

## Key Provisions of H.R. 6201

### **Public Health Emergency Leave**

- This legislation uses the existing Family and Medical Leave Act (FMLA) as a framework to provide certain employees with the right to take up to 12 weeks of job-protected leave.
- Under the bill, eligible employees may take leave if the employee is unable to work (or telework) because they must care for a child (under 18 years of age) whose school or care provider is closed or unavailable due to a coronavirus emergency as declared by a Federal, State, or local authority.
- These requirements are in effect 15 days after the enactment of the legislation through December 31, 2020.

### ***Covered Employees and Employers***

- Eligible employees include those who work for employers with fewer than 500 employees and government employers who have been on the job for at least 30 days.
- Provides exemptions for small businesses with fewer than 50 employees from the bill's paid leave requirements if those requirements would jeopardize the viability of the business.
- Employers who are health care providers or emergency responders may elect to exclude their employees from the public health emergency leave provisions of the bill.

### ***Time Frame***

- The first 10 days in which an employee takes emergency leave may be unpaid. An employee may elect, or an employer may require the employee, to substitute any accrued paid vacation leave, personal leave, or medical or sick leave for unpaid leave.
- After 10 days of unpaid leave, an employer is required to provide paid leave at an amount not less than two-thirds of an employee's regular rate of pay up to \$200 per day or \$10,000 in the aggregate.

### ***Hourly Employees with Variable Schedules***

- For those employees whose schedules vary to the extent that an employer cannot determine the exact number of hours the employee would have worked, the employee's paid leave rate should equal the average number of hours that the employee was scheduled per day over the six-month period prior to the leave.
- If the employee did not work in the preceding six-month period, the paid leave rate should equal the "reasonable expectation" of the employee at the time of hiring with respect to the average number of hours per day that the employee would be scheduled to work.

### ***Job Restoration***

- Eligible employees who take emergency paid leave are entitled to be restored to the position they held when the leave commenced or to obtain an equivalent position with their employer.

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- **This rule is limited for employers with fewer than 25 employees.** In such circumstances, if an employee takes emergency leave, then the employer does not need to return the employee to their position if: (1) the position does not exist due to changes in the employer's economic or operating condition that affect employment and were caused by the coronavirus emergency; (2) the employer makes "reasonable efforts" to restore the employee to an equivalent position; *and if these efforts fail*, (3) the employer makes an additional reasonable effort to contact the employee if an equivalent position becomes available.
  - The "contact period" is the one-year window beginning on the earlier of (a) the date on which the employee no longer needs to take leave to care for the child or (b) 12 weeks after the employee's paid leave commences.

### **Emergency Paid Sick Leave**

- The legislation requires certain employers to provide employees with two weeks of paid sick time if the employee is unable to work (or telework) for the following coronavirus-related reasons:
  - The employee is subject to a Federal, State, or local quarantine or isolation order related to the coronavirus;
  - The employee has been advised by a health care provider to self-quarantine due to concerns related to the coronavirus;
  - The employee is experiencing symptoms of coronavirus and is seeking a medical diagnosis;
  - The employee is caring for an individual who is subject to a quarantine or isolation order or advised to self-quarantine by a health care provider;
  - The employee is caring for a child whose school or care provider is closed or unavailable due to coronavirus precautions; and
  - The employee is experiencing any other condition substantially similar to the coronavirus, as specified by the U.S. Department of Health and Human Services (HHS).
- The bill requires the Secretary of Labor to issue guidelines to assist employers in calculating paid sick time within 15 days of the bill's enactment
- These requirements are in effect 15 days after the enactment of the legislation through December 31, 2020.

### **Covered Employees and Employers**

- Private sector employers with fewer than 500 employees, government employers, and all other non-private entity employers with more than one employee are required to provide their employees with paid sick leave.
- Entitles employees of covered employers to paid sick leave *regardless of how long the employee has worked for the employer.*
- Provides exemptions for small businesses with fewer than 50 employees from the bill's paid leave requirements if those requirements would jeopardize the viability of the business.

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- Employers who are health care providers or emergency responders may elect to exclude their employees from the public health emergency leave provisions of the bill.

### ***Paid Sick Time***

- Full-time employees are entitled to 80 hours of paid sick leave.
- Part-time employees are entitled to the number of hours that the employee works, on average, over a two-week period.
- For hourly employees whose schedules vary, the employee's paid leave rate should equal the average number of hours that the employee was scheduled per day over the six-month period prior to the leave. If the employee did not work in the preceding six-month period, the paid leave rate should equal the "reasonable expectation" of the employee at the time of hiring with respect to the average number of hours per day that the employee would be scheduled to work.
- Once an employee's coronavirus-related need for using the emergency paid sick leave ends, then the employer may terminate the paid sick time.
- Paid sick time provided under this bill shall not carry over from one year to the next.

### ***Paid Leave Rate***

- Employees who take paid sick leave because they are subject to a quarantine or isolation order, have been advised by a health care provider to self-quarantine, or are experiencing coronavirus symptoms and seeking medical diagnosis are entitled to be paid at their regular pay rate or at the federal, state or local minimum wage, whichever is greater.
- Employees who take paid sick leave to care for another individual or child or because they are experiencing another substantially similar illness (as specified by HHS) are entitled to be paid at two-thirds their regular rate.

### ***Effect on Existing Paid Leave Agreements***

- An employer may not require an employee to use other paid leave provided by the employer before using the paid sick time provided under the provisions of this legislation.

### ***Notice Requirements***

- After the first workday (or portion of a day) an employee receives paid sick time, an employer may require the employee to follow "reasonable notice procedures" in order to continue receiving paid sick time.
- Employers must post and keep posted, in conspicuous places, notice of the emergency paid sick leave requirements made available under this legislation.

### ***Prohibitions and Enforcement***

- Employers may not discharge, discipline, or discriminate against any employee who (a) takes paid sick leave or (b) has filed a complaint or proceeding or testified in any such proceeding related to the benefits and protections provided by this legislation.

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- Employers may not require, as a condition of providing paid sick time, that an employee search for a replacement employee to cover the hours during which the employee is using paid sick time.
- Employers who violate the paid sick leave requirements or retaliation prohibitions of this legislation will be subject to civil penalties under the Fair Labor Standards Act.

### **EMPLOYER TAX CREDITS**

The legislation provides for employer tax credits to offset the costs associated with the paid public health emergency leave and qualified paid sick leave requirements of the bill.

#### **Payroll Tax Credit**

- The bill provides a refundable tax credit worth 100 percent of qualified public health emergency leave wages and qualified paid sick leave wages paid by an employer for each calendar quarter through the end of 2020.
- The tax credit is allowed against the tax imposed under the employer portion of Social Security and Railroad Retirement payroll taxes.

#### ***Credit Amount***

- The bill allows employers to take tax credits for qualified public health emergency leave wages and qualified sick leave wages:
  - *Public Health Emergency Leave Wages.* The amount of qualified public health leave wages taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters.
  - *Emergency Sick Leave Wages.* In instances when an employee receives paid sick leave because they are subject to a quarantine or isolation order, have been advised by a health care provider to self-quarantine, or are experiencing coronavirus symptoms and seeking medical diagnosis, the amount of qualified sick leave wages taken into account for each employee is capped at \$511 per day.
- In instances when an employee receives paid sick leave because they are caring for another individual or child or because they are experiencing another substantially similar illness (as specified by HHS) the amount of qualified sick leave wages taken into account for each employee is capped at \$200 per day.
- In determining the total amount of an employer's qualified sick leave wages paid for a calendar quarter, the total number of days that the employer can take into account with respect to a particular employee for that quarter may not exceed 10 days minus the number of days taken into account for that employee for all previous quarters.

#### ***Credit for Health Plan Expenses***

- Under the bill, the public health emergency leave and paid sick leave credits would be increased to include amounts employers pay for the employee's health plan coverage while they are on leave.

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- Specifically, the bill allows for the credit amounts to be increased by the amount of the employer's group health plan expenses that are "properly allocated" to the qualified emergency leave and sick leave wages. Health plan expenses are "properly allocated" to qualified wages if made on a pro rata basis (among covered employees and periods of coverage).

### *Refundability of Excess Credit and Limitations*

- The amount of the paid sick leave credit that is allowed for any calendar quarter cannot exceed the total employer payroll tax obligations on all wages for all employees. If the amount of the credit that would otherwise be allowed is so limited, the amount of the limitation is refundable to the employer.
- Employers may not receive the tax credit if they are also receiving a credit for paid family and medical leave under the 2017 Tax Cuts and Jobs Act (P.L. 115-97). Employers would instead have to include the credit in their gross income.

### **Additional Provisions**

The legislation also adjusts numerous federal benefits programs affecting health care, food assistance, and worker protections to assist individuals affected by COVID-19:

- **Unemployment Insurance:** the bill provides for the Secretary of Labor to make emergency administration grants to states in the Unemployment Trust Fund. The legislation also appropriates funds for states that aim to establish work-sharing programs that permit employers to reduce employee hours rather than laying them off. Under such programs, employees would receive partial unemployment benefits to offset the wage loss.
- **Coverage for COVID-19 Testing:** The bill requires health insurance issuers offering group or individual health insurance coverage to provide coverage and not impose any cost sharing (including deductibles and copays) for COVID-19 testing, as well as health care provider office visits, urgent care center visits, and emergency room visits. The bill also requires coverage of testing with no cost sharing under the Medicare Advantage Program, Medicaid and the State Children's Health Insurance Program.
- **Medicaid Funding:** The bill would provide states with a temporary 6.2% increase in federal medical assistance percentages. Under this increase, the bill would require states to offer coronavirus testing under Medicaid without cost sharing.
- **Emergency Funding for Nutrition and Agriculture Programs:** The bill appropriates hundreds of millions of dollars in new funds for nutrition and agriculture programs
- **Protections for Health Care Workers:** The bill directs the Secretary of Labor to develop new emergency temporary standards to protect health care workers.