



To address the economic impact of the COVID-19 global pandemic, the U.S. House of Representatives passed the **Families First Coronavirus Response Act** on Saturday. Although the bill has passed the House, it is still subject to revisions negotiated between the House, Senate and White House. The Senate is expected to pass a version of the bill this week with the President signing shortly thereafter. The bill contains three important provisions that will impact most employers:

1. Family and Medical Leave Act (FMLA) expansion of coverage and benefits;
2. 80 hours of paid sick leave for employees affected by COVID-19; and
3. Tax credits for employers to help offset the increased costs of the leave provisions.

Here is what employers need to know:

- **Effective period** - Both the FMLA expansion and the paid sick leave provisions are temporary and will expire on December 31, 2020.
- **Affected employers** - All employers with fewer than 500 employees are subject to both provisions. However, it is possible that—at some point—certain small business could be exempted from the FMLA expansion, as further outlined below.

#### FMLA EXPANSION

- **Reasons for leave** - The temporary expansion of the FMLA applies to leave taken for any of the following purposes: (1) compliance with a quarantine requirement or recommendation due to exposure or symptoms of COVID-19; (2) care for an at-risk family member complying with a quarantine requirement or recommendation; and (3) care for a child if the child's school or place of care has been closed due to public emergency.
- **Eligible employees** - Employees are eligible for the expanded FMLA leave rights after 30 days of employment.
- **Paid leave** - The first 14 days of any eligible leave are unpaid, though an employee may use PTO or any other type of leave available during this period. After the first 14 days, employees must be paid at 2/3 their regular rate of pay.
- **Exemption** - The law allows for the Secretary of Labor to issue regulations allowing for exemptions for small businesses (*i.e.*, fewer than 50 employees). However, it remains to be seen if, when, or how such regulations will be implemented.

#### PAID SICK LEAVE

- **Reasons for leave** - Employers are required to allow employees to use this new paid sick leave for any of the following reasons: (1) compliance with a quarantine requirement or recommendation due to exposure or symptoms of COVID-19; (2) self-isolation after COVID-19 diagnosis; (3) seeking diagnosis after exhibiting COVID-19 symptoms; (4) care for an at-risk family member complying with quarantine requirement or recommendation; and (5) care for a child if the child's school or place of care has been closed due to a public emergency.
- **Payment of leave** - Employers must provide at least 80 hours of leave paid at the employee's regular pay rate. However, the employer need only pay 2/3 of the employee's regular rate if the leave is taken pursuant to items (4) and (5) above. At an employee's request, employers must remit this sick leave pay to cover the unpaid portion of the first 14 days of the expanded FMLA leave outlined above.
- **Carryover** - Because this is aimed at temporary relief, the paid sick leave hours will not carry over into 2021.

*(continued on next page)*



## **TAX CREDITS AGAINST SOCIAL SECURITY TAX**

To compensate for the additional burden the FMLA expansion and mandatory paid sick leave provisions may have on businesses, employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages or qualified family leave wages paid by employers for each calendar quarter. The tax credits provided by the bill are allowed against the tax imposed by Internal Revenue Code Section 3111(a), concerning the employer portion of Social Security taxes. It allows for reimbursement if employer's costs for qualified sick leave or qualified family leave wages exceed the taxes owed. The credit for sick leave wages is capped at \$511 per day (\$200 per day if the leave is for caring for a family member or child) for up to 10 days per employee in each calendar quarter. The credit for family leave wages is capped at \$200 per day for each individual up to \$10,000 total per calendar quarter.

## **KEY TAKEAWAY FOR EMPLOYERS**

The Families First Coronavirus Response Act is the federal government's first legislative response to the significant impact COVID-19 is having—and will continue to have—on the American workforce. The provisions contained in the bill represent substantial shifts in federal employment policy aimed at combatting the spread of the virus, and it is imperative that employers immediately begin preparing themselves to implement the measures outlined above.

Notably, there will be a lot of questions about the details of and the implementation of the law. We are here to help, feel free to [contact us](#).

## **CAVEAT**

While we are attempting to give you as much notice as possible about this new law which will soon effect employers, there may be changes to the bill before it is final. If any of those changes affect the provisions discussed herein, an immediate update of this alert will be published.

## **ABOUT [GRAY REED'S LABOR AND EMPLOYMENT PRACTICE GROUP](#)**

Gray Reed's labor and employment practice group recognizes that proper management of the workforce is essential for our clients' success. Our proactive employment attorneys counsel employers on all employment laws and regulations, as well as help clients draft employment contracts, executive compensation agreements, policies and handbooks. When litigation cannot be avoided, our employment attorneys are skilled trial lawyers, and they defend our clients in a cost-effective manner. They craft an aggressive strategy to defend each lawsuit and develop cost and risk determinations at each step of the litigation so that our clients can make the best decision for their business. To learn more about the practice group or Gray Reed, visit [grayreed.com](http://grayreed.com).