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Insights

Proposed Federal Law to Offer Paid Sick Leave Due to Coronavirus: H.R. 6201, Families First Coronavirus Response Act

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By: Kate Trinkle

On March 14, 2020, the House of Representatives of the U.S. Congress took action against the Coronavirus emergency by passing House Bill H.R. 6201, Families First Coronavirus Response Act ("H.R. 6201").[1] H.R. 6201, if passed by the Senate, would provide expansive relief to families across a variety of areas, including health care and employment leave. For employers, H.R. 6201 would impose significant changes to the current employee leave laws.

The Emergency Family and Medical Leave Expansion Act. H.R. 6201 implements the Emergency Family and Medical Leave Expansion Act, which amends the current Family and Medical Leave Act (FMLA) language to provide greater job-protected leave to employees due to Coronavirus.

Under the Emergency Family and Medical Leave Expansion Act, employers with fewer than 500 employees must provide job-protected leave to eligible employees. An eligible employee in this context is one who has been employed by the employer for more than 30 days, a much shorter time than that required by the FMLA, and has a qualifying need for leave.

An employee's qualifying need for leave under the Emergency Family and Medical Leave Expansion Act consists of one of the following:

- To self-isolate because:
  - the employee's physical presence poses a risk to the health of others as a result of:
    - exposure to Coronavirus; or
    - exhibition of Coronavirus symptoms; and
  - the employee is unable to both perform the employee's job functions and comply with the recommendation or order at the same time.
- To care for a family member[2] of the employee if a public official or health care provider determines that the family member's presence in the community would pose a risk to the health of others because the family member:
  - was exposed to Coronavirus; or
  - exhibits the symptoms of Coronavirus.
- To care for the employee's child, under 18 years of age, if the school or place of care has been closed, or the child's child care provider is unavailable due to Coronavirus.

If an eligible employee takes leave under Emergency Family and Medical Leave Expansion Act, the first 14 days of the leave may consist of unpaid leave and the employer cannot force the employee to take paid leave (vacation, paid time off, sick leave, etc.) during that time, however, the employee may elect to do so.

After the initial 14-day unpaid leave period, the employer must provide paid leave to the employee. The employee is to be paid no less than 2/3 of the employee's regular rate of pay for the number of hours the employee would have normally been scheduled to work.[3] An eligible employee is entitled to 12 weeks of leave or when the qualifying need concludes. This leave is in addition to leave for other qualifying reasons under the FMLA.

Certain health care providers and emergency responders are exempt from the requirements imposed under the Emergency Family and Medical Leave Expansion Act. Small businesses with fewer than 50 employees may also be exempt if providing such leave "would jeopardize the viability of the business." The Emergency Family and Medical Leave Expansion Act did not provide examples of what constitutes "jeopardizing the viability of the business" so it is unclear whether small businesses would receive an exemption.

The Emergency Paid Sick Leave Act. H.R. 6201 also enacts the Emergency Paid Sick Leave Act, which requires private employers with fewer than 500 employees and all public employers to provide paid sick time to employees. All employees are eligible regardless of their tenure with the employer.

Full-time employees are entitled to 80 hours of paid sick time and part-time employees are entitled to receive paid sick time for the number of hours that the employee usually works, on average, over a 2-week period. The paid sick time terminates when the need for sick leave no longer exists.

The paid sick leave under the Emergency Paid Sick Leave Act is available for the following uses:

- To self-isolate because the employee:
  - was diagnosed with Coronavirus;
  - is experiencing Coronavirus symptoms and needs to obtain a medical diagnosis or medical care;
  - poses a risk to others, as recommended or ordered by a public official or health care provider, because the employee has been exposed to Coronavirus or exhibits its symptoms.
- To care for a family member of the employee if the family member is:
  - self-isolating because of a diagnosis of Coronavirus;
  - experiencing symptoms of Coronavirus and must seek medical diagnosis or care;
  - posing a risk to the health of other individuals, as determined by a public official or health care provider, where the family member has been exposed to Coronavirus or exhibits its symptoms.
- To care for the employee's child if the school or place of care has been closed, or the child's child care provider is unavailable due to Coronavirus.

Employers must provide this paid sick time in addition to any paid sick leave available under existing policies. Employers may not change any existing paid sick leave policies to avoid providing this additional paid sick time.

Employers will not bear the burden of paying these wages alone. H.R. 6201 provides employers who pay out qualified sick leave wages to their employees with a tax credit for the full amount of qualified paid sick leave paid to employees for each calendar quarter.

Timeline. There is discussion about a possible vote by the Senate on H.R. 6201 by the end of the week, meaning by Friday, March 20, 2020. If H.R. 6201 is passed by the Senate, the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act would take effect fifteen (15) days after President Trump signs H.R. 6201 into law, and both Acts would expire on December 31, 2020.

The Employment Law team at Krieg DeVault LLP is actively monitoring this legislation and will continue to provide updates as they become available. Until then, the Employment Law team is prepared to answer any questions you may have.

[1] The full text of H.R. 6201 is available here. The House of Representatives made technical corrections to H.R. 6201 on Monday, March 16, 2020, before it moved to the U.S. Senate. The Senate is expected to vote on H.R. 6201 as early as Tuesday, March 17, 2020, but may make significant changes to the existing bill. President Trump previously indicated that he plans to sign H.R. 6201.

[2] The definition of family member is broader than that of the FMLA and includes an employee's parents, spouse, child under 18 as well as vulnerable individuals (pregnant, senior citizen, individual with a disability, or individual with function needs) who are the children of the employee, next of kin of the employee or person for whom the employee is next of kin, or a grandparent or grandchild of the employee.

[3] 2/3 of regular rate x hours scheduled = amount of paid leave.