

How does the Families First Coronavirus Response Act (H.R. 6201) impact employers?

March 19, 2020

On March 18, 2020, President Trump signed into law The Families First Coronavirus Response Act (<https://www.congress.gov/bill/116th-congress/house-bill/6201/text>) (H.R. 6201). The law is effective April 1, 2020 and the provisions below end on December 31, 2020. While this act has extensive provisions in response to COVID-19, the following areas are important for employers to note:

EXPANDED FMLA

What is expanded?

The Emergency Family and Medical Leave Expansion Act amends the current Family and Medical Leave Act (FMLA), allowing leave for eligible employees who can't work (or telework) because their minor child's school or childcare service is closed due to a COVID-19 emergency declared by a federal, state or local authority.

Who is eligible?

Eligible employees include employees who work for an employer with fewer than 500 employees and who have been on the payroll for at least 30 calendar days.

The legislation also allows the secretary of labor to exclude health care providers and emergency responders from the definition of employees who are allowed to take leave.

Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Is this paid leave?

The first 10 days of this leave may be unpaid; however, employees may elect to substitute available paid time off, such as vacation, personal or sick leave, during this time.

After the initial 10 days, employers must pay eligible employees at least two-thirds of the employees' regular rate of pay (as defined under the Fair Labor Standards Act) based on the number of hours the employees would otherwise have been scheduled to work. These paid-family-leave benefits are capped at \$200 a day (or \$10,000 total).

Are there exceptions?

A small employer with fewer than 25 employees is not obligated to reinstate an employee at the end of his or her leave if the employee's position has been eliminated due to economic conditions or other changes in operating conditions of the employer caused by COVID-19, and the employer is unable to reinstate the employee to an equivalent position.

What is the effective date?

The expanded FMLA provisions take effect April 1, 2020 and expire on December 31, 2020.

PAID SICK LEAVE**Who is covered?**

Employers with fewer than 500 employees and public agencies with at least one employee.

Which employees are eligible?

All employees, regardless of how long they have worked for the employer are eligible for paid sick leave, with the exception that an employer of health care providers or emergency responders may elect to exclude such employees.

How much leave is required?

Covered employers must provide full-time employees with up to 80 hours of paid sick leave if the employees are unable to work (or telework) due to COVID-19. Part-time employees are entitled to paid sick leave based on the number of hours the employees work, on average, over a two-week period.

What are the qualifying reasons for leave?

Qualifying reasons for this paid sick leave include:

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 health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to either number 1 or 2 above.
5. The employee is caring for his or her son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the secretary of health and human services in consultation with the secretary of the treasury and the secretary of labor.

What are the pay requirements?

Paid sick leave must be paid at the employee's regular rate of pay, or minimum wage, whichever is greater, for leave taken for reasons 1-3 above. An Employee taking leave for reasons 4-6 may be compensated at two-thirds of his or her regular rate of pay, or minimum wage, whichever is greater.

What if the employee has other paid leave available?

An employer may not require an employee to use other types of paid leave provided by the employer before the employee uses the paid sick time available under this law.

What is the effective date?

The-paid-sick leave provisions take effect April 1, 2020 and expire on December 31, 2020.

HEALTH INSURANCE

A group health plan must provide coverage without any cost-sharing requirements, such as deductibles, co-payments and co-insurance, or prior authorization or other medical management requirements, for:

- The costs of a test to detect or diagnose the virus that causes COVID-19; or
- Health care provider visits, including telehealth visits, urgent care and emergency room visits, that result in an order for or administration of a test to detect or diagnose the virus that causes COVID-19.

TAX CREDITS FOR PAID SICK LEAVE AND PAID FMLA

A tax credit is created for each calendar quarter for an amount equal to 100 percent of the qualified sick leave wages and qualified family leave wages paid by an employer during the calendar quarter, including some costs associated with providing and maintaining a group health plan during such paid leaves.

Employers pay the paid leave and can take an immediate tax credit by retaining the amount of payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If the leave paid is greater than the amount of payroll taxes owed, employers will file a request for a refund from the IRS, which they expect to process in two weeks or less.

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