
COVID-19 Response Legislation: Emergency Expanded FMLA and Sick Leave Provisions

The Emergency Family and Medical Leave Expansion Act

H.R. 6201 amends the Family and Medical Leave Act to provide up to 12 weeks of job protected leave (10 of which are paid) to employees because of a qualifying need related to a public health emergency. The requirement applies to all employers with fewer than 500 employees and to any employee who has been employed for at least 30 calendar days by the employer. Following the first 10 days of coronavirus FMLA leave, the employer must provide paid leave in an amount that is not less than two-thirds of the employee's regular rate of pay. The Secretary of Labor has authority under the bill to exempt employers with fewer than 50 employees from emergency FMLA requirements if they jeopardize the viability of the business as a going concern.

The Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act requires employers with fewer than 500 employees to provide two weeks of paid sick leave at the employee's regular rate of pay because of a qualifying need related to a coronavirus public health emergency. The provision limits pay to two-thirds of the employee's regular rate when the leave is to care for a family member or child. Full-time employees are afforded 80 hours of paid sick time while part-time employees are to receive the number of hours that such employee works, on average, over a two week period. Moreover, paid sick time must be granted on top of any pre-existing paid leave benefits. As with the expanded FMLA, the Secretary of Labor has authority to exempt employers with fewer than 50 employees from emergency paid sick leave requirements if they jeopardize the viability of the business as a going concern. Paid sick leave shall not carry over from one year to the next, and an employer may not require an employee to use existing paid leave provided by the employer before using the emergency paid sick leave provided for in the bill.

Tax Credits for Paid Sick and Paid Family and Medical Leave

H.R. 6201 provides for a refundable tax credit that is equal to the qualified paid sick or family leave wages paid by an employer for each calendar quarter. The tax credit is allowed against the employer portion of Social Security and Medicare taxes. The credit generally is equal to amounts paid to employees who are sick or in quarantine. With respect to amounts paid to employees caring for a family member or for a child whose school or place of care has been closed, a lesser credit will apply. In addition, there are applicable caps and limits on these credits.

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