

President Trump signs the Families First Coronavirus Response Act (H.R. 6201)

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This update is current as of Thursday, March 19th, 2020.

What happened?

President Donald Trump signed emergency bill H.R. 6201 on Wednesday, March 18, 2020 to expand the Family and Medical Leave Act (FMLA) as well as guarantee paid sick leave for certain U.S. workers, including those employed by private entities or individuals who employ fewer than 500 employees. To look at the final bill sent to the President, please visit the link below:

Finalized Bill: Applicable sections addressed here are Division E: Emergency Paid Sick Leave Act and Division F: Paid Sick Days for Public Health Emergencies and Personal and Family Care Act

<https://www.congress.gov/bill/116th-congress/house-bill/6201/text/enr>

The bill takes effect April 2, 2020, and it will conclude on December 31, 2020

Required Posting

Employers will be required to post an approved notice regarding the Act once the Secretary of Labor makes it available

Emergency FMLA Expansion Act

One section of the FFCRA is the Emergency FMLA Expansion Act (Emergency FMLA). This provides for paid Emergency FMLA leave and remains in effect through December 31, 2020. In short, Emergency FMLA leave only applies to employees who take emergency leave for a qualifying event. At present, there is only one qualifying event for Emergency FMLA leave – when the employee is unable to work because the employee needs to care for a child if the child’s school is closed, or childcare provider is unavailable, due to a public health emergency. The following is a summary of the basic provisions of Emergency FMLA.

Covered Employer

- › All employers with “fewer than 500 employees.”

Eligible Employee

- › Any employee who has worked for the employer for at least 30 days prior to the designated leave.
- › Exception – The Secretary of Labor has discretion to exempt healthcare providers and emergency responders from taking emergency leave, as well as businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business.
- › Exception – Employers of healthcare providers or emergency responders may on their own elect to exclude these employees from paid sick leave.

Qualifying Event

- › If an Eligible Employee is unable to work or telework because the employee needs to care for the employee's child (under 18 years of age) if the child's school is closed, or the childcare provider is unavailable, due to a public health emergency. At present, this is the only Qualifying Event for Emergency FMLA.

Amount of Leave

- › 12 weeks of job-protected leave

Notice of the Need for Leave

- › Whether the need for leave is foreseeable or not, the employee is to provide as much notice "as is practicable" under the particular facts and circumstances.

Pay During Leave

- › The first 10 days of Emergency FMLA leave is unpaid. During this time, employees may elect to substitute accrued paid leave (such as vacation, PTO, or sick leave) to cover some or all of the 10 days.
- › After the 10-day period, the employer must pay employees at two-thirds the employee's regular rate for the number of hours the employee would otherwise normally be scheduled.
- › If an employee's schedule varies to the extent that an employer cannot determine the number of hours the employee would have worked, the number of hours is calculated as follows:
 - › The average number of hours the employee worked per day for the prior six months; or
 - › If the employee worked less than six months, then the employee's reasonable expectation at the time of hiring regarding the average number of hours per day that the employee would normally be scheduled to work.
- › Paid Emergency FMLA leave is capped at \$200 per day and \$10,000 in the aggregate per employee.

Job Protection

- › Employers with 25 or more employees have the same job restoration obligations as under traditional FMLA leave, the employee must be returned the same or equivalent position after taking Emergency FMLA leave.
- › Employers with 24 or less employees are not required to return an employee to the same or equivalent position if the employee's position no longer exists due to an economic downturn or other changes in operating conditions that are caused by a public health emergency during the period of leave. However, the employer must make reasonable efforts to restore the employee to an equivalent position and continue these efforts for up to a year following the employee's leave.

Expiration

- › Unless extended, the Emergency FMLA will expire on December 31, 2020.

Tax Credits

- › Employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid each calendar quarter. Employers should consult with their tax professionals about these tax credits.

Emergency Paid Sick Leave Act

The FFCRA also includes the Emergency Paid Sick Leave Act, which provides federal paid sick leave for eligible employees affected by COVID-19. As with the Emergency FMLA, this goes into effect on April 2, 2020, and terminates December 31, 2020. Note that the FFCRA requires the Secretary of Labor is to issue guidelines no later than April 2, 2020 to assist employers in calculating the amount of paid sick leave.

Eligibility

- › All employers with “fewer than 500 employees” are required to provide paid sick leave.
- › Exception – The Secretary of Labor has discretion to exempt healthcare providers and emergency responders from taking emergency leave, as well as businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business.
- › Exception – Employers of healthcare providers or emergency responders may on their own elect to exclude these employees from paid sick leave.
- › An employee is immediately entitled to use paid sick leave regardless of how long the employee has been employed.

Amount of Hours

- › Full-time employees receive 80 hours.
- › Part-time employees receive the average number of hours worked over a two-week period.

Employees May Take Sick Leave if the Employee is:

- Subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- Advised by a health care provider to self-quarantine due to COVID-19 concerns;
- Experiencing COVID-19 symptoms and seeking medical diagnosis;
- Caring for an individual (not limited to family members) subject to a federal, state, or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
- Caring for the employee’s child if the child’s school or place of care is closed or the child’s care provider is unavailable due to public health emergency; or
- Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Pay During Sick Leave

- › The amount of pay depends of the reason for sick leave.
- › If leave is taken for reasons (a), (b), or (c) above:
 - › Employees are paid their regular rate of pay not to exceed \$511 per day and \$5,110 in the aggregate.
- › If leave is taken for reasons (d), (e), or (f) above:
 - › Employees are paid two-thirds their regular rate of pay not to exceed \$200 per day and \$2,000 in the aggregate.

Notice of the Need for Sick Leave

- › “After the first workday (or portion thereof) an employee receives paid sick time under [the federal paid sick leave], an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.”

Required Workplace Poster

- › The Secretary of Labor is to prepare a notice no later than March 25, 2020. Employers must post this notice in a conspicuous place where required workplace posters are customarily placed.

Prohibited Acts by the Employer

- › The employer may not require the employee to search for or find a replacement to cover the hours the employee will be out on sick leave.
- › The employer may not require an employee to use other paid leave options the employer provides before using federal paid sick leave.
- › The employer may not discharge, discipline, discriminate, or in any other manner retaliate against any employee who takes sick leave, filed a complaint or instituted a proceeding against the employer related to sick leave, or testifies in any such proceeding.

Carryover and Expiration

- › Federal paid sick leave does not carry over into next year.
- › Unless extended, the federal paid sick leave expires December 31, 2020.

Tax Credits

- › Employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages paid for each calendar quarter. Employers should consult with their tax professionals about these tax credits.

Future Updates

We are closely monitoring all developments with the Emergency FMLA and the Emergency Paid Sick Leave Act. We will provide updates when the Secretary of Labor publishes the required notice for sick leave that employers will need to post.

Sources:

<https://www.jdsupra.com/legalnews/coronavirus-update-house-passes-bill-85123/>

<https://www.fordharrison.com/house-revises-coronavirus-leave-bill-before-sending-to-senate>

<https://www.seyfarth.com/news-insights/paid-leave-and-coronavirus-part-iii-update-house-passes-technical-corrections-to-covid-19-relief-bill-with-paid-sick-and-family-leave-mandates.html>

Latest:

<https://www.fordharrison.com/coronavirus-leave-bill-passes-senate-president-trump-expected-to-sign>