

## House Resolution 6201

### “Family First Coronavirus Response Act”

On March 18, 2020 the federal government passed the “Family First Coronavirus Response Act”. This Act mandates paid sick leave, paid family and medical leave. Outlined below are the new paid sick leave, paid family and medical leave requirements:

#### **Qualifying Employers:**

- Private Employers with fewer than 500 employees and all public employers are to provided employees with paid sick time for qualifying reasons related to the COVID-19 outbreak.

#### **Eligible Employees:**

- Is any employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested.

#### **Paid Sick Time Allotment:**

- Qualifying employers must provide 80 hours of paid sick time to full-time employees. Part-time employees must receive an amount of paid sick time equal to the number of hours the employee works on average over a two-week period.

#### **Rate of Pay for Sick Time**

- Paid sick time must be paid at the highest of the employee’s regular rate, the federal minimum wage or the applicable state/local minimum wage, to a maximum of \$511 per day (and \$5,110 in the aggregate).
- The daily and aggregate benefit cap is lower for employees who use paid sick time to care for a sick family member, a child unable to attend school or who meet the “substantially similar conditions” criteria. For these qualifying reasons, an employee must be paid at 2/3 of their regular rate, to a maximum of \$200 per day (and \$2,000 in the aggregate).
- Paid sick time is calculated based on the number of hours an employee would otherwise normally be scheduled to work.

#### **Other Requirements:**

- The Act also empowers the Secretary of Labor to issue regulation to exclude certain employees employed by health care providers or emergency responders from entitlement to paid sick leave and also to exempt small businesses with fewer than 50 employees.

#### **New and Additional Family and Medical Leave Act Obligations:**

- The law mandates additional Family and Medical leave Act (FMLA) obligations and also extends coverage for this component to all public (governmental) employers and all

private employers with fewer than 500 employees (even those with fewer than 50 employees).

- The emergency FMLA expansion provides up to 12 weeks of job-protected leave to employees who are unable to work (or telework) due to need to care for a minor child whose school or place of care has been closed or if the child's care provider is unavailable or due to an emergency with respect to the COVID-19 declared by federal, state or local authority.
- While the first 10 days of this expanded leave may be unpaid, employers must provide paid leave after the tenth day of such leave. Leave must be paid at a rate of at least two-thirds of the employee's regular pay rate according to the number of hours the employee is otherwise scheduled to work, up to a maximum of \$200 per day (\$10,000 in the aggregate).
- Generally, the FMLA requires that employees who take qualifying leave be restored to the same or an equivalent position upon returning from leave. However, employers of fewer than 25 employees are not required to provide restoration rights for the expanded qualifying reasons for leave if:
  - (1) the position the employee held at the beginning of leave does not exist due to conditions that affect employment and are caused by a public health emergency during the leave period,
  - (2) the employer makes reasonable efforts to restore the employee to an equivalent position,
  - (3) those reasonable efforts fail, and the employer makes reasonable efforts to contact the employee if an equivalent position becomes available for one year after the earlier of 12 weeks after the employee's leave commences or the date on which the qualifying need to use leave concludes.
- The Secretary of Labor is empowered to issue regulations to exclude certain health care providers and emergency responders from the expanded FMLA requirement. DOL also is tasked with issuing regulations to exempt small businesses (employers with fewer than 50 employees) where the provision of leave would jeopardize the viability of the business as a going concern.

### **Tax Credits for Paid Sick Leave:**

- In order to lessen the financial burden of additional leave benefits (at least for those employers who survive to file taxes), the Act provides for a refundable payroll tax credit equal to 100 percent of qualified sick leave paid by an employer for each calendar quarter. The tax credit is allowed against the employer portion of Social Security and Medicare taxes.
- Self-employed individuals also are entitled to a refundable income tax credit if the taxpayer must self-isolate, obtain a diagnosis or comply with a self-isolation recommendation with respect to coronavirus. For eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus, the refundable income tax credit also is capped. For self-employed

individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus, the income tax credit also is capped.

- The tax credits are in place starting with a date to be set by the U.S. Treasury Department and ending on December 31, 2020.

#### **Tax Credits for Paid Family and Medical Leave:**

- The Act also provides for a refundable payroll tax credit equal to 100% of qualified family leave paid by an employer for each calendar quarter.
- The tax credits are in place starting with a date to be set by the U.S. Treasury Department and ending on December 31, 2020.

#### **Enhanced Unemployment Compensation Benefits:**

- The Act provides \$1 billion in aid to state unemployment compensation programs so long as a state:
  - (1) waives any waiting period;
  - (2) waives the work search requirements for employees directly impacted by COVID-19 on account of an illness in the workplace or direction from a public health official to isolate or self-quarantine; and
  - (3) does not charge employer accounts for these COVID-19 related benefits.