

What Will the "Families First Coronavirus Response Act" Mean for Employers?

Working Together

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At 12:53 a.m. on Saturday March 14, the U.S. House of Representatives passed the “Families First Coronavirus Response Act” with bipartisan support. The bill was a product of lengthy negotiations between House Majority Leader Nancy Pelosi and Secretary of the Treasury Steven Mnuchin. The Senate is scheduled to vote on it on March 16, and President Trump has indicated his support for the legislation. Here is a brief summary of what it may mean for employers.

- The bill creates a mandatory paid family and medical leave program. Covered employers will be required to provide up to 12 weeks of job-protected paid leave to employees who:
 - must quarantine themselves due to symptoms of COVID-19, or exposure to it;
 - must provide care to a family member who is in quarantine; or
 - must provide care for child under 18 whose school or day care has closed because of the coronavirus.
- Covered employers will include private sector employers with at least one, but fewer than 500 employees, as well as government entities.
 - The bill authorizes the Secretary of Labor to issue regulations that would exempt businesses with fewer than 50 employees, as well as certain health care providers, from the paid leave requirements. President Trump has reportedly indicated that he will instruct the Secretary to issue such regulations.
- While the first 14 days of this leave could be unpaid, employees will have a right to use other available paid time off for this period. After that, employees will be entitled to receive at least two-thirds of their normal pay during this job-protected leave.
- Employers will receive payroll tax credits (toward the employer’s share of Social Security tax) to at least partially fund this paid leave.

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- The bill also creates a separate “emergency sick leave” program, which requires covered employees to provide employees with two weeks (80 hours for full-time employees, and normally scheduled hours for part-timers) of paid sick time to:
 - quarantine themselves;
 - obtain diagnosis or care and treatment for COVID-19 for themselves;
 - care for a family member who has been diagnosed or is in quarantine;
 - care for a child whose school or day care has closed due to the coronavirus.
- Employees will be entitled to receive their normal pay during emergency sick leave, unless they are providing care for a family member, in which case they are entitled to two-thirds of normal pay. Employers may not require employees to use other available paid leave for emergency sick leave.
- Again, covered employers for this program will include private sector employers with at least one, but fewer than 500 employees, as well as government entities; the Secretary of Labor may issue regulations to exempt employers with fewer than 50 employees; and employers will receive payroll tax credits to at least partially fund the program.
- It appears that the combined effect of the two paid leave programs contained in the bill will be that eligible employees will be entitled to two weeks of leave at full pay, followed by (if necessary) another 10 weeks at two-thirds pay.
- There are requirements in the bill that employers post notices to their employees of the availability of the paid leave mandated by the statute. There will be civil penalties for covered employers who fail to provide the leave required by the bill, or who discriminate or retaliate against employees who seek to use the benefits provided under the law.
- Both the paid family and medical leave mandate and the paid sick leave mandate expire December 31, 2020.

On its face, the bill does not address the circumstance in which an employer shuts its operations down completely during for a period during this outbreak, but does not go out of business. Employers contemplating this option should consider whether they have obligations under the WARN Act. Employees laid off in these circumstances presumably will file claims for unemployment compensation, and the bill includes federal subsidies and other assistance for state unemployment compensation systems. Unionized employees may have additional rights provided under collective bargaining agreements. We will continue to post updates on the requirements of this legislation as more information becomes available. We will address the specific concerns of educational institutions who may have shut down, or are instead providing “distance learning,” on our sister blog, *Education Law Notes*.

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