

# The Families First Coronavirus Response Act: What You Need to Know

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## Summary

The Families First Coronavirus Response Act (H.R. 6201) passed the US House of Representatives on March 14, 2020, with a vote of 363–40. H.R. 6201 incorporates many of the provisions included in the initial legislation released by House Democratic leadership last week, with some changes. Changes include:

- Would provide for two weeks (80 hours) of emergency paid sick leave related to the coronavirus. This provision applies only to employers with 500 or fewer employees.
- Would provide paid Family Medical Leave Act (FMLA) leave, paid by the employer at two-thirds of an employee's rate of pay, if the employee is on leave for more than two weeks. This provisions applies only to employers with 500 or fewer employees.
- Would provide tax credits to employers to offset costs related to the paid sick leave.
- Would provide flexibility for employers that employ healthcare workers or emergency personnel, and for employers that employ 50 or fewer employees.
- Would not require the Occupational Safety and Health Administration to establish workplace safety requirements to protect healthcare workers from coronavirus infections.
- Would lower the bump in Federal Medical Assistance Percentages (FMAP) from 8% to 6.2%.
- Clarifies that reimbursements for uninsured COVID-19 testing at diagnostic laboratories would not cover individuals receiving other testing assistance provided for in the bill, and that Medicaid coverage would only apply to COVID-19 tests.

The bill is expected to pass the Senate in the coming days, and be signed into law by the president. Both Democratic and Republican party leadership and the Administration indicated that a third emergency supplemental is being drafted. That supplemental is expected to focus on industry-

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specific assistance. McDermott+Consulting continues to closely monitor these developments and will keep you updated.

## **Paid Sick Leave**

H.R. 6201 would require employers with fewer than 500 employees to provide two weeks (80 hours) of paid sick leave. If an employee is on leave for more than two weeks, the employer would be required to provide FMLA leave to equal a total of three months (12 weeks) of leave paid at a reduced rate. The sick leave and FMLA leave must be related to the coronavirus pandemic.

The bill provides payroll tax credits to offset the costs of providing this leave. The bill also provides \$1 billion in grant funding to help states manage and expand their unemployment insurance programs during the COVID-19 pandemic. In the case of states with a more than 10% increase in unemployment, the bill would waive requirements to raise the unemployment tax for employers with high lay-off rates.

### **Sick Leave (for Employers with Fewer than 500 Employees)**

- An employer would be required to provide an employee with paid sick leave for absences related to COVID-19 diagnosis or treatment, or care of those affected by COVID-19.
- The duration of that paid sick leave would be two weeks (80 hours), or equal to the number of hours that a part-time employee works over a two-week period.
- The sick leave would be paid at the employee's regular rate of pay, unless the leave is used to care for a family member affected by the coronavirus or child under 18 who cannot go to school or whose child care provider is unavailable. In that case, the sick leave would be paid at two-thirds of the employee's regular rate of pay.
- The paid sick time must be made available in addition to any paid sick leave an employer might already provide. An employer could not require an employee to use other paid leave that was provided before this entitlement.
- The paid sick leave must be available for use immediately, no matter how long the employee has been employed.
- These provisions are limited to the current COVID-19 pandemic. The bill has a sunset provision on December 31, 2020.

### **FMLA (for Employers with Fewer than 500 Employees Who Have Been Employed for at Least 30 Days)**

- H.R. 6201 would require employers to offer 12 weeks of job-protected leave under FMLA for absence related to the coronavirus.
- The first 14 days of leave that an employee takes under FMLA would be unpaid, but the employee could substitute accrued vacation, paid time off or medical/sick leave. However, the employer could not require such a substitution.

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- For the remainder of the 12-week paid leave period, the employee must be paid at two-thirds of her regular rate of pay.
  - The Secretary of Labor has authority to issue regulations to exclude certain health providers and emergency responders from the definition of eligible employee, and to exempt small businesses with fewer than 50 employees.

### **Tax Credits to Offset Costs of Paid Sick Leave Entitlement**

- H.R. 6201 would establish optional tax credits for employers for qualified sick leave wages and family medical leave wages, and would extend similar tax credits for these lost wages to self-employed individuals.
- The tax credits would be available for wages paid during the period beginning within 15 days of the bill's enactment and ending December 31, 2020.
- Self-employed individuals would also receive a tax credit for sick leave and family medical leave, to be credited against their income tax.

### **Unemployment Insurance**

- H.R. 6201 would appropriate \$1 billion in 2020 for emergency grants to states for activities related to processing and paying unemployment insurance benefits.
- For states with a greater than 10% increase in unemployment, additional grants would be available provided that the state waived certain requirements related to unemployment insurance benefits, including requirements that an employer be taxed at a higher rate if it has laid off a certain number of employees.

### **Food Assistance**

The bill would appropriate \$1.2 billion to the US Department of Agriculture (USDA) and the US Department of Health and Human Services (HHS) to provide additional nutrition assistance to affected areas and populations. Key populations include low-income seniors and their caregivers, local food banks, pregnant and postpartum women, and students who lose access to school lunch programs as a result of COVID-19-related school closures. The bill would also grant states additional flexibility in providing nutrition aid under the Supplemental Nutrition Assistance Program (SNAP) and the Child Nutrition Program.

Key food assistance provisions in H.R. 6201 include:

- Authorizing USDA to provide additional nutrition assistance to families with children who are eligible for but unable to receive free or reduced-priced meals because their schools are closed for more than five days due to the COVID-19 emergency
- Authorizing USDA to provide additional funds to state agencies to make emergency allotments to households participating in SNAP

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- Providing \$100 million for nutrition assistance grants to Puerto Rico, the Northern Mariana Islands and American Samoa for their territorial nutrition assistance programs to help respond to COVID-19 outbreaks
  - Appropriating \$500 million to the Supplemental Nutrition Program for Women, Infants, and Children
  - Appropriating \$400 million through FY 2021 to the USDA Commodity Assistance Program for emergency food assistance, which helps USDA purchase and provide food to elderly and low-income individuals
  - Providing \$250 million to HHS for the Senior Nutrition Program.

## Healthcare Coverage

H.R. 6201 would require private health plans to cover diagnostic testing for COVID-19 at no cost to consumers.

## Insurance Coverage

- Private health plans, Medicare Advantage plans, TRICARE, veterans plans, federal workers' health plans and the Indian Health Service would be required to cover, at no cost to the patient, the COVID-19 diagnostic test. They would also be required to cover the patient's visit to a provider, urgent care center or emergency room to receive the testing.
- States would be permitted to extend Medicaid eligibility to their uninsured populations for COVID-19 diagnostic testing.
- The federal government would match state medical and administrative costs.
- The bill would appropriate \$1 billion for HHS's Public Health and Social Services Emergency Fund for diagnostic testing to be administered to the uninsured.

## Federal Medical Assistance Percentages

- H.R. 6201 would increase the federal government's FMAP matching to states by 6.2% during the COVID-19 emergency.

## Respirators

- H.R. 6201 would require personal respiratory protective devices to be covered under the Public Readiness and Emergency Preparedness (PREP) Act during the COVID-19 emergency. This emergency declaration for respirators would expire on October 1, 2024.

National Law Review, Volume X, Number 76

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