

The Families First Coronavirus Response Act: Passed by the House, Awaiting Action by the Senate.

The U.S. House of Representatives passed HR6201, the Families First Coronavirus Response Act, on Saturday. The Act provides employees affected by coronavirus with paid sick leave and paid Family and Medical Leave Act (FMLA) benefits. The bill must be passed by the Senate and signed into law by President Trump. If enacted, it will take effect 15 days after the President signs it. It will expire on December 31, 2020. The law's salient provisions include the following:

First - Paid Sick Leave

Question: What Employers are covered?

Answer: All private employers with 500 or fewer employees. All public employers.

Question: Which Employees are eligible for paid sick leave?

Answer: All employees of covered employers.

Question: How much paid sick leave must Employers provide?

Answer: Full-time employees are entitled to up to 80 hours of paid sick leave. Part-time employees are entitled to the average number of hours worked over a two-week period.

Question: What can this new paid sick leave be used for?

Answer: It can be used under a variety of scenarios which are broadly classified as: 1) to comply with medical recommendations or orders from public officials; 2) to obtain a

medical diagnosis related to COVID -19; 3) to assist family members dealing with COVID -19; and 4) to care for a child if a school is closed due to COVID-19.

Question: What rate of pay must employees receive?

Answer: Employees are to be compensated at their regular rate of pay. If an employee is absent to care for a sick family member or a child who is unable to attend school or stay with a childcare provider, the employee need only be compensated at two-thirds (2/3) of the rate they would otherwise receive.

Question: My business already has paid sick leave, is this leave in addition to my business's policy?

Answer: Yes. The paid leave provided by this proposed law is in addition to any employer-provided paid leave. Employers will be prohibited from revising their policies after the law is enacted.

Question: How will private sector businesses pay for this new entitlement?

Answer: Refundable FICA tax credits. But these tax credits will not cover the full cost to employers.

Second - Expanded FMLA Leave

Question: What Employers are covered?

Answer: All private employers with 500 or fewer employees. All public employers. *Employers with fewer than 50 employees may be exempted by the Secretary of Labor.*

Question: Which Employees are eligible for FMLA leave?

Answer: Any individual who has been employed with her employer for at least 30 calendar days. *Employees of health care providers and emergency responders may not be eligible for this leave.*

Question: How much leave must Employers provide?

Answer: 12 weeks. This is a total number. It is not in addition to any other FMLA leave.

Question: What can this new leave be used for?

Answer: It can be used under a variety of scenarios similar to those involving paid sick leave.

Question: What rate of pay must employees receive?

Answer: The first 14 days of FMLA leave is to be unpaid, though employees will be entitled to substitute available paid leave (including the emergency sick leave discussed above). During the remaining period of FMLA leave, employees are entitled to pay at the rate of at least 2/3 their regular rate of pay.

Question: Will employees be entitled to paid leave if an employer shuts down or sends some employees home in connection with the coronavirus situation?

Answer: The new FMLA leave provisions do not apply to situations where an employer directs a healthy employee not to work to promote “social distancing” or because the employer is completely or partially shutting down operations during the crisis.

Question: Can an employer require employees to use employer-provided leave first?

No. Employees may take FMLA leave provided under this law first and then still take any employer-provided leave once leave under these laws is exhausted.

Conclusion

The Families First Coronavirus Response Act is not yet law. It may still be amended by the Senate. But its general contours are likely to be the law soon. Please call us if you have questions.

Ross I. Molho
Clingen Callow & McLean, LLC
2300 Cabot Drive, Suite 500
Lisle, Illinois 60532
www.ccmlawyer.com
(630) 871-2614

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