

President signs Coronavirus Response Act

March 20, 2020

On Wednesday night, March 18, 2020, President Trump signed H.R. 6201, the “Families First Coronavirus Response Act”, which goes into effect on April 2, 2020 and remains effective until December 31, 2020. The Act attempts to mitigate the financial impact of the novel coronavirus pandemic on individuals by requiring employers to provide paid leave to employees who are experiencing symptoms of COVID-19 (the illness caused by the virus), caring for another person who is quarantined due to the coronavirus, or caring for a child whose school is closed because of the coronavirus. The Act also expands food assistance and unemployment benefits, mandates free coronavirus testing, and provides additional protections for health care workers.

This article focuses on the employment-related aspects of the Act, most notably the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave (Emergency FMLA) Expansion Act sections. However, do not hesitate to contact us with any questions regarding any other topics covered by the Act.

Who is covered under the Act?

Generally, private employers with fewer than 500 employees are covered by the Act and must provide paid, job-protected leave to employees affected by the coronavirus as detailed in the sections below. The 500-employee threshold is determined company-wide and not based solely on location. In addition, any “public agency” or “any other entity that is not a private entity” is required to provide paid, job-protected sick leave (but not Emergency FMLA leave), regardless of the number of employees. The Act applies to all covered employees, both full-time and part-time.

Importantly, the Act applies to employers with fewer than 50 employees who are not currently covered by the Family and Medical Leave Act (FMLA); however, the Department of Labor may issue regulations to exempt small businesses with fewer than 50 employees if the sick leave mandate “would jeopardize the viability of the business as a going concern.”

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act permits full-time employees affected by the coronavirus to take up to 80 hours paid sick leave immediately (regardless of their length of employment). Part-time employees are entitled to paid sick leave based on the number of hours that such employee works, on average, over a two-week period.

Specifically, employees are eligible for paid sick leave under this section of the Act only if the employee cannot work or telework remotely because of the following reasons:

Reason for Employee’s Leave	Pay Rate and Cap
Subject to a Federal, State, or local quarantine or isolation order related to the coronavirus	<p data-bbox="1045 527 1208 558">Regular pay.</p> <p data-bbox="971 596 1282 705">Capped at \$511 per day with an aggregate maximum of \$5,110</p>
Advised by a health care provider to self-quarantine due to coronavirus related concerns	
Experiencing coronavirus symptoms and seeking a medical diagnosis	
Caring for another subject to a quarantine or isolation order or who has been advised to self-quarantine	<p data-bbox="1008 919 1243 951">2/3 of regular pay</p> <p data-bbox="971 989 1282 1098">Capped at \$200 per day with an aggregate maximum of \$2,000</p>
Caring for a child if the child’s school or daycare is closed or if child-care provider is unavailable due to the coronavirus	
Experiencing any other substantially similar condition specified by the federal government	

Employers are prohibited from requiring employees to use other paid leave (such as accrued company sick leave) before the employee uses the paid sick leave provided under the Act.

Finally, employers must post a notice related to this section in a conspicuous place in the workplace. A model notice will be provided by the Department of Labor by the week of March 23, 2020.

Emergency Family and Medical Leave Expansion Act

The Act also temporarily expands the FMLA’s job-protected leave by providing up to 12 weeks of paid FMLA leave for certain childcare-related absences due to the coronavirus.

Unlike the Emergency Paid Sick Leave Act, an employee is only eligible for the Emergency FMLA paid leave if he or she has been employed for at least 30 days. However, this still represents a drastic

expansion of the current FMLA, which only provides benefits to employees who have worked for at least one year with their current employer.

Specifically, covered full-time employees may take up to 12 weeks of job-protected FMLA leave if the employee is unable to work *or telework* because of a need to care for a child under 18 years of age if the school or daycare has closed, or the child-care provider is unavailable, because of the coronavirus. Paid sick leave for part-time employees (or employees with varying hours) is calculated based on the average number of hours that the employee was scheduled per day over the preceding 6-month period.

The first 10 days of FMLA leave are unpaid, but employees may substitute accrued vacation leave, personal leave, or medical or sick leave for the 10 days of unpaid leave. **However, the employer may not require the employee to substitute his or her personal leave.**

After the 10 days of unpaid leave, employers must pay the employee not less than 2/3 of the employee's regular rate of pay for each day of FMLA leave. Paid Emergency FMLA leave is capped at \$200 per day, and \$10,000 in the aggregate, per employee.

Payroll Tax Credits for Paid Sick Leave and Paid FMLA Leave

To help employers defray the costs of paying these new benefits to affected employees, the Act provides refundable tax credits for employers providing paid emergency sick leave or paid Emergency FMLA leave.

For paid emergency sick leave, the Act provides a payroll tax credit for employers equal to 100% of the qualified sick leave wages paid by the employer with respect to such calendar quarter. The tax credit is capped at \$511 per day for leave taken because of the employee's own personal needs and \$200 per day for leave taken to care for a family member or because of a school closure or loss of childcare, subject to other limitations and conditions.

For paid Emergency FMLA leave, the Act provides a payroll tax credit for employers equal to 100% of the qualified family leave wages paid by the employer with respect to such calendar quarter. The amount of qualified family leave wages taken into account for each employee is capped at \$200 per day and \$10,000 in the aggregate with respect to all calendar quarters.

The Act also provides a corresponding credit for self-employed business owners for both sick leave and FMLA leave.

Emergency Unemployment Insurance Stabilization and Access Act of 2020

The Act allots \$1 billion in emergency grants to eligible states to pay out unemployment insurance benefits for employees affected with the coronavirus. \$500 million of the funds will be transferred to states by May 18, 2020, provided the state complies with certain eligibility requirements. The remaining

\$500 million will be reserved for states where the number of unemployment compensation claims has increased by at least 10% over the same quarter in the prior calendar year and that meet other eligibility requirements, such as waiving work search requirements and waiting periods.

State Law Corollaries

Effective March 18, 2020, New York Governor Andrew Cuomo signed a law providing paid leave to New York employees involuntarily quarantined due to the coronavirus. While we expect other states (California, Massachusetts, etc.) to enact laws in response to the coronavirus similar to New York, we are unaware of any reports of Louisiana or other states in the southeastern U.S. doing the same. We will continue to monitor state law developments related to the coronavirus.

This article constitutes a high-level summary and is not an exhaustive analysis of H.R. 6201. If you need any more information about this, please reach out to your attorney at Fishman Haygood or one of the attorneys listed below.

FishmanHaygood

New Orleans	201 St. Charles Avenue, Suite 4600 New Orleans, Louisiana 70170
John Werner	jwerner@fishmanhaygood.com
Scott Willis	swillis@fishmanhaygood.com
Jim Swanson	jswanson@fishmanhaygood.com
Lori Mince	lmince@fishmanhaygood.com
Kerry Miller	kmiller@fishmanhaygood.com
Baton Rouge	100 North Street, Suite 800 Baton Rouge, Louisiana 70802
Charles Landry	clandry@fishmanhaygood.com
Louis Quinn, Jr.	lquinn@fishmanhaygood.com
Scott Chenevert	schenevert@fishmanhaygood.com