House Passes the “Families First Coronavirus Response Act”

On March 14, 2020, the House passed the Families First Coronavirus Response Act (H.R. 6201). This federal legislation, if enacted, would, among other things:

- Mandate all employer-sponsored health plans cover coronavirus disease 2019 (“COVID-19”) testing.
- For U.S. employers with less than 500 employees (“Covered Employers”), the Act:
  - Expands the group of employees who may qualify for protections and benefits under the Family and Medical Leave Act (FMLA) and provides for employer-provided pay for some FMLA leave related to COVID-19 issues, and
  - Creates a federal paid sick leave law providing for employer-paid leave of up to 80 hours to employees for COVID-19 issues.

The Act’s provisions mandating COVID-19 testing, FMLA changes, and paid sick leave are only temporary. They would take effect within 15 days of enactment and remain in place until the end of 2020.

**MANDATED COVID-19 TESTING**

The Act requires all employer-sponsored health plans to provide coverage for testing and other services related to COVID-19, without:

- cost sharing,
- prior authorization, and
- other medical management requirements.

The tests and services include:

- In vitro COVID-19 diagnostic tests that are cleared or authorized by the FDA, and
- Items and services furnished to an individual during health care provider office visits, urgent care center visits, and emergency room visits that result in an order for, or administration of, an in vitro diagnostic product, described above.

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FMLA EXPANSION – COVERED EMPLOYERS ONLY

The Act requires Covered Employers to temporarily expand FMLA protections and benefits to employees who have been employed 30 calendar days and need leave due to various reasons relating to COVID-19. Those are:

- To comply with a recommendation or order by a public health official or a health care provider that the physical presence of the employee on the job would jeopardize the health of others because of:
  - the exposure of the employee to COVID-19, or
  - exhibition of symptoms of COVID-19 by the employee where the employee is unable to both perform the functions of the employee’s position and comply with such recommendation or order.

- To care for a family member of an eligible employee with respect to whom a public health official or a health care provider determines that the presence of the family member in the community would jeopardize the health of other individuals in the community because of:
  - the exposure of such family member to COVID-19, or
  - exhibition of symptoms of COVID-19 by such family member.

- 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 childcare provider of such son or daughter is unavailable, due to COVID-19.

This FMLA provision does not require an affected employee to meet the usual FMLA requirements such as being employed for 12 months, having worked for 1,250 hours, or working in a location with at least 50 employees in a 75-mile radius in order to access this protected leave.

The Act’s FMLA provision also provides for paid FMLA leave for affected employees. It does not require that the first two weeks of leave be paid, but, for any remaining time, the Covered Employer must pay the employee at two-thirds of the employee’s regular rate of pay. Employees may substitute PTO or other accrued leave for unpaid or partially paid periods, but Covered Employers cannot require it.

The Act does provide for the possibility of regulations that could limit employers to which the expanded FMLA provisions would apply. Such regulations may provide for:

- The possible exclusion of certain health care providers and emergency responders from the definition of eligible employee, or
- An exemption for businesses with under 50 employees if the Act might jeopardize the viability of the business.

The Act’s FMLA provisions do not require all Covered Employers to give protected job leave to all affected employees. Generally, a Covered Employer with fewer than 25 employees need not restore an affected employee to his or her position if the position ceases to exist, though such an employer will be subject to other requirements, including reinstatement to an equivalent position if one becomes available within a 1-year period.
PAID SICK LEAVE – COVERED EMPLOYERS ONLY

Covered Employers must also provide paid sick leave in connection with COVID-19. The Act’s paid sick leave provisions apply to all employees, even those employed less than 30 days, and it applies to all Covered Employers, even those with fewer than 25 employees.¹

Employees eligible for paid sick leave include those needing time off to:

i. self-isolate because the employee has been diagnosed with COVID-19;
ii. obtain diagnosis or care if experiencing symptoms of COVID-19;
iii. comply with an official order or recommendation because of exposure or symptoms, to care for or assist a family member in connection with (i) or (ii) above; or
iv. care for a child whose school or place of care has been closed or whose childcare provider is unavailable.

Covered Employers are required to provide 80 hours of sick leave to full-time employees, while providing part-time employees with the number of hours averaged over a 2-week period. The sick leave must be provided in addition to the sick leave the Covered Employer already provides.

The Act also includes a posted notice requirement related to paid sick leave.

POSSIBLE TAX CREDITS – COVERED EMPLOYERS ONLY

Through the end of 2020, the Act provides refundable payroll tax credits for employers providing paid family leave or paid sick leave required under the Act due to COVID-19.

WHAT SHOULD EMPLOYERS DO NOW?

On March 16, the House re-passed the Families First Coronavirus Response Act, addressing some technical corrections. The legislation can now move on to the Senate. On March 17, Senate Majority Leader Mitch McConnell indicated in a press conference that Republicans may support passage of the House bill without further amendments. President Trump has indicated he would sign such legislation.

Further, it is expected another major COVID-19 response package could be forthcoming.

For now, employers should continue to monitor the legislation and stay abreast of any updates.

USI is actively watching the legislation and will provide you with timely updates.

FOR MORE INFORMATION

- For a copy of Families First Coronavirus Response Act, visit https://docs.house.gov/billsthisweek/20200309/BILLS-116hr6201-SUS.pdf
- For a summary, visit https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Families%20First%20Summary%20FINAL.pdf

¹ While not clear in the legislative text, the Act may extend paid sick leave to individuals employing household employees, such as nannies, housekeepers, and drivers.
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