

House Coronavirus Response Bill Will Impact Employers

by Christina Lewis

On March 14, 2020, the U.S. House of Representatives passed a bill entitled the “Families First Coronavirus Response Act” (the “Bill”). The Bill contains a number of provisions relating to the public’s health and welfare, including among other things, food and nutrition waivers and medical costs. The Bill also contains provisions that will significantly impact employers, including amendments to the Family and Medical Leave Act (FMLA) and paid sick time.

This client alert summarizes the material provisions of the Bill that may impact private employers. Employers should be aware, however, that **the Bill has not yet become law**. The Senate will consider the Bill and may make changes – some of which may be material – before the Bill becomes final. Employers should be cautious about taking action to comply with the Bill before a final version is signed into law.

EMERGENCY FAMILY AND MEDICAL LEAVE

The Bill amends the FMLA to provide employees who: (i) work for an employer with fewer than 500 employees (including those not otherwise covered by the FMLA), and (ii) have been working for the employer for at least 30 days, with up to 12 weeks of “emergency leave” for any of the following reasons:

- To adhere to a requirement or a recommendation to quarantine, either due to exposure to coronavirus or the exhibition of symptoms of coronavirus.
- To care for a family member who is adhering to a requirement or recommendation to quarantine, either due to exposure to coronavirus or the exhibition of symptoms of coronavirus.
- To care for a child under 18 years of age if the child’s school or place of care has been closed, or the child’s care provider is unavailable due to the public health emergency.

The first 14 days of leave is unpaid, although employees may (but are not required to) use accrued time off under their employer’s existing paid time off policies. Thereafter, an employer must pay employees not less than two-thirds of the employee’s regular rate of pay assuming the leave is necessary for one of the stated purposes.

Following the end of the leave, employers must return employees to the same or an equivalent position. Employers with fewer than 25 employees, however, are not required to provide job restoration rights if: (i) the position held by the employee does not exist due to economic conditions or other changes in operating conditions of the employer; (ii) the employer makes a reasonable effort to restore the employee to an equivalent position; and (iii) barring an ability to restore the employee to an equivalent position, the employer makes a reasonable effort to contact the employee if an equivalent position becomes available within one year beginning on the earlier of: (i) the date the leave ends, or (ii) the date that is twelve weeks after the leave begins.

EMERGENCY PAID SICK LEAVE

Employers with fewer than 500 employees are also required to provide paid sick leave for any of the following purposes:

- To self-isolate because the employee is diagnosed with coronavirus or to obtain a medical diagnosis or care if the employee is experiencing the symptoms of coronavirus;

- To care for or assist a family member who is quarantined or needs a medical diagnosis or care as a result of symptoms of coronavirus; or
- To care for the employee's child if the child's school or place of care has been closed, or the child's care provider is unavailable due to coronavirus.

Full-time employees are entitled to 80 hours of paid sick time and part-time employees are entitled to the number of hours the employee works, on average, over a two-week period. The amount of pay the employee is entitled to receive depends on the reason for the leave. The employee will be entitled to receive his or her regular rate of pay if the absence is due to quarantine or to seek a diagnosis or care, and the employee will be entitled to receive two-thirds the employee's regular rate of pay if the absence is to care for a family member or a child.

Employers may not require employees using paid sick leave to find a replacement employee to cover their hours. They also may not require the use of the employer's paid sick leave before using the emergency paid sick leave. Employers may not take adverse employment actions or discriminate against an employee who uses sick time for the permitted purposes.

TAX CREDITS

To assist employers with the costs of paid family leave and paid sick time, the Bill provides a series of refundable tax credits. There is a refundable tax credit equal to 100 percent of "qualified family leave wages" paid by an employer for each calendar quarter for wages up to \$200/day (\$10,000 maximum) while the employee is receiving paid leave.

Similarly, there is a refundable tax credit for employers equal to 100 percent of the paid leave each calendar quarter required by the Emergency Paid Sick Leave Act. The sick leave credit for time taken to self-isolate or seek treatment is for wages up to \$511/day and the sick leave credit for time taken to care for a family member or child following a school or place of care closure is \$200/day.

In addition, for self-employed individuals, there is a refundable tax credit against the self-employment tax for up to 10 days, which covers 100% of a self-employed individual's sick-leave equivalent amount, or 67% of the individual's sick-leave equivalent amount if the individual is taking care of a family member or a child.

UNEMPLOYMENT

In addition to the above provisions, the Bill provides grants to states to assist with the processing and handling of unemployment claims. To obtain the grant, states must require employers to notify employees about the availability of unemployment compensation at the time of separation from employment. In addition, states must notify applicants when an application is received or whether more information is needed to process the application, and applications must be accessible by two of the following: phone, in-person, or online. States may receive an additional grant if the number of unemployment claims has increased by 10% over the same quarter in the previous calendar year.

SHORT-TERM COMPENSATION PROGRAMS

The Secretary of Labor will assist states in establishing and improving employer awareness of short-term compensation programs to help avert layoffs, including by providing technical assistance and guidance.

As stated above, the Bill is not yet final law and the Senate may make changes before the law is enacted. Even if passed in its current form there are many questions including, whether employers with more than 500 employees will remain excluded from the requirements, how this law will interact with existing state or local paid sick leave entitlements, and if the anti-retaliation provisions will affect how employers manage their

workforces, particularly if they are considering downsizing options. We are monitoring new developments closely and will issue an updated client alert when there is a final version of the law.

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