



UPE Update

Families First Coronavirus Response Act

UPE Sisters and Brothers:

On March 18, 2020, the Families First Coronavirus Response Act (HR 6201) was signed into law. It is the first of multiple bills we expect Congress to pass to provide relief from the impacts of COVID-19, and touches on a variety of subjects, including COVID-19 testing, unemployment insurance funding, and federal assistance programs.

This memo outlines the key features of the bill relating to (1) paid, public health emergency leave, which is an expanded form of FMLA leave for workers to care for children out of school or without child care (the “Emergency Family and Medical Leave Expansion Act”); and (2) emergency paid sick leave employers must provide for COVID-19 related health conditions (the “Emergency Paid Sick Leave Act”).

The full text of the bill can be found at: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>.

Note that the emergency family medical leave and the emergency paid sick leave apply only to private employers with fewer than 500 employees. Public agencies are required to provide the emergency family medical leave and emergency paid sick leave regardless of size. **Both private and public employers can exempt employees who are health care providers or emergency responders from these leaves.**

These benefits must become available no later than 15 days after the law’s enactment, meaning April 2, 2020.

Short Summary

A. Emergency Family and Medical Leave Expansion Act:

- Expands FMLA to provide job-protected emergency paid FMLA leave to workers who have been **employed at least 30 days**;
- Can be used only to **care for a child whose school or place of care has been closed** due to a declared COVID-19 public health emergency (this is different than prior versions of this bill);
- First 10 days of leave is unpaid although employee can use existing vacation or sick leave, then **paid at 2/3 of the regular FLSA rate up to \$200 per day** and \$10,000 in the aggregate; and
 - a. Prior versions also allowed use of this leave to care for a sick or isolated

family member with COVID-19 or symptoms of the disease—this has been taken out

1. First 10 days of leave is unpaid, although employee can use sick or vacation leave.
2. After first 10 days, employer must pay 2/3 of FLSA regular rate of pay but only up to \$200 per day and \$10,000 in the aggregate.
 - a. There are provisions as well for calculating the rate of pay if an individual works a variable schedule
3. Employee must provide as much practicable notice of the need to use the leave, if the need for the leave is foreseeable
4. The leave is job protected, although employers with fewer than 25 employees do not need to reinstate someone to the person's position if economic conditions or other changes in the employer's operating conditions caused by the public health emergency mean that the position no longer exists.
 - a. If the employer relies on this, the employer must make reasonable efforts to restore the individual to an equivalent position
 - b. Employer must also make reasonable efforts to reach out to the individual for one year afterward to offer equivalent positions that become available
5. Payroll tax credits are available to the employer for the public health emergency leave paid out by the employer, subject to the following:
 - a. The wages to be reimbursed are capped at \$200 per day for an individual and \$10,000 in the aggregate, considering all calendar quarters
 - b. The credit also will be increased based on the employer's health plan expenses that can be allocated to the public health emergency leave taken
 - c. Payroll tax credits do not apply to state or local governments

B. Emergency Paid Sick Leave Act (HR 6201 § 5101 et seq.; tax credits detailed at § 7001):

1. Applies to employers with fewer than 500 employees, plus public agencies
 - a. Employers of health care provider and emergency responders can choose to exempt those employees
 - b. DOL also authorized to issue regulations to exempt small businesses with fewer than 50 employees based on the same grounds listed above for emergency FMLA
 2. Provides 80 hours of paid sick leave for full-time employees; for "part-timers" amount is calculated based on hours worked in average two-week period.
 - a. Sick leave becomes immediately available 15 days after signing of bill. Sick leave disappears once employee returns to work following use of the emergency paid sick leave.
- Private employers get refundable payroll tax credits, up to a cap.

C. Emergency Paid Sick Leave Act:

- Provides **80 hours of paid sick leave for full-time employees**, with amount prorated for part-time employees;
- Can be used for **employee’s own COVID-19 illness or symptoms, to self-quarantine based on health care provider’s advice, to care for someone with COVID-19 or under quarantine/self-quarantine, or to care for a child whose school or child care provider is closed**;
- **Paid at 2/3 of the regular FLSA rate up to \$511 per day for the employee’s own illness, symptoms, or quarantine/self-quarantine**, but the pay is **capped at \$200 per day if the employee is caring for someone else or a child**; and
- Private employers get refundable payroll tax credits up to a cap.

Detailed Summary

A. Emergency Family and Medical Leave Expansion Act (HR 6201 § 3101 et seq.; tax credits detailed at § 7003):

1. Applies to employers with fewer than 500 employees, plus public agencies, although the DOL is authorized to issue regulations exempting:
 - a. Small businesses with fewer than 50 employees where the requirements would “jeopardize the viability of the business as a going concern”
 - b. Employees who are health care providers or emergency responders (this is a change from prior versions, which did not create a health care provider/emergency responder exception)
2. Expands FMLA eligibility for employees who have been employed at least 30 days, although apparently does not grant additional FMLA if someone has taken it recently (i.e., the 12 weeks is not extended)
3. Public health emergency leave can be taken if an employee can’t work or telework because the employee’s son/daughter’s school or child care provider has closed down, due to an emergency declared by federal/state/local authorities with regard to COVID-19. Here in the Bay Area, there shouldn’t be a question that such an emergency has been declared.
 - b. Caring for a child out of school or who lacks child care is the only reason this leave is available—this is different from prior versions of this bill, including versions reported on in the media. The version that initially passed the House allowed use of the emergency leave if the individual was diagnosed with COVID-19 or experienced symptoms or was seeking a diagnosis for COVID-19. Sick leave will disappear at end of 2020
 - c. No right to cash out this sick leave
4. Paid sick leave can be taken if employee can’t work or telework because:
 - a. Employee is subject to quarantine or isolation order related to COVID-19
 - b. Employee has been advised by health care provider to self-quarantine

- c. Employee is experiencing symptoms of COVID-19 and is seeking diagnosis
 - d. Employee is caring for someone else subject to quarantine/isolation order or is doing so on health care provider's advice
 - e. Employee is caring for child whose school or child care provider is closed/unavailable due to COVID-19 precautions
 - f. Employee is experiencing a similar condition to any of the above, as determined by HHS
5. Employee gets to use emergency paid sick leave before using regular sick leave or vacation
- a. Unlike in prior versions, the enacted bill does not explicitly prohibit an employer from changing sick leave policies in response to the new paid sick leave requirements—e.g., a non-unionized employer could conceivably reduce future sick leave accrual rate
 - b. However, the new sick leave is not supposed to reduce benefits available under existing employer policy, CBA, or existing law
6. Rate of pay for sick leave depends on what it is for—if someone is addressing his/her own COVID-19 health needs, then rate of pay is \$511/day up to aggregate amount of \$5,110, or else pay is \$200/day up to \$2,000 in the aggregate
7. Employer must post notice describing paid sick leave requirements; DOL to prepare no later than 7 days after passage of act
8. Payroll tax credits also available to the employer, subject to:
- a. Wages to be reimbursed per day are either \$511 or \$200, depending on how sick leave is used, and aggregate number of days for any individual can't exceed 10
 - b. The credit also will be increased based on the employer's health plan expenses that can be allocated to the emergency paid sick leave taken
 - c. Payroll tax credits do not apply to state or local governments

UPE is committed to providing our members with the latest law updates as they evolve. UPE will continue to press the employer to ensure the safety and well-being of our members who are required to continue to work during this pandemic. Please contact your UPE Business Agents to discuss workplace concerns and issues.

In Solidarity,
United Public Employees

Ted Somera, Executive Director