

Insights: Alerts

Update: U.S. House Amends the "Families First Coronavirus Response Act"

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic is dynamic and continues to develop. Please monitor this site and/or your email for updates.

After noting that it had “rushed this bill to the floor,” as stated by Representative Louie Gohmert, the House amended H.R. 6201 for what it deemed “technical corrections.” Nonetheless, it appears that several substantive changes were made. Of note, with regard to the Emergency Family and Medical Leave Expansion Act:

- Qualifying public health emergency need for leave related to an employee's need to care for a child whose school or daycare has closed only exists if the employee is unable to work or **telework**.
- In addition, while the Emergency Family and Medical Leave Expansion Act originally provided that the first 14 days of public health emergency leave could be unpaid, the amended bill lowers the number of unpaid days to the first 10 days.
- Although the amount of leave is not limited, the amount of pay that an employer must provide to an employee is capped at \$200 per day **and** \$10,000 in total.

The Emergency Paid Sick Leave Act was similarly clarified and limited in the new amendments. Specifically:

- The amended bill adds qualifying language to cover a new classification of eligible employees who are “subject to a Federal, State, or local quarantine or isolation order related to COVID-19.” While not explicitly stated, this language may apply to employees whose employers shut down the business or whose shifts were eliminated due to Federal, State, or local orders that certain types of businesses shutter their doors.
- The amended bill suggests that an employee can use their paid leave under the Emergency Paid Sick Leave Act during the initial 10 days of unpaid leave under the expanded FMLA. Specifically, the amendment states: “(2) SEQUENCING—(A) IN GENERAL.—“An employee may first use the paid sick time under subsection (a) *for the purposes described in such subsection.*” (emphasis added).
- The amended bill removes the language prohibiting employers from modifying their existing paid leave policies, but does continue to prohibit employers from requiring that employees exhaust paid leave under the employer's policies prior to receiving paid leave under the Emergency Paid Sick Leave Act. Whereas the last version explicitly stated that the emergency paid sick leave was in addition to existing leave policies, this version is more ambiguous.

- Under the amendments, paid leave is capped at \$511 per day and \$5,110 in total for employees who:
 - Are subject to isolation or quarantine due to a federal, state or local order or a health;
 - Have been advised by their health care provider to self-quarantine due to COVID-19 related concerns; or
 - Are experiencing symptoms of COVID-19 and are seeking medical diagnosis.
- Under the amendments, paid leave is capped at \$200 per day and \$2,000 in total for employees who:
 - Are caring for an individual subject to quarantine or isolation at the order of the government or direction of a physician;
 - Are caring for a son or daughter if the child's regular care provider is unavailable or school or place of childcare has been closed due to COVID-19 precautions.
- The amended bill now includes a small business exemption. The Secretary of Labor may exempt business with less than 50 employees from the Emergency Paid Sick Leave Act if complying with it "would jeopardize the viability of the business as a going concern."

Under the amended bill, as with the original, the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act both contain an automatic expiration on December 31, 2020.

As with all things COVID-19 related the status of H.R. 6201 is steadily changing and evolving. We will continue to monitor the bill and its progress, and will provide an update once serious action is taken by the Senate. In the meantime, please reach out to any of the attorneys below should have you have questions about the bill.

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