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BLOG

Senate Passes and President Trump Signs Historic Paid Leave Bill Related to COVID-19

MARCH 19, 2020

On March 18, 2020, the U.S. Senate voted 90-8 to pass the Families First Coronavirus Response Act (the Act), approving a revised version of the bill (H.R. 6201) passed earlier in the week by the U.S. House of Representatives. The President signed the measure the same day. The Act becomes effective not later than 15 days after enactment. Among other things, the Act provides paid sick leave for employees of employers with fewer than 500 employees, as well as related federal tax credits for employers, unemployment assistance, and free coverage of coronavirus testing and related treatment. Our prior briefing on the original version of H.R. 6201 passed on March 14, 2020, can be found here and a chart with the main features of the Act can be found here. Notable changes to the earlier version of the bill were made on March 16, 2020, and include the following:

- ***Revised qualifying reasons for Paid Sick Leave***: As noted in our earlier briefing, the Act provides eligible full-time employees up to 80 hours of Paid Sick Leave for certain qualifying reasons relating to COVID-19. Under the version passed by the Senate, the qualifying reasons for taking Paid Sick Leave have been scaled back from earlier versions to permit leave only in situations where the employee cannot work or telework because the employee (i) is subject to a mandated (federal, state, or local) quarantine, (ii) has been advised to self-quarantine by a health care provider because of COVID-19 concerns, (iii) is experiencing COVID-19 symptoms and seeking a medical diagnosis, (iv) is caring for an individual who is subject to a mandated (federal, state, or local) quarantine or has been advised to self-quarantine by a health care provider because of COVID-19 concerns, (v) is caring for his or her son or daughter whose school or child care provider is closed due to COVID-19, or (vi) is experiencing symptoms of a substantially similar condition to COVID-19 as determined by the Secretary of Health and Human Services (HHS). Notably, this revised list expands upon earlier versions by allowing employees to use paid leave to care for any *individual* who meets the circumstances listed in (iv), whereas the original bill limited these situations to care for a family member.
- ***Cap on payments under Paid Sick Leave to mirror the limit on the corresponding payroll tax credit***: As originally written, the bill did not cap Paid Sick Leave payments and required Paid Sick Leave to be calculated based on the greater of the employee's regular rate, the federal minimum wage, or the state or local minimum wage. Under the Act as passed by the Senate, however, Paid Sick Leave for reasons (i), (ii), and (iii) above is capped at $511 per employee per day ($5,110 maximum per employee for all Paid Sick Leave). For reasons (iv), (v), and (vi), employees are compensated at 2/3 of the rate of pay they would otherwise receive; however, that amount is capped at $200 per employee per day above ($2,000 maximum per employee).

- ***Revised, limited qualifying reason for FMLA expansion***: As noted in our earlier briefing, the Act expands the FMLA to provide eligible employees of employers with fewer than 500 employees up to 10 days of unpaid leave, followed by 10 weeks of paid leave for certain qualifying reasons. As originally acted, the qualifying reasons for this FMLA expansion were numerous, and were as permissive as a doctor's note indicating the employee was a threat to the safety of others because she had been exposed to COVID-19 (even if the employee exhibited no symptoms). The FMLA expansion is now available ***only*** for employees who cannot work or telework due to the need to care for the employee's children whose schools or child care providers are closed due to COVID-19.
- ***Cap on payments under FMLA expansion to mirror the limit on the corresponding payroll tax credit***: The bill requires that covered employees receive pay in an amount not less than two-third of their regular rates of pay but caps the maximum payment under the FMLA expansion to $200 per employee per day ($10,000 max per employee). The original bill passed by the House did not cap FMLA expansion payments.
- ***Decrease in number of unpaid days under FMLA expansion****:* The revised bill decreases the number of unpaid leave days for employees qualifying for the FMLA expansion to 10 (from 14 days in the original bill). This now corresponds with the 80-hour-per-employee maximum under the Paid Sick Leave requirements. The FMLA expansion permits an employee to substitute *any* accrued paid leave time (vacation, personal, medical, or sick leave) during these 10 unpaid days under the FMLA expansion. Given the overlap of these two provisions for certain employees, there may be individuals who are entitled to the FMLA expansion who also have 10 or more days of accrued vacation or other paid leave, thereby entitling such employees to up to 12 paid FMLA leave weeks, plus an additional 80 hours of Paid Sick Leave.
- ***Possible Exemptions:*** The Secretary of Labor has been granted the authority to issue regulations to exempt health care providers and emergency responders from the definition of employer under the Act. In addition, the Secretary may exempt small businesses with fewer than 50 employees from the requirement to offer leave to care for a child when a school is closed when the imposition of such paid sick leave would jeopardize the "viability of the business as a going concern."
- ***Diagnostic Testing:*** The Act requires health plans to provide coverage for diagnostic testing with no out-of-pocket cost to the patient (including deductibles, copayments, and coinsurance) or requirements for prior authorization or other medical management requirements. This testing includes items and services furnished to the patient associated with the testing during their health care provider office visit, which office visit can be performed in person, through a telehealth visit, an urgent care center visit, or an emergency room visit.

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