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**LABOR AND EMPLOYMENT LAW ALERT**

**March 2020**

**Congress Passes Bill in Response to Coronavirus**

House Bill H.R. 6201 is the Congressional response to the coronavirus (i.e., SARS-CoV-2 or COVID-19) outbreak – The Families First Coronavirus Response Act. The bill responds to the Coronavirus outbreak by providing paid sick leave, free testing, expanding food assistance and unemployment benefits, and requiring employers to provide additional protection for health care workers. The bill has been passed by both the United States House of Representatives and United States Senate, and has been signed into law by President Trump

*Family and Medical Leave Provisions*

**Division C of the Bill, titled “Emergency Family and Medical Leave Expansion Act”** - temporarily expands the coverage of the Family and Medical Leave Act (“FMLA”).  Under this section, an “eligible employee” means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested, and t**he “employer threshold” includes those employers with “fewer than 500 employees.”**

A “qualifying need related to a public health emergency” means the employee is unable to work (or telework) due to a need for leave to care for a child under 18 years of age if the child’s school or place of care has been closed, or the child’s ordinary care provider is unavailable, due to a public health emergency.

The first 10 days of leave an employee takes may be unpaid leave, but the employee may substitute vacation, personal, or sick leave during the initial 10-day period. The Employer must provide paid leave for each day of leave that an employee takes after taking FMLA leave for 10 days.

The pay benefit employers must provide equals two-thirds of the employee’s regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work. For employees with variable hours, employers must look at the number equal to the average number of hours worked over a 6-month period. An employer signatory to a multi-employer collective bargaining agreement may fulfill its obligations by making contributions to the fund based on the paid leave each of its employees is entitled to under the agreement.

Under the amendments, a position does not have to be restored if an employer employs fewer than 25 employees and: (1) the employee takes leave due to a public health emergency; (2) the position held by the employee no longer exists due to economic conditions or other changes in the operating conditions of the employer that affect employment and are caused by the public health emergency during the period of leave; (3) the employer makes reasonable efforts to restore the employee to an equivalent position; (4) and within a year after the public health emergency concludes, the employer makes reasonable efforts to contact the employee about an equivalent position that has become available.

Employers of health care providers or emergency responders may elect to be excluded from applying the temporary FMLA amendments.

*Paid Sick Leave Provisions*

**Division E of the Bill provides for paid sick leave for certain absences. Under this section, private employers with fewer than 500 employees or public agencies or other public entities with more than 1 employee must provide their employees with up to 80 hours of paid sick leave, regardless of how long the employee has worked for the employer. Part-time employees are also entitled to paid sick leave, but on a prorated basis. Paid sick leave is available for immediate use for the following reasons:**

i. To self-isolate because the employee is diagnosed with coronavirus;

ii. To obtain a medical diagnosis upon experiencing symptoms of coronavirus;

iii. To comply with recommendation or order by a public official or health care provider because the physical presence of the employee would jeopardize the health of others because of exposure to coronavirus or exhibition of symptoms;

iv. To care for or assist a family member who is self-isolating because of diagnosis, experiencing symptoms, or who is subject to an order that the presence of that person in the community would jeopardize the health of others due to exposure to the coronavirus or symptoms; or

v. To care for the child of an employee if school or place of care is closed due to coronavirus.

The legislation provides for caps for paid sick leave - $511 a day and $5,110 in the aggregate when used for self-isolation, obtaining a medical diagnosis, or complying with a recommendation or order by an official or health care provides. The cap for sick leave must not exceed $200 a day and $2,000 in the aggregate when used for caring or assisting a family member who is self-isolating or caring for a child if school or other place of care is closed due to the coronavirus.

An employer may not require that the employee search for or find a replacement employee to cover the hours in which the employee is using paid sick time. An employer may not require an employee to use other paid leave before using the paid sick time.

Each employer is required to post a notice, to be provided by the Secretary of Labor. Employers are prohibited from discharging or disciplining an employee who takes a leave in accordance with the Act. For employers who are signatories to multi-employer collective bargaining agreements, this obligation may be satisfied by making contributions to the fund, plan or program based on the hours of paid sick time each of its employees is entitled.

The Secretary of Labor has the discretion to issue regulations exempting health care providers and emergency responders form the definition of employee under this section as well as small businesses with fewer than 50 employees if the imposition of the requirements would jeopardize the viability of the business as a going concern.

For additional information, click [here](https://www.congress.gov/bill/116th-congress/house-bill/6201/text).