



## Families First Coronavirus Response Act

On March 13, 2020, President Trump declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. On March 18, 2020, H.R. 6201, the *Families First Coronavirus Response Act* was signed into law. This document includes the summary of the following sections of the new law in chronological order of the bill:

- Division C – Emergency Family and Medical Leave Expansion Act (new rules for family leave)
- Division D – Emergency Unemployment Insurance Stabilization and Access Act (state and local government requirements)
- Division E – Emergency Paid Sick Leave Act (new rules for paid leave for affected employees)
- Division G – Tax Credits for Paid Sick and Paid Family Leave

### Division C—Emergency Family and Medical Leave Expansion Act (new rules for family leave)

- Amends the Family and Medical Leave Act (FMLA) to create a new section that requires small businesses to offer up to 12 weeks of **paid family and medical leave** for employees<sup>1</sup> during a “Public Health Emergency” (“PHE”).<sup>2</sup>
- Businesses with fewer than 500 employees are required to participate in this new “PHE” **paid family and medical leave** program; businesses with 500 or more employees are exempt.
- The Secretary of Labor has the authority to exempt certain small businesses with fewer than 50 employees if the “PHE” **paid family and medical leave** “would jeopardize the viability of the business as a going concern.”<sup>3</sup>
- An employee qualifies for “PHE” **paid family and medical leave** if they are unable to work due to the closure of a child’s school or childcare facility.
- How does the “PHE” paid family and medical leave work?
  - The first 10 days of leave may consist of unpaid leave.<sup>4</sup>
    - An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave.
    - An employer may not require an employee to substitute any unpaid leave for “PHE” **paid family and medical leave**.
  - After 10 days, this FMLA expansion covers day 11 through week 12.
  - For day 11 through week 12, an employer must provide paid leave at an amount that is not less than 67% of an employee’s regular rate of pay, and the number of hours the employee would otherwise be normally scheduled to work.

<sup>1</sup>To be eligible for this program, the employee must have worked for the employer for at least 30 calendar days.

<sup>2</sup>“Public Health Emergency” means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

<sup>3</sup> Certain healthcare providers and emergency responders are exempted, as well.

<sup>4</sup> The requirements of Division E, the Emergency Paid Sick Leave Act, may allow for 10 days paid leave in certain circumstances.

- For a variable hour employee, the employer must calculate a number equal to the average number of hours that the employee was scheduled per day over the last six months, ending on the date which the employee takes leave.<sup>5</sup>
- This benefit is capped to \$200/day and \$10,000 in the aggregate per employee.
- In the foreseeable event of taking leave due to closure of a childcare facility and/or school, an employee must provide the employer with notice of leave as is practicable.
- Sunsets on December 31, 2020.

### Division D – Emergency Unemployment Insurance Stabilization and Access Act (state and local government requirements)

- Allocates \$1 billion in 2020 for emergency administration grants to states for activities related to processing and paying unemployment insurance (UI) benefits.
  - Of this funding, \$500 million would be used to provide immediate additional funding to all states for staffing, technology, systems, and other administrative costs – so long as they met basic requirements about ensuring access for eligible workers. These requirements are:
    - Require employers to provide notification of potential UI eligibility to laid-off workers.
    - Ensure that workers have at least two ways (for example, online and phone) to apply for benefits.
    - Notify applicants when an application is received and being processed and if the application cannot be processed, provide information to the applicant about how to ensure successful processing.
  - States would be required to report on the share of eligible individuals who received UI benefits and the state's efforts to ensure access within one year of receiving the funding.
  - The other \$500 million would be reserved for emergency grants to states which experienced at least a 10% increase in unemployment.
    - These states would be eligible to receive an additional grant, in the same amount as the initial grant, to assist with costs related to the unemployment spike.
    - The states would also be required to take steps to temporarily ease eligibility requirements that might be limiting access to UI during the COVID-19 outbreak. For example, easing work search requirements and required waiting periods.
      - While the text does not explicitly require states to increase UI taxes where high layoffs occur, this section may lead to that.
  - Depending on the state, those actions might require changes in state law, or might just require changes in state policy. This section also provides temporary federal flexibility regarding those UI restrictions which are also in federal law.
- For states who experience an increase of 10% or more in their unemployment rate (over the previous year), this bill provides 100% federal funding for Extended Benefits.

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<sup>5</sup> If the employee has not worked for the employer for 6 months, the employer should consider the number of hours the employee would normally be scheduled to work.

- This program normally requires 50% of funding to come from states. Extended Benefits are triggered when unemployment is high in a state and provide up to an additional 26 weeks after regular UI benefits (usually 26 weeks) are exhausted.
- Provides states with access to interest-free loans to help pay regular UI benefits through December 31, 2020, if needed.
- Provides technical assistance to states that want to set up work-sharing programs, in which employers reduce hours instead of laying employees off, and then employees receive partial unemployment benefits to offset the wage loss.

### **Division E – Emergency Paid Sick Leave Act (new rules for paid leave for affected employees)**

- Businesses with fewer than 500 employees are required to participate in a new “Public Health Emergency” (“PHE”) **paid sick leave** program; businesses with 500 or more employees are exempt.
- The Secretary of Labor has the authority to exempt small businesses with fewer than 50 employees from certain eligibility if the “PHE” **paid sick leave** “would jeopardize the viability of the business as a going concern.”<sup>6</sup>
- Employer offers “PHE” **paid sick leave** when an employee is unable to work (or telework) because:
  - The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
  - The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
  - The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
  - The employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
  - The employee is caring for an individual who has been advised by a healthcare provider to self-quarantine due to the concerns related to COVID-19.
  - The employee is caring for his/her child in the event of school or childcare facility closure due to COVID-19, or if the childcare facility of the son or daughter is unavailable due to COVID-19 precautions.
  - The employee “is 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.”
  - Exception for employers of healthcare providers and emergency responders.
- If a full-time employee qualifies for “PHE” **paid sick leave**, the employee is eligible for up to 10 paid days (80 hours). If a part-time employee qualifies for “PHE” **paid sick leave**, the legislation allows for a number of hours equal to the number of hours that the employee works, on average, over a two-week period.
  - If the part-time employee’s schedule varies from week to week, which makes the above calculation inapplicable, consider the average number of hours that the employee was

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<sup>6</sup> Specifically, the employee would not qualify for the school/childcare facility closure eligibility: “The employee is caring for his/her child in the event of school or childcare facility closure due to COVID-19, or if the childcare of the son or daughter is unavailable due to COVID-19 precautions.”

scheduled per day over the six-month period ending on the date in which an employee takes “PHE” **paid sick leave**.

- The employee’s required compensation cannot be less than the greater of the following:
  - Employee’s regular rate of pay.
  - The minimum wage rate.
  - The minimum wage rate in effect for the employee in the applicable State or locality, whichever is higher.
- In no event shall such “PHE” **paid sick leave** exceed –
  - \$511 per day and \$5,110 in the aggregate if the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or the employee has been advised by a health care provider to quarantine due to concerns related to COVID-19.
  - \$200 per day and \$2,000 in the aggregate if the employee is caring for an individual who is subject to an order to quarantine; the employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider is unavailable; or the employee is 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.
- If the employee is using “PHE” **paid sick leave** to care after an individual or child, the required compensation is 67% of the amount.
- The employer must provide “PHE” **paid sick leave** to an employee regardless of how long the employee has been employed by the employer.
- The employer is prohibited from requiring an employee to find another employee to work his/her shift as a condition of taking **paid sick leave**.
- The employer may not require the employee to use other forms of paid leave before using “PHE” **paid sick leave**.
- The employer must publicly display a notice of this act with a description of the act.
- The employer cannot discharge, discipline, or discriminate against an employee who claims this legislation’s “PHE” **paid sick leave** and/or an employee who has filed a complaint related to “PHE” **paid sick leave**.
- Violations of the act shall be treated the same as violations of minimum wage standards under the Fair Labor Standards Act.
- This act does not preempt state, local law, or collective bargaining agreements.
- Sunsets on December 31, 2020.

#### Division G – Tax Credits for Paid Sick and Paid Family Leave

- **Payroll Credit for Required Paid Sick Leave**
  - Through utilizing the payroll tax, this legislation authorizes a refundable tax credit for employers up to 100% of the qualified sick leave wages.
    - The credit first offsets the full employer-side payroll tax liability (7.65%), then the excess is refundable to the employer up to the thresholds below.

- The amount of the credit will be increased by so much of the employer's qualified health plan expenses as are properly allocable to the qualified sick leave wages.
        - Qualified health plan expenses mean amounts paid or incurred by the employer to provide and maintain a group health plan – but only to the extent that such amounts are excluded from the gross income of employees.
  - Limited to “the aggregate number of days taken into account... for any calendar quarter shall not exceed the excess (if any) of – (A) 10, over (B) the aggregate number of days so taken into account for all preceding calendar quarters.”
  - The credit is limited to \$200/day, or \$511/day if the employee claims **paid sick leave** for the following:
    - To self-isolate after receiving a coronavirus diagnosis.
    - To receive a medical diagnosis or care if employee is experiencing coronavirus symptoms.
    - To comply with a recommendation or order by a public health official having jurisdiction or a healthcare provider on the basis that the physical presence of the employee on the job would jeopardize the health of others – due to the employee's exposure to the coronavirus – or employee's exhibition of symptoms related to the coronavirus.
  - Limitation/Prohibition – if the employer already claims the “Employer credit for paid family and medical leave” (26 U.S. Code § 45S), the employer is ineligible for this credit.
  - State and local governments are also ineligible for this credit.
  - This credit is voluntary. Employers may elect “not to have this section apply.”
  - Under Regulations, Secretary of Treasury may provide “regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section.”
  - Timeline – this credit only applies to wages paid after enactment (Treasury Secretary has a 15-day window to announce when this applies).
  - Sunsets on December 31, 2020.
  - For money lost from the Social Security (OASDI) trust fund, the Treasury shall transfer revenue from the general fund to offset the losses.
- How does this credit apply to self-employed individuals?
    - Similar to above, with the following differences.
      - Number of days the individual is unable to perform services in a trade or business (but no more than 10 days) multiplied by the lesser of \$200/day or \$511/day (if the individual meets the coronavirus criteria noted above) or “the average of daily self-employment income.”
      - If the individual is unable to perform services due to caregiver duties or has been exposed to a family member with the virus, 67% rather than 100% qualified sick leave wages.
        - What is “the average of daily self-employment income”? It is net earnings from self-employment of the individual for the taxable year divided by 260.

- Sunsets at the end of 2020.
- **Payroll Credit for Required Paid Family Leave**
  - Through utilizing the payroll tax, this legislation authorizes a refundable tax credit for employers up to 100% of the qualified family leave wages.
    - The credit first offsets the employer-side payroll tax liability (OASDI payroll taxes – 6.2%), then the excess is refundable to the employer up to the thresholds below. Note that the credit does not offset Medicare/HI payroll taxes.
  - The credit is limited to \$200/day or maximum of \$10,000 (in the aggregate with respect to all calendar quarters) per employee.
  - Limitation/Prohibition – if the employer already claims the “Employer credit for paid family and medical leave” (26 U.S. Code § 45S), the employer is ineligible for this credit.
  - State and local governments are also ineligible for this credit.
  - Under Regulations, Secretary of Treasury may provide “regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section.”
  - This credit is voluntary. Employers may elect “not to have this section apply.”
  - This credit only applies to wages paid after enactment (Treasury Secretary has a 15-day window after enactment to announce when this applies). This credit sunsets on December 31, 2020.
  - For money lost from the Social Security (OASDI) trust fund, the Treasury shall transfer revenue from the general fund to offset the losses.
- **How does this credit apply to self-employed individuals?**
  - Similar to above, with the following differences.
  - Number of days (but no more than 50 days) multiplied by the lesser of \$200 or the “average of daily self-employment income.”
    - What is the “average of daily self-employment income” mean? It is net earnings from self-employment of the individual for the taxable year divided by 260.
- For payroll taxes, all wage payments are exempt from employee payroll taxes.

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