

## House Modifications to H.R. 6201, Families First Coronavirus Response Act

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Late on Monday, March 16, 2020, the U.S. House of Representatives modified H.R. 6201, Families First Coronavirus Response Act, and substantially narrowed the employer leave requirements under Division C – Emergency Family and Medical Leave Expansion Act and Division E – Emergency Paid Sick Leave Act. As of the time of this Alert, H.R. 6201 has not been taken for consideration by the Senate.

The major changes from the previous version of the Emergency Paid Sick Leave Act are as follows:

- Language defining the circumstances under which employers must provide the new paid sick time to employees affected by COVID-19 adds that the employee must be “unable to work (or telework) due to a need for leave,” and redefines the following six reasons as qualifying:
  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 self-quarantine due to concerns related to COVID-19;
  3. The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis;
  4. The employee is caring for an individual who is subject to a federal, state or local quarantine order, or the individual has been advised to self-quarantine due to concerns related to COVID-19;
  5. The employee is caring for the employee’s son or daughter, if the child’s school or child care facility has been closed or the child’s care provider is unavailable due to COVID-19 precautions; or
  6. The employee is experiencing any other substantially similar condition specified by Health

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and Human Services in consultation with the Department of the Treasury and the Department of Labor.

- Employers are still prohibited from requiring employees to use other paid leave provided by the employer before using the new paid sick time, but the explicit prohibition against employers changing their existing paid leave policies on or after any date of enactment has been eliminated.
- There are new caps on the total amount of pay an employee may receive under the Act:
  - Emergency sick time relating to an employee's own condition (see 1-3 above) is calculated based on the employee's regular rate or applicable minimum wage, whichever is greater, but is limited to \$511 per day and \$5,110 total.
  - Emergency sick time relating to situations where the employee is acting as a caregiver (see 4-6 above) is calculated based on two-thirds of the employee's regular rate or applicable minimum wage, whichever is greater, but is limited to \$200 per day and \$2,000 total.

The major changes from the previous version of the Emergency Family and Medical Leave Expansion Act are as follows:

- The circumstances under which the new Emergency FMLA will become available have been significantly narrowed to include only leave for an employee who is "unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency."
- The initial period of unpaid leave, during which an employee can substitute accrued vacation, personal leave, or medical or sick leave, has been reduced from 14 to 10 days.
- There are new caps on paid leave for the 10 weeks following the initial 10-day period of unpaid leave of \$200 per day and \$10,000 total.
- Certain small employers may now be exempt from penalties for violation of the Act.

In addition to the above, there are three new features of both the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act under H.R. 6201:

- There are new exceptions allowing health care providers or emergency responders to elect to exclude certain employees from the Act; and
- The Department of Labor is now explicitly authorized to issue regulations which, among other things: (1) exclude health care workers and emergency responders from eligibility for emergency paid sick time, and (2) exempt businesses with fewer than 50 employees when providing emergency paid sick time would jeopardize the viability of the business.

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- The new caps on both Emergency FMLA and Emergency Paid Sick Time are consistent with the refundable tax credits for employers that are described in Division G of H.R. 6201.

Again, H.R. 6201 has passed the House but may still be further amended in the Senate, and no version of the “Families First Coronavirus Response Act” will be law until passed by Congress and signed by the president.

#### ATTACHMENTS

- [House Modifications to H.R. 6201, Families First Coronavirus Response Act](#)

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National Law Review, Volumess X, Number 78

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