

PUBLICATION

President Signs the Families First Coronavirus Response Act into Law

Authors: Nakimuli O. Davis-Primer

March 18, 2020

On March 14, 2020, the House passed HR 6201, the Families First Coronavirus Response Act. The Act, among other things, would amend the Family and Medical Leave Act (FMLA) to provide paid emergency leave to eligible employees and would require covered employers to provide paid sick leave to employees in need of such leave due to the coronavirus pandemic. The Act also provides reimbursable tax credits to covered employers for the costs associated with providing this paid leave and sick time.

After the initial version of HR 6201 passed on the early morning of March 14, the House made a "technical correction" to the bill before it was sent to the Senate for consideration on March 17. Key provisions of the initial House-passed version of the Act are summarized in our prior alerts [here](#) and [here](#). This alert identifies notable changes between the version that passed on Saturday, March 14 and the version that was passed by the Senate in a final vote 90-8 and signed by the President on March 18, as well as other key points of the new law.

Division C, Emergency Paid FMLA Leave, amends the FMLA to provide up to 12 weeks of paid leave to employees for a qualifying need related to a public health emergency, i.e. COVID-19. The law:

- Takes effect *up to* 15 days after enactment, which could be as late as April 2, 2020 (the initial version took effect immediately) and ends on December 31, 2020.
- Defines the employer threshold to those with "fewer than 500 employees" and eligible employee as one who has worked for at least 30 calendar days.
- Defines *qualifying need related to a public health emergency*, with respect to leave, to mean the employee is unable to work (or telework) due to a need to care for his or her son or daughter under 18 if the school or place of care has been closed or the childcare provider is unavailable due to a public health emergency (the initial version had more expansive coverage for a qualifying need related to a public health emergency that included, e.g., if the person's presence at work would jeopardize other employees due to his or her exposure to or exhibition of symptoms from COVID-19).
- Includes language to allow the Secretary of Labor to issue regulations that exempt small businesses with fewer than 50 employees from the paid leave requirements when "the imposition of such requirements would jeopardize the viability of the business as a going concern" and that exclude certain health care providers and emergency responders from the definition of eligible employee.
- Provides that the initial **ten** days of emergency FMLA leave may be unpaid (the initial version provided the initial 14 days may be unpaid). The enacted version maintains that an employee may elect to use any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave for this initial ten-day period (the prior version had language that the employer may not require an employee to use such paid leave alternatives for the initial ten-day leave period, but such language is not in the revised version). Leave after the initial ten-day period should be calculated at not less than

two-thirds of an employee's regular rate of pay at the hours the employee would normally be scheduled to work.

- Clarifies that the amount required for paid emergency FMLA leave is limited to \$200/day or \$10,000 in the aggregate.
- Maintains that the restoration requirement shall not apply to an employer with fewer than 25 employees if certain circumstances are met.
- Provides that an employer of an employee who is a health care provider or emergency responder may elect to exclude such employee from the emergency leave requirements.

Division E, the Emergency Paid Sick Leave Act requires covered employers to provide two weeks of paid sick leave to employees (regardless of how long the employee has been employed) who are unable to work (or telework) due to a need for leave caused by COVID-19. The enacted law:

- Revises the Short Title to the Emergency Paid Sick Leave Act (initially it was the Paid Sick Days for Public Health Emergencies and Personal and Family Care Act).
- Requires paid sick time when an employee is unable to work (or telework) **due to a need for leave** because (1) the employee is subject to a federal, state or local quarantine or isolation order related to COVID-19, (2) the employee has been advised by a health care provider to quarantine due to concerns related to COVID-19, (3) the employee is experiencing symptoms of COVID-19 and seeking a diagnosis, (4) the employee is caring for an individual who is subject to a quarantine order or has been advised to quarantine as outlined above, (5) the employee is caring for a son or daughter if the school or place of care has closed or is unavailable due to COVID-19, or (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor. (This language condenses the language from the initial version that was passed by the House and now primarily focuses on COVID-19 related reasons to define a qualifying need.)
 - Allows employers of health care providers or an emergency responder to elect to exclude such employees from application of this section.
- Provides that full-time employees are entitled to 80 hours of paid sick leave and part-time employees are entitled to a number of hours that equal the number of hours the employee works on average over a two-week period (initially there were accrued hours in addition to the two weeks of paid sick time and other variations).
 - The DOL should provide guidelines to assist in calculating the amount of paid sick time no later than 15 days after enactment of the Act.
 - Paid sick time shall not exceed \$511/day or \$5,110 in the aggregate for needs (1), (2), or (3) noted above or \$200 per day and \$2,000 in the aggregate for needs (4), (5), or (6).
 - Sick time shall not carry over from one year to the next year (in the initial version carryover was allowed).

- Provides that the paid sick time shall cease beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick time.
- Provides that sick time shall be available for immediate use regardless of how long the employee has been employed. (The initial version passed by the House had a provision to reinstate accrued sick leave but that accrual provision has also been removed.)
- Prohibits an employer from requiring an employee to use other paid leave provided by the employer before the employee uses the paid sick time under this Act.
- Requires posting a notice, prepared or approved by the Secretary of Labor, in conspicuous places on the premises where notices are customarily placed (the initial version required a notice or placing the information in the company's handbook). The Secretary of Labor must make a model notice available no later than seven days after enactment of the Act.
- Makes it unlawful to discharge, discipline, or in any manner discriminate against an employee for taking the sick leave or filing a complaint, instituting suit, or testifying in a proceeding under or related to the Act, and a violation of the Act is considered a failure to pay minimum wages in violation of the FLSA.
- Defines a covered employer as any person engaged in commerce or in an industry or activity affecting commerce that, in the case of a private entity or individual, employs fewer than 500 employees and in the case of a public agency or any other entity that is not a private entity or individual, employs one or more employees.
 - Includes any person acting directly or indirectly in the interest of an employer within the meaning of 29 U.S.C. § 203(d) and any successor of an employer; any public agency as defined by 29 U.S.C. § 203(x); and the Government Accountability Office and the Library of Congress.
- Takes effect no later than 15 days after enactment of the Act and sunsets on December 31, 2020 (initial version took effect immediately).

The above are highlights of the enacted law. There are other provisions that have not been summarized, and there were other items removed (or modified) from the initial house-passed version of the law.

Although the Act likely will not take effect until April 2, 2020, we strongly encourage employers to begin efforts to comply with the new law and seek counsel to assist as needed. For more information, feel free to contact the author, or any [Baker Donelson L&E Attorney](#), and visit the [Coronavirus \(COVID-19\): What you Need to Know information page](#) on our website for continuing updates.