

Amended House Bill Passes Senate

March 18, 2020

The latest version of the Families First Coronavirus Response Act (H.R. 6201) passed through the Senate on March 18, 2020 after a brief delay and is headed to President Trump's desk where he is expected to immediately sign.

The latest version of the bill includes sweeping changes to the prior legislation, which was passed by the House of Representatives only days earlier.

By way of brief background, the legislation initially required private employers with 500 or fewer employees, and most public-sector employers, to provide extended "emergency" FMLA leave for a variety of COVID-19 related contingencies and paid sick leave.

Under the latest revision, the House narrowed these objectives.

Emergency Family and Medical Leave Act

The revised bill provides that employers with fewer than 500 employees must provide up to 12 weeks of job-protected FMLA leave for "a qualifying need related to a public health emergency" to employees who have been on the payroll for 30 calendar days. This "qualifying need" is limited to circumstances only where an employee is unable to work (or telework) due to a need to care for a minor child if the child's school or place of childcare has been closed or is unavailable due to a public health emergency.

The revision has a few key exemptions:

1. Healthcare provider or emergency responder employees; and
2. Small businesses (defined as those with fewer than 50 employees) if the required leave would jeopardize the viability of their business.

This is a dramatic scaling back from the prior version of the bill, which would have provided extended leave for significantly more COVID-19 related reasons.

The revised bill provides 10 days (reduced from 14) of unpaid FMLA leave. An employee can opt to substitute accrued vacation, personal, or sick leave, but an employer may not require an employee to do so. The remainder of FMLA leave must be paid, generally at two-thirds of the employee's regular rate, for the number of hours the employee would otherwise be scheduled to work. Unlike the prior bill, the revised bill limits the amount of required pay for leave to no more than \$200 per day and \$10,000 in the aggregate.

As with typical FMLA leave, the employer must restore employees to their prior positions (or an equivalent) upon the expiration of leave. There is an exception for employers with fewer than 25 employees if the employee's position no longer exists following leave due to operational changes occasioned by a public health emergency.

Emergency Paid Sick Leave

The bill also requires private employers with fewer than 500 employees to provide paid sick time to an employee who is unable to work or telework because:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a healthcare provider to self-quarantine because of COVID-19;
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. The employee is caring for an individual subject or advised to quarantine or isolation;
5. The employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions; or
6. The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

An employer may exclude employees who are healthcare providers or emergency responders from this coverage. The bill also exempts small businesses with fewer than 50 employees from these requirements if they jeopardize the viability of a business as a going concern.

In general, an employee is entitled to 80 hours of paid sick time (pro-rated for part-time employees). Unlike the 30-day payroll requirement, employees are immediately eligible for this leave. The revisions also allow employers to require employees to follow reasonable notice procedures to continue to receive paid sick time after the first workday (or portion thereof) an employee receives paid sick time.

The bill limits an employer's requirement of paid leave to \$511 per day (\$5,110 in the aggregate) where leave is taken for the first three reasons noted above (generally, an employee's own illness or quarantine); and \$200 per day (\$2,000 in the aggregate) where leave is taken for the last three reasons (care for others or school closures).

The bill includes a prohibition on retaliating against any employee who takes leave in accordance with the new law. The bill further provides that the 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 bill requires employers to notify each employee of their right to emergency sick leave. **This notice must be documented in any employee handbook and in conspicuous places on the premises of the employer, where notices are customarily posted.** Employers who fail to provide the notice requirement will be subject to a civil fine for each separate offense.

For more information on the current bill or our thoughts on key provisions, please contact the authors or any member of our Labor and Employment team.

Additional updates will be provided in the [COVID-19 Resource Center](#) as well as through social media.

Related people

Camille R. Bryant