



H.R. 6201: The Families First Coronavirus Response Act

The Families First Coronavirus Response Act consists of two main components – the provision of additional paid sick leave pursuant to the **Emergency Paid Sick Leave Act**, and the provision of an extended period of leave for a public health emergency (i.e. coronavirus) pursuant to the **Emergency Family and Medical Leave Expansion Act (“E-FMLA”)**.

The requirements of H.R. 6201 will take effect not later than 15 days after the date of enactment. The bill was enacted on Wednesday, March 19, 2020, when President Trump signed it into law.

The **Emergency Paid Sick Leave Act** requires private employers employing less than 500 employees and government employers to provide 2 weeks of paid sick time to employees who are unable to work because the employee:

1. is subject to a federal, state, or local quarantine or isolation order related to coronavirus;
2. was advised by a health care professional to quarantine or self-isolate due to coronavirus-related concerns;
3. is experiencing symptoms of coronavirus and is seeking a medical diagnosis;
4. is caring for an individual who is subject to a quarantine or isolation order or who has been advised by a health care professional to quarantine;
5. is caring for a son or daughter because the child’s school or place of care has been closed or his or her childcare is unavailable due to precautions related to coronavirus; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health in consultation with the Secretary of the Treasury and the Secretary of Labor.

A full-time employee is entitled to 80 hours of paid sick time (prorated for part-time employees) and is immediately eligible for leave, regardless of how long such employee has been on payroll.

Note that employers of health care providers and/or emergency responders are not required to provide emergency paid sick leave to such employees.

Other key provisions under the Emergency Paid Sick Leave Act include the following:

- The paid sick leave is to be paid for reasons 1 through 3 up to \$511 per day / a combined cap of \$5,110 for employees receiving their regular rate.
- The paid sick leave is to be paid for reasons 4 through 6 up to \$200 per day / a combined cap of \$2,000 for employees receiving their regular rate.
- Employees may first use paid sick leave provided by the Emergency Paid Sick Leave Act before using any other leave.
- An employer may require employees to follow reasonable notice procedures to continue to

receive paid sick leave after the first workday that an employee receives paid sick leave.

- An employer is prohibited from requiring a worker to find a replacement to cover their absence, discharging or discriminating against employees for requesting paid sick leave, and filing a complaint against an employee for requesting paid sick leave.
- Employers will qualify for an employment tax credit equal to the amount that an employer pays an employee under the Act, up to \$511 for any day of absence for time taken to quarantine or seek a diagnosis or preventative care for coronavirus, and up to \$200 for any day of absence for time taken to care for assist a family member or child as provided above.
- The tax credit will cover up to ten days per employee for the year.
- Any tax credit claimed is considered taxable income.
- The Secretary of Labor is given authority to issue regulations to:
 - (1) exclude certain health care providers and emergency responders from the definition of employee by, among other things, allowing them to opt out;
 - (2) exempt small businesses with fewer than 50 employees from the requirements of section 5102(a)(5) (e.g. leave to care for a son or daughter because the child's school or place of care has closed or childcare is unavailable due to COVID-19) if such requirements would jeopardize the viability of a business as a going concern; and
 - (3) ensure consistency between the paid family and paid sick standards and tax credits.
- Failure to pay required sick leave will be treated as a failure to pay minimum wages in violation of the Fair Labor Standards Act.
- The Act sunsets on December 31, 2020.

Under the second component, the **E-FMLA** expands the protections of the FMLA to include public health emergency leave. Businesses with less than 500 employees must allow employees to take modified paid leave for up to 12 weeks if there is a “qualifying need related to a public health emergency.” Such “qualifying need” is limited to only circumstances where an employee is unable to work (or telework) due to a need to care for a son or daughter under 18 if the child's school or place of care has been closed, or if the child's childcare provider is unavailable, because of a public health emergency (e.g. the coronavirus).

Other key provisions under the E-FMLA include the following:

- E-FMLA leave runs concurrently to regular FMLA leave, meaning that an employee may not take both 12 weeks of E-FMLA leave as well as 12 weeks of regular FMLA leave.
- An employee is eligible for E-FMLA leave if the employee has been employed for at least 30 days (in contrast to the Emergency Paid Sick Leave Act).
- The first 10 days of E-FMLA leave may be unpaid, but an employee can elect to use any accrued leave, including vacation, personal, medical and sick leave, for such time. An employee may elect to substitute any accrued paid vacation leave, personal leave, or medical or sick leave, for unpaid leave during this these days.
- After the first 10 days, employers must provide partially paid leave for each additional day of leave of at least 2/3 of the employee's regular rate for the remainder of the leave, with a caveat that E-FMLA may not exceed \$200 per day and \$10,000 in the aggregate. Employees may also elect to substitute accrued leave for the 1/3 of unpaid leave so that they are still paid at their regular rates, although this is not necessary.
- Employers may exclude any health care provider or emergency responder employees from coverage under the E-FMLA.
- The Secretary of Labor has the discretion to exempt certain employers, including businesses with less than 50 employees, from all coverage under the E-FMLA (in contrast to the Emergency Paid Sick Leave Act) if the leave requirement would jeopardize the viability of the business.
- Employers may claim a tax credit equal to payments made to employees for E-FMLA leave, with a maximum of \$200 per employee per day of E-FMLA leave with a \$10,000 per employee cap.

- Any tax credit claimed is considered taxable income.
- Since there is already a FMLA-related tax credit that an employer may claim, the new credit cannot be used in conjunction with any wages to which the existing FMLA tax credit already applies.
- The FMLA's job restoration requirements will apply to employers with 25 or more employees.
- If an employer employs less than 25 employees, job restoration is **not** required if: (1) the employee takes E-FMLA leave; (2) the employee's position no longer exists due to economic conditions or other changes in operating conditions caused by a public health emergency during the period of leave; and (3) the employer makes reasonable efforts to restore the employee to an equivalent position. If no such equivalent positions are available at the time the employee attempts to return to work, the employer has an ongoing duty lasting one year to attempt to contact the employee if an equivalent position opens.
- The Act sunsets on December 31, 2020.

Please feel free to contact the following individuals at Updike, Kelly & Spellacy, P.C. with any questions or to inquire as to representation related to this topic:

Attorney Christopher Brigham is the Chair of Updike, Kelly & Spellacy's Employment Practices Group. He provides legal advice concerning all aspects of employment law and offers a variety of training programs and seminars for schools and companies and can be reached at cbrigham@uks.com or at (203) 786-8310.

Updike, Kelly & Spellacy, PC would like to thank associates Jeffrey Renaud and C. Zack Hyde for their contributions to this article.

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