

Phase Two of Federal Government's Coronavirus Response: Emergency Paid Leave Mandates with Employer Tax Credits

Overview

On March 14, 2020, the U.S. House of Representatives approved the *Families First Coronavirus Response Act* (H.R. 6201). The bill includes two new paid leave mandates on employers with less than 500 employees that will have significant impacts on employers' ability to maintain or resume operations.

- 1) The Emergency Family and Medical Leave Expansion Act (Division C): Businesses with *less than 500 employees* will be required to offer Family Medical Leave Act (FMLA) leave benefits to all employees. Eligible employees must have been on the employer's payroll for 30 days. The first two weeks of leave may be unpaid leave, but thereafter employers must continue to offer FMLA paid leave for ten weeks compensated at two-thirds of the employee's regular rate of pay. This leave can be utilized for an employee's COVID-19 quarantine or treatment, care for an at-risk family member, or care for a child due to school closings or child care disruption. As with traditional FMLA, this leave is job-protected, meaning the employee must be returned to her/his same or equivalent job position.
 - Employers will receive a 100% refundable tax credit from the federal government for qualified family leave wages paid by an employer for each calendar quarter, but this is capped at \$200 per day and \$10,000 for all calendar quarters.
 - The tax credit is allowed against the payroll tax imposed by section 3111(a) (the employer portion of Social Security taxes).
 - The benefit expires by December 31, 2020.
 - Regulatory Authority or Exemption: The U.S. Secretary of Labor has authority to exempt small business with fewer than 50 employees from this section "when the imposition of such requirements would jeopardize the viability of a business as a going concern."
- 2) The Emergency Paid Sick Leave Act (Division E): Businesses with *less than 500 employees* will be required to offer full-time employees 10 days (80 hours) and part-time employees a two-week hourly average of paid sick leave, on top of any other existing paid leave program, to quarantine or seek a diagnosis or preventive care for COVID-19. Or, pursuant to the Division C above, leave is paid at two-thirds the employee's regular rate of pay if taken to care for a family member for the same reasons or to care for a child whose school has closed.
 - Employers will receive a 100% tax credit for all wages that are paid, but capped at \$511 per day, and \$7,156 altogether for each employee.
 - The tax credit is allowed against the payroll tax imposed by section 3111(a) (the employer portion of Social Security taxes).
 - The benefit expires by December 31, 2020.

Our Position:

This legislation will accelerate rather than mitigate the intense economic uncertainty and financial pressure felt by America's small businesses, employees, and the communities they serve. Leaders in Congress and the Administration must immediately rework the two emergency paid leave mandates and tax provisions mandated on small businesses, which are facing unprecedented economic disruption in the wake of the COVID-19 global health pandemic.

Due to cash flow issues directly associated with this crisis, many small businesses are *right now* reducing operating hours or closing their doors. We urge federal policymakers to adjust the paid leave compensation mechanisms to ensure small businesses are not forced to meet new federal mandates during a period when their own cash reserves are severely strained amid declining sales revenue.

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