



Families First Coronavirus Response Act (H.R.6201)

Overview

Unemployment Compensation

Under H.R. 6201, states will have more flexibility over waiting periods and the “able, available and actively looking” test for Unemployment Compensation (UC) eligibility. Anyone who has been quarantined due to COVID-19 (also eligible for paid sick time), furloughed due to COVID-19, or laid off because of COVID-19 will be eligible for Unemployment Compensation. Some states, greatly impacted by COVID-19, will also have unemployment benefits extend past the normal 26 weeks which will be funded by the federal government.

Paid Sick Leave

All employers with less than 500 employees will be mandated to provide two weeks of paid sick leave for employees that are:

- Subject to a government quarantine or isolation order related to COVID-19,
- Have been advised by health provider to self-quarantine due to COVID-19,
- Experiencing symptoms of COVID-19 and seeking medical diagnosis,
- Caring for an individual subject to quarantine order or self-quarantine,
- Caring for children if schools are closed or their caregiver is unavailable because of a public health emergency
- Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services

The employer must provide 100% paid sick leave up to \$511 a day and \$5,111 in aggregate for up to 80 hours for full-time employees and the hours normally worked in a two-week period for a part-time employee under the first three scenarios above. Employees missing work due to caring for a sick family member or caring for children because of school closure may be paid 2/3 of the rate they would normally receive for up to \$200 a day and \$2,000 in aggregate. Importantly, these provisions are in addition to whatever type of paid sick leave a business already offers and would sunset on December 31, 2020.

The Federal Government will reimburse businesses 100% of the capped costs associated with paying for employee’s sick leave due to COVID-19 through a Social Security tax credit. Employers with Social Security tax liabilities less than their costs associated with paying for sick leave will receive reimbursement in other forms. The amount of the tax credit is further increased by the amount of the expenses of the employer’s health care plan allocable to the qualified sick leave. Paid sick leave is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax, for the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax.

The Secretary of Labor is authorized to issue regulations to exempt health care providers and emergency responders from the definition of employer. In addition, the Secretary may exempt small businesses with fewer than 50 employees from the requirement to offer leave to care for a child when a school is closed when the imposition of paid sick leave would jeopardize the viability of the business as an ongoing concern.

Paid Family and Medical Leave (FMLA)

Employers with less than 500 employees will be required to provide employees with up to 12 weeks of paid FMLA if they must miss work to care for children if schools are closed or their daycare is unavailable because of a public health emergency and they are unable to work or telework. Employers must pay 2/3 of the normal pay, not to exceed \$200 a day and \$10,000 in aggregate.

The Secretary of Labor is authorized to exempt health care providers and emergency responders and small businesses with fewer than 50 employees if the requirement would jeopardize the business as an ongoing concern. The requirements to restore the employee to their position after the paid leave is taken do not apply to businesses with fewer than 25 employees if the position no longer exists because of the public health emergency (provided the employer takes certain actions to try and assist the employee). Employers with less than 50 employees are exempt from civil actions brought by employees for violations of this section. Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid FMLA. These provisions would end on December 31, 2020.

Small Businesses Concerns

Over the course of vetting this bill we have heard many concerns from small businesses, specifically related to providing the upfront costs needed to pay for sick leave or FMLA. The provisions in the House passed bill include regulatory flexibility to waive penalties for businesses not submitting their payroll taxes if they do so in anticipation of a refund under this bill. And with respect to paid FMLA, the bill exempts businesses with fewer than 50 employees if paying leave would jeopardize the business. Moreover, leave under the bill is not available if an employee can perform their job remotely, and the qualifying conditions for providing paid family leave have been scaled back to taking care of children when school is closed or their ordinary care giver is not available.

Other Provisions of the Bill

Provisions for Diagnostic Testing:

- Requires private health plans to provide coverage for diagnostic testing at no cost to the consumer
- Waives beneficiary cost sharing under Medicare Part B when provider visit includes diagnostic test
- Requires Medicare Advantage to provide diagnostic test and associated provider visit at no cost to the beneficiary
- Requires Medicaid to provide diagnostic test and associated provider visit at no cost to the beneficiary
- Requires that those under TRICARE, Veterans programs, Indian Health Services, and federal civilian workers have coverage for diagnostic testing without cost sharing
- \$1 billion to reimburse cost of testing for individuals without health insurance
- \$82 million for Defense Department Health program
- \$64 million for Indian Health Service
- \$60 million for Veterans Medical Services

Health Services:

- 6.2% increase in FMAP – State Medicaid Match Rate
- Increase in Medicaid allotments for U.S. territories

School Nutrition Programs, WIC, SNAP, Senior Food Programs:

- \$500 million for the WIC program
- \$400 million for Dept of Agriculture Commodity Assistance program for local food banks
- \$100 million for nutrition assistance to U.S. territories
- \$250 million for senior nutrition programs including home-delivered meals and congregate

- nutrition
- Authority to provide school nutrition benefits, including through the EBT system, for families with children in schools closed for five or more days
- Authority for state waivers for certain program requirements under school nutrition, WIC, and SNAP to respond to COVID-19
- Suspension of SNAP work and work training requirements

Medical Devices Liability:

- Provides limited liability protection for manufacturers of personal respiratory protective devices

Phase 3 of the Federal Government's Response

Phase 3 is expected to be passage of a large economic stimulus package. Exact language for Phase 3 legislation has not yet been announced; however, a stimulus package proposed by the U.S. Department of Treasury includes:

- Money for the airline industry
- Money for critical sectors
- Payments to individual taxpayers
- Money for small business loans

Questions

The SC Chamber is working diligently to keep our members informed as we receive new information. For all business-related questions related to COVID-19, please email COVID19response@scchamber.net. As a member of the S.C. Emergency Management Division's ESF-24 team, we will do our best to help you find answers to your questions.