., to take care of another).

- Wages required to be paid under the emergency sick leave provisions will not be subject to the 6.2 percent social security payroll tax typically paid by employers on employees' wages.
- Employers with existing paid leave policies will be required to provide workers with the sick leave under this emergency program. An employer cannot require a worker to use any other available paid leave before using the sick time.
- Employers will be prohibited from (i) requiring workers to find replacements to cover their hours during time off; or (ii) discharging or discriminating against workers for requesting paid sick leave or filing a complaint against the employer related to such.
- Employers will have to post a notice containing information regarding the emergency sick leave provisions; the Labor Department is to create a model notice no later than 7 days after the Act is enacted.
- The Department of Labor will be authorized to issue regulations to (i) exclude certain health care providers and emergency responders from paid leave benefits, (ii) exempt small businesses with fewer than 50 employees from the paid leave requirements "when the imposition of such requirements would jeopardize the viability of the business as a going concern", and (iii) ensure consistency between the emergency sick leave provisions and emergency family leave provisions described below.
- Workers under multiemployer collective bargaining agreements whose employers pay into pension plans will have access to paid emergency leave.
- The above provisions will take effect no later than 15 days after the Act is enacted, and expire on December 31, 2020.

Emergency Family Leave

- Private sector employers with fewer than 500 workers, along with governmental entities, will have to provide up to 12 weeks of FMLA leave for employees who have been on the job for at least 30 days, and who are unable to work or telework because they have to care for a minor child if the child's school or place of care has been closed, or if the child care provider of that child is unavailable due to a coronavirus emergency.
- An employer of an employee who is a health care provider or an emergency responder may elect to exclude the employee from the emergency family leave provisions.
- The first 10 days of leave can be unpaid (a worker could opt to use accrued vacation days or other available paid leave for those days). For subsequent days of leave, workers will

receive a benefit from their employers equal to at least two-thirds of their normal pay rate. The paid leave is capped at \$200 per day and \$10,000 in the aggregate.

- Generally, the employee on leave must be restored to his or her prior position; however, this requirement does not apply to employers with fewer than 25 employees if the position held by the employee on leave no longer exists due to economic conditions or other changes in the employer's operating conditions caused by the coronavirus pandemic, and the employer makes reasonable efforts to restore the employee to an equivalent position.
- Wages required to be paid under the emergency family leave provisions will not be subject to the 6.2 percent social security payroll tax typically paid by employers on employees' wages.
- The Department of Labor will be authorized to issue regulations to (i) exclude certain health care providers and emergency responders from paid leave benefits, and (ii) exempt small businesses with fewer than 50 employees from the paid leave requirements "when the imposition of such requirements would jeopardize the viability of the business as a going concern."
- Workers under multiemployer collective bargaining agreements whose employers pay into pension plans will have access to paid emergency leave.
- The above provisions will take effect no later than 15 days after the Act is enacted, and expire on December 31, 2020.

Employer Tax Credits

Refundable credits for the employer portion (but not the employee portion) of the Old-Age, Survivors, and Disability Insurance (OASDI) component of payroll taxes (i.e., the 6.2 percent employer portion of the Social Security tax) will be provided to employers to cover wages paid to employees for time off under the above sick leave and family leave programs.

- The sick leave credit for each employee will be for wages (including qualified health plan expenses relating to those wages) of up to \$511 per day while the employee is receiving paid sick leave to care for himself or herself, or \$200 if caring for a family member or child whose school has closed. The credit will be limited to 10 days per employee per quarter.
- The family leave credit for each employee will be for wages (including qualified health plan expenses relating to those wages) of as much as \$200 per employee per day, and \$10,000 in the aggregate for all calendar quarters.
- To prevent a double benefit, employers must include the amount of credits received in their gross income.

- Any wages taken into account in determining the credit allowed under the above emergency provisions will reduce the Code section 45S paid family and medical leave credit established by the 2017 tax reform act available to the employer.
- An employer can elect to not take the credit for a given quarter.
- The Department of the Treasury will be authorized to issue regulations or guidance relating to the credits.
- Amounts will be transferred to the social security and disability insurance trust funds from the general fund to cover the cost of the credits and lost wages.
- Railroad Retirement Tax Act (RRTA) employment taxes are also eligible for the credit, in a manner parallel to the regular social security taxes.
- The above provisions will take effect on a date selected by the Treasury Secretary within the 15 days following the Act's enactment, and end on December 31, 2020.