

***Coronavirus Response Bill, with Required Paid Sick Leave, Enacted into Law***

**Issue: Paid Sick Leave**

**Date: March 19, 2020**

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**Action Taken:** On March 18, 2020 President Trump signed into law H.R.6201, a \$104 billion bill that, among other things, requires small employers (those with fewer than 500 employees) to provide paid sick leave to employees dealing with COVID-19 or with exposure to the coronavirus. The new requirement takes effect 15 days from enactment (April 2) and will remain in effect until December 31, 2020.

The law provides for payroll tax credits that are intended to fully offset the cost to employers of the new paid sick leave requirements. And, the bill contains a provision that allows employers with fewer than 50 employees to apply to the Department of Labor (DOL) for a waiver, based on hardship, from the rules.

There are three important elements to these new rules. They are:

- ***Emergency paid sick leave:*** Small employers must pay their employees 100 percent of their normal pay for 10 days for sick leave taken in connection with the coronavirus crisis. The law specifies that the leave must be for one of these reasons: leave due to a quarantine or self-isolation order from state or federal government, having COVID-19 symptoms or being diagnosed with COVID-19, caretaking for a family member with the virus, or caring for a child whose school and/or daycare is closed due to the coronavirus crisis.

- **Family and Medical Leave Act (FMLA) paid leave:** Small employers must pay their employees two thirds of their regular pay, for weeks three through 12 of FMLA leave, when that leave is taken to care for children whose schools and/or daycare have closed due to the coronavirus crisis.
- **Tax Credits to Offset the Cost:** The new law creates tax credits against the payroll tax that are intended to fully offset the cost of providing this new paid leave. The tax credit amount for emergency paid leave is \$511/person, for up to 10 days/person (i.e., \$5,110). The tax credit for the FMLA portion of the paid leave is \$200/person up to maximum of \$10,000 for all calendar quarters.

The tax credit amounts can include not only the amounts paid to the employees taking this leave, but also the portion of the employee's qualified health insurance that is allocable to the leave. In addition, the tax credits can cover the Medicare (HI) tax the employer pays on the amount of the paid sick leave.

The tax credit is refundable, and can be used to offset the amount of payroll taxes the employer must remit to the Treasury. The Treasury Department says that employers may also apply in advance for any amount of sick leave paid that exceeds the amount of payroll taxes they must remit. The process for applying for tax credit payments in advance will be established by Treasury regulation.

H.R.6201 also includes provisions to provide for free coronavirus testing, expanded unemployment insurance (UI) rules, funding for food (e.g., free and reduced-price meals normally provided by schools which are now closed due to the coronavirus crisis), funding for the federal agencies that will be administering and enforcing this new law.

**Next Steps:** This new law is the second in what Congress and the President say will be at least three coronavirus response laws. Congress, working with the Administration, is working on the third bill now. This third bill could top \$1

trillion in federal spending to combat the crisis. Lawmakers say they want to complete work on the “phase three” bill by the end of March.

The next bill’s targets are stabilization of the economy, which is reeling from the coronavirus crisis; aid to small businesses that need help with cash flow during the period of shut-down of normal business activity; help for hard-hit industries (e.g., airlines, hotels and travel companies, and restaurants/entertainment companies); and more assistance to individual Americans.

Among the possibilities for inclusion in this new law are direct payments (checks) from the federal government to individual Americans, low-cost federally guaranteed loans to small businesses to help them meet payroll while their businesses are closed due the social distancing required by the crisis, more expansion of the unemployment insurance system, and aid to specific industries (like, for example, airlines, hotels, and restaurants). There is also talk of expanding the paid sick leave rules enacted in H.R.6201, particularly with respect to potentially expanding their application to large businesses and to further expanding the FLMA portion of the rules.

This is a fast-moving, highly-fluid initiative, with new proposals popping up each day. NAIFA is working with lawmakers to have your interests represented and will keep you informed as the process develops.

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