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March 16, 2020

The Families First Coronavirus Response Act—What Could It Mean for Employers?

The Families First Coronavirus Response Act was passed by the U.S. House of Representatives shortly before 1:00 a.m. on March 14, 2020. H.R. 6201 amends several existing federal laws and creates new law to address the COVID-19 pandemic and its impact on American workers and employers. The U.S. Senate is expected to take up the bill this week and its current form is likely to change. The following is a summary of key provisions, as the bill currently stands, pertaining to employers and employees.

Expansion of the Family and Medical Leave Act to Provide Unpaid and Paid Leave

H.R. 6201 amends existing provisions of the Family and Medical Leave Act (FMLA) to provide both unpaid and *paid* leave because of a qualifying need related to the coronavirus public health emergency. The bill adds a "Qualifying Need Related to a Public Health Emergency" to FMLA: (1) leave to self-quarantine at the direction of a health official or health care provider because of exposure to coronavirus or exhibition of coronavirus symptoms; (2) to care for a family member who has been self-quarantined under the same direction; and (3) to care for a child if the child's school or place of care has been closed for coronavirus-related reasons.

The bill provides for 14 days of unpaid leave for the above circumstances. An employee may elect to use accrued paid leave but the employer may not require substitution of such leave. This initial period is then followed by 14 days of employer-paid leave. Any person employed for at least 30 days is eligible for FMLA under the proposed public health emergency provisions.

Emergency Paid Sick Leave

H.R. 6201 also mandates paid sick leave under the above scenarios for employers with fewer than 500 employees. Full-time employees would be entitled to up to 80 hours of paid leave. This 80-hours of leave is in addition to any leave currently provided by employers. An employee may use the leave immediately and an employer may not require an employee to use other paid leave before the emergency paid sick time.

Like the expanded FMLA provisions, this emergency paid sick leave would be available only for the following uses: to self-isolate because an employee is diagnosed with coronavirus; to obtain a medical diagnosis or care of symptoms; to comply with a recommendation or order to self-isolate due to exposure to coronavirus or exhibition of symptoms; to care for a family member who is self-isolating because of exposure or symptoms; or to care for a child if the school or place of care is unavailable. If approved, this new leave provision would expire December 31, 2020.

Expansion of Unemployment Benefits and Tax Credits for Employers

H.R. 6201 also provides emergency unemployment insurance benefits to states that see an increase in unemployment applications, including waivers of waiting periods and proof of seeking work. Employers would also receive a tax credit for qualified sick leave benefits paid under the bill.

What's Next?

The U.S. Senate is expected to take up the bill this week. The current form of the bill is expected to change before Congress reaches a deal and it is signed by the president. We will issue further updates as the bill moves

through Congress.

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