

Act Adjusts Payroll Requirements

The President signed the March 18 legislation that created a federal paid sick leave requirement for coronavirus-related needs and expanded the Family and Medical Leave Act to include a paid leave component for employees caring for children whose schools or child care facilities were closed because of the virus outbreak.

The Families First Coronavirus Response Act (H.R. 6201) was passed by the Senate after the House passed the bill March 14. The President signed the legislation on March 18.

Employers are eligible for payroll tax credits in connection with providing paid leave under this measure.

We are expecting additional guidance from the Department of Labor. We will publish as we receive information.

The Senate has also started working on another bill they are currently calling COVID 3. We will keep you informed as to the outcome of this additional bill.

The article below was written by Howard Perlman of Bloomberg Tax. Bloomberg Tax is a research service HRCG utilizes to stay abreast of current Payroll and HR events, regulations and law. We also have the report that was prepared by the "Joint Committee on Taxation". Please let us know if you would like us to send you that report.

If you need guidance on applying this bill, your HCM specialist will put you in touch with our HR Consulting team.

There is much to digest in this bill, and we will provide guidance to you as we determine the most appropriate way to handle thru the payroll system. This bill also requires additional programming to properly handle the tax effects. Our programming team has been monitoring this bill and will work to enact the required changes as quickly as possible.

National Paid Sick Leave Related to COVID-19

Private-sector employers with fewer than 500 employees, and public-sector employers in general, are required under the Coronavirus Response Act to provide employees, regardless of how long they have worked for their employer, with paid sick leave if any of six situations related to coronavirus is applicable to the employee. This is the first national requirement for employers to provide paid sick leave under any circumstances.

The paid sick leave would be available to full-time employees for up to 80 hours and to part-time employees for the average number of hours that they work, or are expected to work, over a two-week period. Employers cannot require employees to use other types of employer-provided paid leave before the employee uses nationally required paid sick leave related to COVID-19.

The six situations related to coronavirus for which an employee is eligible for this paid sick leave are those in which the employee cannot be at a worksite in person or telework because:

a federal, state, or local quarantine or isolation order related to COVID-19 has limited the employee's ability to travel;

- a health-care provider advised the employee to self-quarantine because of concerns regarding COVID-19;
- the employee is experiencing symptoms associated with COVID-19 and is in the process of determining whether he or she has contracted the virus;
- the employee is caring for someone who is subject to a governmental quarantine or isolation order for COVID-19 or whose health-care provider advised that person to self-quarantine because of COVID-19;
- the employee needs to care for his or her child because of the closure of the child's school or child-care facility, or the unavailability of a child-care provider, because of COVID-19 considerations (although this is separate from similar leave available via an extension to the Family and Medical Leave Act, discussed later in this article); and;

- the employee is experiencing a situation that was specified by the Department of Health and Human Services as substantially similar to any of the five aforementioned situations.

In general, for the first three situations, the amount of paid sick leave regarding COVID-19 that an employee would need to be paid per hour is the greatest amount among the employee's regular hourly rate of pay as determined under the Fair Labor Standards Act, the federal hourly minimum wage of \$7.25, or the applicable hourly minimum wage of the state or locality where the employee is considered to be employed. However, for the fourth, fifth, and sixth situations, the employee would be entitled to two-thirds of the amount of paid sick leave to which he or she would have been entitled had the first, second, or third reasons been applicable.

The amount of paid sick leave provided for the first three situations cannot exceed \$511 a day and a total of \$5,110. The amount of paid sick leave provided for the fourth, fifth, or sixth situations cannot exceed \$200 a day and a total of \$2,000.

For part-time employees with fluctuating workweeks regarding hours worked, the employer may use as the daily number of compensable hours for calculating the amount payable for this type of paid sick leave an applicable average number of hours. This applicable average number of hours is the average number of hours per day that the employee was scheduled to work, including hours for which the employee took leave of any type, during the six-month period ending on the start date of the period in which the employee uses this nationally required paid sick leave related to COVID-19.

Employees cannot be required by their employer to search for or otherwise provide a replacement employee to cover work hours as a condition of receiving this paid sick leave related to COVID-19.

The period of this paid sick leave can start at any point in 2020, although hours of this leave not used in 2020 cannot be carried over into 2021.

Employers would be required to provide employees with notice of the availability of this leave. Although the Coronavirus Response Act specifies that the notice would need to be posted in conspicuous places on the employer's premises, it is reasonably expected that practical implementation of the notice requirement will necessitate that employers provide employees with this notice electronically. The Labor Department is to create a model notice for this leave by the seventh day after the enactment of the measure.

Employers can require employees who have received at least one day paid sick leave related to COVID-19 to provide the employer with reasonable notice as to their health status as a condition of continuing to be able to use this paid sick leave.

FMLA Expansion, Paid-Leave Components

Although the Family and Medical Leave Act traditionally has required employers to provide unpaid leave for qualifying circumstances, the Coronavirus Response Act amended the FMLA to add a paid-leave requirement related to COVID-19. After 10 days of unpaid leave, a period of paid leave would follow for employees who need to care for children younger than 18 whose school or child-care facility is closed because of the virus or whose child-care provider is unavailable because of the outbreak.

This new type of leave for caring for children during the pandemic is referred to in the Coronavirus Response Act as public health emergency leave. The measure established entitlement to public health emergency leave by amending Section 102(a)(1) of the FMLA to add this as a sixth reason among the list of situations that employees must be granted leave by employers upon request, although the other five reasons provide only unpaid leave.

The period of paid public health emergency leave is for up to the remainder of the period of 12 work weeks of leave generally available for employees who qualify under the FMLA.

The amount of paid leave per day generally would need to be at least two-thirds of the employee's regular rate of hourly pay as defined by

the Fair Labor Standards Act, multiplied by the number of hours the employee normally would have been scheduled to work. The maximum amount payable per day would be \$200 and the total amount payable to an employee for public health emergency leave cannot exceed \$10,000.

The method for determining the average number of daily hours used for calculating the daily amount of pay to a full-time or part-time employee for public health emergency leave when that employee has a fluctuating workweek is the same as the method for determining a part-time employee's average number of hours for calculating daily payments for paid sick leave related to COVID-19 when that part-time employee has a fluctuating workweek, with the start date of public health emergency leave used instead of the start date of paid sick leave related to COVID-19.

For employees with fluctuating workweeks regarding hours worked, the employer may use as the daily number of compensable hours for that employee with respect to public health emergency leave an applicable average number of hours. This applicable average number of hours is the average number of hours per day that the employee was scheduled to work, including hours for which the employee took leave of any type, during the six-month period ending on the start date of the period in which the employee uses public health emergency leave.

For employees with fluctuating workweeks but who did not work throughout the entirety of the six-month period, the employer may use as the applicable number of daily compensable hours of public health emergency leave the expected average number of hours per day that the employee would have been expected to work.

While FMLA requirements generally apply only to employers with at least 50 employees on each workday of at least 20 weeks in the current or previous year, the group of employers required to provide public health emergency leave is to be those with fewer than 500 employees. An earlier version of the Coronavirus Response Act that the House passed before technical corrections were added would have required all employers to provide public health emergency leave. However, the Labor Department would be granted authority under the

measure to exempt employers with fewer than 50 employees from the requirement to provide employees with public health emergency leave if the employers can show that granting such leave would “jeopardize the viability of the business as a going concern.”

To be eligible for public health emergency leave, employees generally would need to show that they are unable to sufficiently work in-person or telework because they need to care for their children because of coronavirus-related loss of access to educational or childcare services.

While employees covered by the FMLA generally are those who have worked for their employer for at least 12 months and performed at least 1,250 hours of work in the past 12 months, public health emergency leave is available to all employees who have worked for their employer for at least 30 days, regardless of how many hours of work they performed during their period of employment, and who need to take care of their child at home because of the virus.

All employees in the U.S. have fulfilled the act’s requirement that they can take the leave only if a federal, state, or local authority declared a public health emergency regarding the virus because President Donald Trump issued a **proclamation** March 13 that the coronavirus outbreak is a national emergency.

Employees would be able to substitute days of accrued vacation leave, personal leave, or medical or sick leave for the initial period of 10 days of unpaid public health emergency leave. Employees would need to provide notice to their employer to take the leave.

Public health emergency leave under the FMLA would be able to be taken by an employee from the date the Coronavirus Response Act is signed into law until Dec. 31, 2020. The original version of the bill as passed by the House would have allowed public health emergency leave to be taken up to two years from the date the act passed.

Payroll Tax Credits

The employer portion of Social Security tax due under Section 3111(a) of the Internal Revenue Code, but not the employer portion of Medicare tax due under Section 3111(b), would be able to be reduced by the amount of paid sick leave related to COVID-19 provided to employees and the amount of paid public health emergency leave provided to employees under the amended FMLA.

The amount of the credit per quarter with respect to paid sick leave related to COVID-19 provided to an employee is limited to the amount of payments to that employee for 10 days of this paid leave, subtracted by the payments for the number of days of such paid leave taken in previous quarters. If the amount of the credit based on payments of paid sick leave to all employees for a quarter would exceed the amount of the employer's portion of Social Security tax due for the quarter, the employer could have the excess treated as a refundable overpayment.

The amount of the credit with respect to paid public health emergency leave is limited to the per-employee payment limitations of up to \$200 per day and \$10,000 in the aggregate. If the amount of the credit based on payments of paid public health emergency leave for a quarter would exceed the amount of the employer's portion of Social Security tax due for the quarter, the employer could have the excess treated as a refundable overpayment.

While payments for these forms of paid leave cannot be credited against Medicare tax, the amount of the credit of Social Security tax for payments regarding paid sick leave related to COVID-19 and the amount of the credit of Social Security tax for payments regarding paid public health emergency leave can be increased by the amount of the employer portion of Medicare tax due on payments of paid sick leave related to COVID-19 and payments regarding paid public health emergency leave.

The amounts of these credits also can be increased by the amount of the employer's qualified health plan expenses for employees receiving

this paid sick leave, helping employers maintain health coverage for these employees.

Payments for paid sick leave related to COVID-19 and paid public health emergency leave under the amended FMLA are themselves not subject to the employer portion of Social Security tax.

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