
Pending Legislation Would Require Job-Protected Leave and Paid Benefits for Absences Related to COVID-19

By: Natalie Sanders and Elizabeth Troutman

House Bill 6201 was passed by the U.S. House of Representatives with bipartisan support. It creates an obligation for employers with fewer than 500 employees to provide job-protected leave and paid sick leave to employees for absences related to COVID-19. The Senate is expected to take up the bill today, and the President has expressed his support for it. While things could change, as everything has been recently, here's what we know about the bill now:

Emergency Family and Medical Leave Expansion Act:

- **What do you mean expansion?** There would be a new reason that leave may be taken under the FMLA, and the definitions and limits are not the same for the new type of leave.
- **What's the new reason?** A "qualifying need related to a public health emergency." This will include an employee's need to be absent because of the employee's own situation or a family member's situation.
- **What situations?** There are detailed, technical descriptions of the reasons, but they all relate to the coronavirus pandemic. In short, it includes situations where the employee can't work without posing a risk to others, where an employee needs to provide care to a family member because they pose a risk to others, or if the employee needs to care for a child under age 18 whose school or daycare is closed because of the pandemic.
- **Who's covered?** Employers with fewer than 500 employees.
- **Why not larger employers?** We're not sure yet. There may be additional legislation coming.
- **Who's eligible for leave?** Employees who have been employed for at least 30 calendar days.
- **Does that include part-time employees?** Yes, it looks like it.
- **How long of a leave would an employer be required to provide?** Up to 12 weeks.
- **Is someone's job protected if they take leave?** Yes, although, employers with fewer than 25 employees have slightly different requirements under certain circumstances and it still requires significant efforts to keep employees or return them to jobs later.
- **How many of those weeks would an employer have to pay an employee?** Up to 10 weeks. The first 2 weeks may be paid using the employee's sick leave, either under existing employer-provided sick leave or the 2 weeks of sick leave that must be provided under another portion of the new law (see below). Employees would have the choice, however, of whether to use sick leave to cover the first 2 weeks or save their sick leave for later.
- **Are those 10 weeks at full pay?** There are detailed provisions about how to calculate the amount to pay, but it is no less than 2/3 of the employee's usual rate of pay.
- **Are there provisions to help employers cover those costs?** The bill calls for refundable tax credits against employer portions of social security taxes (up to certain limits).
- **When would all this be effective?** 15 days after it is enacted.
- **What else?** There's an expanded definition of parent and of family. The Secretary of Labor also has some discretion to carve out exceptions for certain health care providers and businesses with fewer than 50 employees.

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Wait—There's more: Emergency Paid Sick Leave Act:

- **Mandated Paid Sick Leave! What do you mean?** This would be in addition to any paid leave an employer already provides, and employers may not change their paid leave policies on or after the date of enactment in order to avoid having to provide both sick leave under this Act and under already existing policies.
- **How much paid leave?** For full-time employees, 80 hours. For part-time employees, something equivalent to what they would have worked on average over a 2-week period.
- **At what rate?** The higher of the employee's regular rate or applicable minimum wage. If the reason for the leave is to care for a family member, then the rate goes down to 2/3.
- **Can employers make employees use other paid leave first?** No.
- **Which employees does this apply to?** Pretty much all of them.
- **Which employers does it apply to?** Most, but with regard to private entities, it is limited to those who employ fewer than 500 employees.
- **Again, how can employers afford this?** Same as above, the bill calls for refundable tax credits against employer portions of social security taxes (up to certain limits).
- **For what reasons can paid leave be taken?** The bill has a specific list, but they are very similar to the reasons described above for taking FMLA leave relating to the coronavirus situation.

One more thing: Emergency Unemployment Insurance Stabilization and Access Act:

- **What would this do?** It clears the way for federal funds to get to states to be used for unemployment claims.
- **How can states get the money?** A state must do a few things, including demonstrate that it has taken or will take steps to ease eligibility requirements and access to unemployment compensation for people directly impacted by COVID-19.
- **Is North Carolina doing that?** Not yet, but Governor Cooper mentioned last week during a news briefing that he was looking into ways to use the unemployment system to help affected workers.

What now?

- First, wait for final laws before taking any action. This bill has only passed the House of Representatives at this point.
- Second, start anticipating what all this might mean for you.
- Third, whatever final emergency laws we end up with, call when you need help. We know there will be complicated considerations, like what if someone has already exhausted FMLA leave, what if you don't have the cash flow to pay, etc. Our team of Labor and Employment Attorneys are working hard to anticipate your needs and will be ready for your calls.

If you have questions regarding this legislation, please contact Natalie Sanders or Elizabeth Troutman.

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