

Paid Leave in the Families First Coronavirus Response Act (H.R. 6201)

President Trump signed into law the the Families First Coronavirus Response Act (H.R. 6201), on March 18, 2020. This legislation contains the nation's first national paid leave requirement for businesses.

Employers with less than 500 employees should be ready to implement emergency paid sick leave and provide for FMLA leave under certain circumstances relating to COVID-19 as early as April 2, 2020.

CONGRESSIONAL ACTION

H.R. 6201 enacted an "Emergency Family Leave Program" section that will affect certain utility contractor businesses:

- Private sector employers with fewer than 500 workers and all government entities will have to provide as many as **12 weeks of job-protected leave under the Family and Medical Leave Act (FMLA)** for employees who are unable to work or telework because they have to care for a child younger than 18 whose school or daycare has closed because of coronavirus
 - The first 10 days could be unpaid, but a worker may choose to use available paid leave to cover this period
 - For the remainder of the period, workers would receive a benefit from their employers that will be at least 2/3 of their normal pay rate, capped at \$200 per day or \$10,000 total

The bill also established an "Emergency Paid Sick Leave Program":

- Private sector employers with fewer than 500 workers and all government entities will have to provide employees who are unable to work or telework with immediate paid sick time off to
 - Comply with a federal, state, or local quarantine or isolation order
 - Self-quarantine per a health-care provider's advice
 - Obtain a medical diagnosis for coronavirus
 - Care for an individual who is in quarantine or for a child whose school or day care has closed due to coronavirus
- Full-time employees would receive 80 hours of sick leave; part-time employees would be granted time off equivalent to their scheduled or normal work hours in a two-week period. This time does not carry over from year to year.
 - Workers would have to be paid at least their normal wage or the federal, state, or local minimum wage, whichever is greater.
 - They would be paid at two-thirds for providing caregiver for another individual or child
 - Leave assistance would be capped at \$5,110 for a worker's quarantine or diagnosis, and at \$2,000 for another individual or child
- **Employers cannot (subject to civil penalties) do the following:**
 - Require a worker to use other available paid leave before using sick time
 - Require a worker to find a replacement to cover their hours during said sick time
 - Discharge or discriminate against a worker for requesting paid sick time or filing a related complaint against the employer.

- There are several exemptions to this program that companies should note:
 - The Labor Department can issue regulations exempting **small businesses with fewer than 50 employees from the paid sick leave and family leave requirements** if it would “jeopardize the viability of the business as a going concern.”
 - Certain healthcare providers and emergency responders can also be exempted.
 - The measure would **exempt employers with fewer than 25 workers** from requirements to restore an employee’s original position if it no longer exists because of economic conditions or changes to operations due to the public health emergency. The employer would have to have made reasonable efforts to restore the employee to an equivalent position.

The Labor Department must issue guidelines by April 2, 2020 to assist employers in calculating how much paid leave their employees should get.

Employers will be reimbursed for the full amount within three months (in the form of a payroll tax credit, but the Trump administration has said that they will advance the money earlier for employers who cannot wait that long.

- This also covers the **employer’s contribution to health insurance programs** during the leave period.
- **The program is fully-refundable** – if the amount that employers pay workers who take leave is loner than what they owe in taxes, the government will send them a check for the remainder (this applies to self-employed and “gig economy” workers, too.)
 - The sick leave credit for self-employed individuals would be for the lesser of \$511 per day or an individual’s average daily self-employment income if quarantining themselves. It would be for the lesser of 67% of their average daily self-employment income or \$200 if they were caring for someone else. The credit would be available for 10 days over the number of days taken into account in preceding years. Self-employed individuals could receive a family leave credit for as many as 50 days for the lesser of \$200 or 67% of their average daily self-employment income. Documentation will need to be submitted, as required by the Treasury Department.

These paid leave provisions expire December 31, 2020.

An earlier bill, H.R. 6074, was signed into law on March 5, 2020. The “Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020” unlocked \$7 billion in low-interest loans to small businesses affected by the outbreak, administered through the Small Business Administration.

This information is provided to NUCA members as a courtesy and is not a substitute for reading the actual legislation and understanding all of its nuances. This fact sheet is NUCA’s best summary of what is in this legislation and how it might affect our member’s operations and requirements. Competent legal advice by a company’s counsel on these requirements should be the final arbitrator.

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