

## ALERT: President signs Families First Coronavirus Response Act

March 20, 2020

On Wednesday, March 18, President Donald Trump signed into law H.R. 6201, which includes several important provisions designed to aid the economy, support individual financial stability and curb the spread of COVID-19.

This alert summarizes three aspects that affect employers: (1) the Emergency Family and Medical Leave Expansion Act, (2) the Emergency Paid Sick Leave Act, and (3) Tax Credits for Paid Sick and Paid Family and Medical Leave Act. Private businesses with 500 or more employees are not covered by this legislation.

### **Emergency Family and Medical Leave Expansion Act**

First, the Families First Coronavirus Response Act includes changes to the Family and Medical Leave Act of 1993 (FMLA).

- The FMLA Expansion Act provides that private-sector employers with fewer than 500 employees, and covered public-sector employers, 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 at least 30 calendar days prior to the request for qualified leave.
  - This “qualifying need” is limited to circumstances where an employee is unable to work or telework due to a need to care for a son or daughter under 18 years of age if the child’s school or place of childcare has been closed or is unavailable due to a public health emergency.
- The first 10 days of emergency FMLA leave can be unpaid. Employees can substitute accrued vacation, personal or sick leave, but an employer may not require them to do so.
- The remainder of FMLA leave is required to be paid, at no less than two-thirds of the employee’s regular rate, for the number of hours the employee would otherwise be scheduled to work. The provisions limit the amount of required pay for leave to no more than \$200 per day and \$10,000 in the aggregate per employee.
- FMLA leave, including this expansion, generally requires the employer to restore employees to their prior positions (or an equivalent) upon return from FMLA leave.
  - The Act includes an exception to this requirement for employers with fewer than 25 employees, if the employee’s position no longer exists following the qualified leave due to economic conditions or operational changes (e.g., a dramatic downturn in business) caused by a public health emergency, subject to certain conditions.
- The legislation authorizes the Secretary of Labor to issue regulations to exempt small businesses (defined as those with fewer than 50 employees) if the required leave would jeopardize the viability of their business.
- An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions in the amendments of this Act.

The provisions take effect no later than April 2nd and expire December 31, 2020.

### **Emergency Paid Sick Leave Act**

In addition to the FMLA expansion, H.R. 6201 contains a provision requiring paid sick leave. In general, a full-time employee is entitled to 80 hours of paid sick leave, pro-rated for part-time employees, based upon their average two-week work expectancy. Unlike the 30-day payroll requirement for FMLA expansion, employees are immediately eligible for this leave.

The Act requires private employers with fewer than 500 employees, and covered public employers, to provide paid sick time to an employee who is unable to work or telework for the following reasons:

- 1) the employee is subject to a federal, state or local quarantine/isolation order related to COVID-19;
- 2) the employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns;
- 3) the employee is experiencing COVID-19 symptoms and seeking a medical diagnosis;
- 4) the employee is caring for an individual who is under a governmental quarantine or healthcare provider isolation order;
- 5) the employee is caring for a son or daughter whose school or place of childcare is closed due to COVID-19 precautions; or
- 6) the employee is experiencing any other substantially similar conditions as specified by the Secretary of Health and Human Services and other government officials.

The paid sick time shall not exceed the following amounts based on the employee's circumstances:

<b>Leave is taken for reasons (1), (2) and (3) noted above:</b>	\$511 per day (\$5,110 in the aggregate) where leave is taken when the employee is subject to quarantine, isolation or is seeking medical treatment for COVID-19 (reasons (1), (2) and (3) noted above); calculated using the greater of the employee's regular rate of pay or the minimum wage established by the FLSA or the state or locality in which the employee is employed.
<b>Leave is taken for reasons (4), (5) or (6) noted above:</b>	\$200 per day (\$2,000 in the aggregate) where leave is taken for caring for others or school closures (reasons (4), (5) or (6) noted above); calculated at two-thirds the employee's required compensation as described above for reasons (1), (2) and (3).

The Act also indicates the following:

- The employer may **not** require an employee to use other paid leave before the employee uses this paid sick leave.
- This paid sick leave shall not carry over to any other years.
- A prohibition on retaliating against any employee who takes leave in accordance with the new law.
- 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 and be subject to penalties.

The Act also grants the Secretary of Labor the authority to issue regulations to:

- a) exclude certain health care providers and emergency responders, including by allowing the employer of such health care providers and emergency responders to opt out;
- b) exempt small businesses with fewer than 50 employees from the requirements of reason (5) noted above – the employee is caring for a son or daughter whose school or place of childcare is closed due to COVID-19 precautions – if they jeopardize the viability of a business as a going concern; and
- c) ensure consistency between the paid family and paid sick standards and tax credits.

The provisions take effect no later than April 2nd and expire on December 31, 2020.

### **Tax Credits for Paid Sick and Paid Family and Medical Leave Act**

The legislation also provides a payroll tax credit for employers that are required to offer Emergency FMLA or paid sick leave, including self-employed individuals.

#### **Credit for Paid Sick Leave**

- Employers will be allowed a payroll tax credit for 100% of qualified sick leave wages paid by the employer.
- The wages taken into account for this credit are those wages which are authorized under the Emergency Paid Sick Leave Act, described above. In addition, the amount of wages eligible for credit for any individual shall not exceed \$511 per day and \$200 per day respectively, as indicated above. There are some overall limits that apply related to how many days can be taken into account for the credit.

- If the amount of the credit for any calendar quarter exceeds the payroll tax liability for the quarter, the excess shall be refunded.
- Employers will also receive an increased credit for the amount of the employer's qualified health plan expenses (for example, expenses paid or incurred to provide and maintain a group health plan) as are allocable to the qualified sick leave wages.

### **Credit for Paid Family Leave**

- Employers are also entitled to a payroll tax credit for wages that are paid due to the Emergency Family and Medical Leave Act.
- The wages taken into account for this credit for any individual shall not exceed \$200 per day or \$10,000 for all calendar quarters.
- If the amount of the credit for any calendar quarter exceeds the payroll tax liability for the quarter, the excess shall be refunded.
- Employers will also receive an increased credit for the amount of the employer's qualified health plan expenses (for example, expenses paid or incurred to provide and maintain a group health plan) as are allocable to the qualified family leave wages.

The wages paid for emergency sick leave and family and medical leave under this legislation are taxable wages for income and employment tax purposes, except that such wages are exempt from the employer's portion of Social Security tax. Such payments are subject to Medicare taxes but an additional payroll tax credit is allowed for the amount of Medicare tax paid on those wages. **Accordingly, hours and wages paid for these two situations should be tracked and reported separately.**

### **Other legislative efforts**

H.R. 6201 is the second emergency measure from Congress in response to the coronavirus. H.R. 6074 was enacted on March 6 and focused on supplemental appropriations to various federal agencies to ramp up preparedness and response efforts. A third piece of legislation is reportedly underway that will focus on industry-specific financial relief. The bill is expected to include tax and other measures to increase cash flow to businesses in industries such as travel, lodging, restaurants and retail that have been rapidly and dramatically impacted by the spread of COVID-19.

### **Changing landscape & for more information**

As you know, the landscape changes daily during this unprecedented public health emergency. We will continue to provide pertinent updates to you during this time.

As a reminder, the above is only a summary review of the Families First Coronavirus Response Act. There are also provisions in the law regarding funding for various federal agencies, as well as other provisions relating to the response to this public health crisis. Please contact your AGH tax advisor, Tax Executive Vice President Shawn Sullivan, Senior HR Consultant Carrie Cox or Outsourcing Senior Vice President Cindy McSwain using the contact information included below to discuss your situation or employer-related questions.

- **Tax:** Shawn Sullivan at 316.291.4110 or [Shawn.Sullivan@aghlc.com](mailto:Shawn.Sullivan@aghlc.com)
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