President Trump Signs COVID-19 Relief Package Into Law

“Families First Coronavirus Response Act” Requires Employers to Provide Paid Family and Sick Leave; Health Care Plans Must Cover COVID-19 Testing Without Employee Cost-Sharing

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On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (FFCRA), the first of several pieces of legislation intended to address the economic impact of the coronavirus (COVID-19) pandemic.

The FFCRA, among other provisions, provides temporary payments to individuals for family and sick leave, allows businesses to receive tax credits for providing such payments, and requires group health plans to cover testing for COVID-19 without cost-sharing to participants.

Temporary Paid Family Leave for Public Health Emergency

The FFCRA requires employers with fewer than 500 employees to provide emergency job-protected Paid Family Leave. The Paid Family Leave must provide up to 12 weeks of leave for an employee with a “qualifying need related to a public health emergency.” The FFCRA defines “qualifying need” as the inability to work or telework due to a need to care for a child under age 18 if the child’s school or place of child care is closed or unavailable due to a public health emergency. In turn, a “public health emergency” is defined as an emergency with respect to COVID-19 declared by a federal, state, or local authority. To be eligible for this leave, an employee must have been employed with the employer for at least 30 calendar days.

While the FFCRA permits the leave to be unpaid for the first 10 days, the employee has the option to use paid vacation, personal, or sick leave during that time. The employer cannot require the employee to use paid time during the first 10 days. The employer must then pay the remaining weeks of Paid Family Leave at two-thirds of the employee’s regular rate of pay for the number of hours the employee would otherwise normally be scheduled to work. The FFCRA provides methods for calculating the replacement wage for employees with variable hour schedules. Pay is capped at $200 per day or $10,000 total per employee.

Employers of first responders or health care providers are not required to provide the leave. Additionally, the Secretary of Labor may exempt employers with fewer than 50 employees, provided the employer meets certain criteria.

The temporary Paid Family Leave provisions are effective beginning not later than 15 days following enactment through December 31, 2020.

Temporary Paid Sick Leave for COVID-19

The FFCRA includes temporary Paid Sick Leave provisions applicable to employees of employers with fewer than 500 employees. Employees may take up to 80 hours of Paid Sick Leave (pro rata for part-time employees) if they are unable to work or telework for one of the following qualifying needs:
1. The employee is subject to government quarantine or isolation order related to COVID-19;
2. The employee is advised to self-quarantine because of COVID-19;
3. The employee is experiencing symptoms of COVID-19 and is seeking medical diagnosis;
4. The employee is caring for an individual subject to, or advised to, quarantine or isolate;
5. The employee is caring for a child whose school is closed or care provider is unavailable because of COVID-19; or
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services (HHS) in connection with the Secretaries of Labor and Treasury.

The amount to be paid is the higher of the employee’s regular rate of pay or the minimum wage. The amount is capped at $511 per day ($5,110 total) paid for reasons 1 to 3 above, or two-thirds of the regular pay (or, if applicable, the minimum wage) capped at $200 per day ($2,000 total) paid for reasons 4 to 6 above. Paid Sick Leave ends with the employee’s next scheduled work shift following the end of the qualifying need.

The employer cannot require an employee to take other paid leave before using this new temporary Paid Sick Leave. Like the Paid Family Leave, employers of employees who are first responders or health care providers are not required to provide Paid Sick Leave. Unlike the temporary Paid Family Leave, there is no minimum service requirement for the Paid Sick Leave.

Employers will be required to provide notice of these requirements once the Secretary of Labor releases a model notice.

Like the temporary Paid Family Leave, the temporary Paid Sick Leave is effective not later than 15 days following enactment through December 31, 2020.

**Tax Credits for Paid Family Leave and Paid Sick Leave**

The FFCRA also provides a refundable Federal Insurance Contributions Act (FICA) tax credit equal to 100 percent of the “qualified sick leave wages” that the employer is required to pay for a given quarter under the temporary Paid Sick Leave. The amount of the qualified sick leave wages taken into account for purposes of the credit per employee varies according to the qualified need for sick leave, mirroring the amounts payable, described above.

The FFCRA also provides a refundable FICA tax credit equal to 100 percent of the “qualified family leave wages” that the employer is required to pay for a given quarter under the temporary Paid Family Leave. The amount of the qualified family leave wages taken into account for purposes of the credit per employee is $200 for any day (or portion thereof) for which the employer pays the employee the required replacement wage under the FFCRA, up to a maximum aggregate amount for all calendar quarters of $10,000 per employee.

The FFCRA is not available with respect to any leave for which an employer claims the paid Family and Medical Leave Act (FMLA) tax credit under the temporary FMLA program extended under the 2017 tax bill. The FFCRA also requires the employer to take the amount of the FICA tax credit into income, thus prohibiting the employer from claiming both the FICA tax credit and a FICA tax deduction for the qualified sick leave and family leave wages paid to the employee.

Additionally, the FFCRA apparently allows for an increase in the amount of the tax credits equal to the amount of the employer’s “qualified health plan expenses” that are allocable to the qualified family or sick leave wages that can be taken into account for the family or sick leave credits.
Group Health Plan Coverage of COVID-19 Testing

The FFCRA requires a group health plan to cover the cost of COVID-19 testing without requiring employee cost-sharing, prior authorization, or any other medical management restrictions. This includes coverage for:

- Diagnostic testing products;
- Items and services provided to an individual during health care provider office visits (including in-person and telehealth visits);
- Urgent care center visits; and
- Emergency room visits that result in an order for the test, the administration of the test, or the evaluation of the individual to determine whether the test is needed.

This requirement applies to all self-insured and fully insured group health plans, including grandfathered health plans. It does not appear to apply to plans that are retiree-only plans or excepted benefit plans. The Departments of HHS, Labor, and Treasury are authorized to develop sub-regulatory guidance to implement these requirements.

Resources

The full text of H.R. 6201 is available here.
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