

House Passes Emergency "Families First Coronavirus Response Act"

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Related Practice Areas: Business, COVID-19 Response and Employment

An emergency bill targeted to help families during the coronavirus outbreak is expected to pass the U.S. Senate this week.

With the support of President Donald Trump, the U.S. House of Representatives passed the *Families First Coronavirus Response Act*. The bill now heads to the Senate where it is expected to pass this week and be signed by President Trump.

Here is what employers should be prepared for:

Emergency Family and Medical Leave Expansion Act

The bill includes an emergency expansion of the Family and Medical Leave Act as follows:

1. Applies to any employee who has been employed for at least 30 calendar days.
2. Applies to all employers with fewer than 500 employees and removes the 50 employee minimum threshold for coverage.
3. Leave is available to comply with a recommendation or order of a public health official or a health care provider if:
 - The physical presence of the employee would jeopardize the health of others because the employee was exposed to the virus or is exhibiting symptoms of the virus and the employee can't perform essential functions of job and comply with the order.
 - Is needed to care for a family member who is in the previous, same circumstances.
 - Is needed to care for a child under the age of 18 if no school or child care is available due to a public emergency.
4. Family member means a parent of the employee, a spouse of the employee or a minor child of the employee. It also includes an individual who is a pregnant woman, senior citizen, an individual with a disability or who has access or functional needs and who is:
 - Sibling of the employee
 - Next of kin of the employee or
 - Grandparent or grandchild of the employee

5. Regulations will be issued excluding certain health care providers and emergency responders from the bill.
6. Employers with fewer than 50 employees may be exempt from leave provisions if providing leave would jeopardize their business as an ongoing concern.
7. First 14 days of leave may consist of unpaid leave but employee may elect to use paid time off. Employer cannot mandate paid time off.
8. After first 14 days, employee must be paid for the leave at two-thirds of his/her regular pay.
9. Employers with fewer than 25 employees can refuse employee reinstatement if the job no longer exists due to economic conditions or shut down of operations. If the employee is denied reinstatement, the employer must make reasonable efforts to reinstate within the earlier of one year after date the public health emergency was declared or 12 weeks after the date the employee's leave began.

Emergency Paid Sick Leave Act

The bill includes an emergency expansion of paid sick leave as follows:

1. Applies to all employers with fewer than 500 employees.
2. Within seven days of the effective date, the U.S. Department of Labor will issue a notice for employers to post about mandatory paid sick leave.
3. Employers must provide 14 days of paid sick leave as follows:
 - Full-time employees: Up to 80 hours
 - Part-time employees: Number of hours based on average hours worked in last two weeks.
 - There is no carryover into next calendar year.
 - This sick leave is in addition to an employee's already existing sick leave or other paid time off. Employers cannot mandate that employees substitute accrued sick leave or other paid time off for the mandatory sick leave nor deduct from sick leave or other paid time off banks.
 - Employers cannot require that an employee find a substitute employee to cover his/her work shift.
 - Paid sick leave is available if the employee is self-isolating or needs to obtain a medical diagnosis because of symptoms, is caring for a family member who is self-isolating or needs to obtain a medical diagnosis because of symptoms, or is caring for a child because the school or daycare is closed.

The bill also includes additional funding for unemployment compensation benefits, provided states relax requirements related to waiting periods and searching for work. Employers would also receive a tax offset for paid leave provided.

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Developments in this area are changing daily. If you have questions for how the coronavirus will affect your business, please contact me or any member of the Barley Snyder COVID-19 Response Team.