



**CHAMBERLAIN, HRDLICKA, WHITE, WILLIAMS & AUGHTRY
M E M O R A N D U M**

TO: CHWWA Clients

FROM: CHWWA Labor & Employment Group

DATE: March 20, 2020

RE: Paid Leave Under the Families First Coronavirus Response Act (H.R. 6201)

This Memorandum summarizes the paid leave provisions of the Families First Coronavirus Response Act (H.R. 6201) that was signed into law on March 18, 2020.

The Act takes effect on **April 2, 2020**, and ends on December 31, 2020. The Secretary of Labor is expected to provide additional guidance with respect to implementation of the paid leave provisions within the next few days.

Covered Employers: The paid leave provisions discussed below only apply to employers with **fewer than 500 employees**. In addition, the Secretary of Labor has authority to (i) exempt small businesses with fewer than 50 employees when compliance with the leave requirements would jeopardize the viability of the business and (ii) exclude health care providers and emergency responders from eligibility for leave under the Act.

Emergency Family and Medical Leave Act (FMLA) Expansion Act

Eligible Employees: Employees who have been employed with the company for at least 30 calendar days.

Basis for Leave: Employers must provide up to 12 weeks of job-protected FMLA leave when the employee is unable to work (or telework) due to a need for leave to care for the employee's child (under the age of 18) if the child's elementary or secondary school or place of care is closed or the child's child care provider is unavailable, due to an emergency declared by a federal, state, or local authority with respect to COVID-19.

Calculating Paid Leave: The first 10 days of the leave may be unpaid. The employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the unpaid leave. After the first 10 days of unpaid leave, the remaining time must be paid at no less than two-thirds of the employee's regular rate of pay. For hourly employees, the regular rate is calculated based on the number of hours the employee would normally be scheduled to work. Paid leave is capped at \$200 per day and \$10,000 in the aggregate per employee. The Act contains additional provisions for calculating the rate of pay for part-time employees or employees who work irregular schedules.

Restoration to Position: Generally, eligible employees who take emergency paid leave must be restored to the position they held when the leave commenced or be placed in an equivalent position. The Act provides an exception to the job restoration rule for employers with less than 25 employees if the employee's job position no longer exists following the leave due to economic or other operational conditions of the employer that are caused by the public health crisis during the leave. To fall within this exception, the employer must still make reasonable efforts to return the employee to an equivalent job position for up to a year.

Exclusions: Employers of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the paid leave requirements.

Emergency Paid Sick Leave Act

Eligible Employees: All employees, regardless of when they started working for the company.

Sick Leave: An employee is entitled to paid sick leave if the employee is unable to work (or telework) because:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. The employee is caring for the employee's child if the school or place of care for the child has been closed, or the childcare provider is unavailable, due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services ("HHS") in consultation with the Secretary of the Treasury and the Secretary of Labor.

Length of Paid Sick Leave: Full-time employees are entitled to 80 hours of paid sick leave. Part-time employees are entitled to the number of hours the employee works, on average, over a two-week period.

Calculating Paid Sick Leave: Employees who take paid sick leave for **reasons (1), (2), and (3)** above (an employee's own illness or quarantine) are entitled to be paid **at their regular rate of pay or at the federal, state or local minimum wage, whichever is greater**. However, the employee's paid sick leave is capped at \$511 per day and \$5,110 in the aggregate.

Employees who take paid sick leave for **reasons (4), (5), or (6)** (care for others or school closures or because of a substantially similar illness as specified by HHS) are entitled to be paid **at two-thirds their regular rate of pay or at the federal, state or local minimum wage, whichever is greater**. However, the employee's paid sick leave is capped at \$200 per day or \$2,000 in the aggregate. The Act contains additional provisions for calculating the regular rate of pay for part-time employees or employees who work irregular schedules.

Prohibitions: The Act prohibits employers from: (1) requiring an employee to take other employer-provided sick leave before using the paid sick leave provided under the Act; (2) requiring the employee to find a replacement worker to cover the hours during which the employee is using paid sick leave; and (3) retaliating against an employee who takes paid sick leave. Failure to pay required sick leave will be treated as a failure to pay minimum wages and will subject the employer to the same penalties set forth in the Fair Labor Standards Act.

Notices: Employers must post, in conspicuous places, notice of the paid sick leave requirements. The Secretary of Labor will provide a model notice by March 25, 2020.

Exclusions: Employers of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the paid sick leave requirements.

Employer Tax Credits and Reimbursements for Paid Leave

H.R. 6201 provides employers with tax credits to offset the costs associated with the Emergency FMLA Expansion Act and the Emergency Paid Sick Leave Act. Employers are entitled to a refundable tax credit equal to 100% of the paid sick leave wages and the family leave wages that the employer is required to pay under the Acts. The tax credit is allowed against the

employer's portion of Social Security taxes and is claimed on the employer's quarterly employment tax returns. Employers are also entitled to a refund of their excess credits if the tax credits exceed the amount of Social Security taxes paid with respect to all employees of the employer. These tax credits are only available to employers that are required to provide paid leave under the Acts.

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