

**Many retailers are seeing reduced foot traffic in their stores resulting in reduced revenue and having to make difficult decisions regarding their valuable employees.**

**A number of state and federal measures have recently been adopted to offer employers and employees relief during this unprecedented time.**

- **The United States Congress took steps with regards to mandated paid sick leave and additional leave that is similar to that afforded under the Family and Medical Leave Act. (Link to comparison chart at: <https://bit.ly/FFchart>).**
- **Additionally, Small Business Administration Loans are also now available.**

**Below is a breakdown of updates on these two programs.**

## **1. EMERGENCY PAID SICK LEAVE ACT**

Federal legislation – HR 6201 - enacted on March 18, 2020, requires employers with LESS than 500 employees to provide two (2) weeks of paid emergency leave immediately to ALL employees if the employee has a qualifying need related to the COVID-19 public health emergency. This new requirement will be effective April 1, 2020 and will remain in effect until December 31, 2020.

### **A. Paid Sick Leave Requirement**

Employers are required to immediately provide each employee two (2) weeks of paid sick leave to the extent that the employee is unable to work (or telework) because of the following reasons related to COVID-19:

- 1) The employee is subject to a federal, state, or local quarantine or isolation order;
- 2) The employee has been advised by a health care provider to self-quarantine;
- 3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- 4) The employee is caring for an individual to which provisions (1) or (2) above apply;
- 5) The employee is caring for a child if the child's school or place of care has been closed 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 in consultation with the Secretaries of Labor and the Treasury.

### **B. Compensation for Care of Family Members**

- 1) Employees are entitled to the equivalent of two weeks of pay for sick leave.
  - a) For full-time employees this equals eighty (80) hours of pay
  - b) For part-time and hourly employees this equals the number of hours the employee works on average over a two-week period.
- 2) Rate of Pay
  - a) For employees who are taking paid sick leave for reasons listed in provisions (1) through (3) above the employee would be paid their full rate of pay not to exceed \$511 per day or \$5,110 for ten days.

- b) For employees who are taking paid sick leave for reasons listed in provisions (4) through (6) the employee would be entitled to two-thirds of their pay up to \$200 per day not to exceed \$2,000 for ten days.

### **C. Miscellaneous**

- 1) Employers are not required to allow employees to carry over paid sick leave from one year to the next.
- 2) An employer may not require an employee to use existing paid leave provided by the employer before the employee uses paid leave provided under HR 6201.
- 3) An employer who does not provide paid leave required by HR 6201 is considered to have failed to pay minimum wage in violation of the Fair Labor Standards Act (FLSA) and is subject to FLSA penalties and remedies.
- 4) The United States Secretary of Labor is directed to issue guidelines to assist employers in calculating the amount of paid sick leave within 15 days.
- 5) An employer is not required to reimburse an employee for unused sick leave following an employee's termination, resignation, retirement, or other separation from employment.
- 6) The United States Secretary of Labor has the authority to:
  - a) Issue regulations for good cause to exempt businesses with fewer than 50 employees from the requirements of the above point A.5) when the imposition of such requirements would jeopardize the viability of the business;
  - b) Exclude certain health care providers and emergency responders from these requirements, including by allowing such employers to opt out;

## **2. OVERVIEW OF EMERGENCY FAMILY MEDICAL LEAVE UNDER HR 6201 RELATED TO COVID-19**

- 1) Amends the Family and Medical Leave Act (FMLA) to require employers with LESS than 500 employees to provide all employees paid leave because of a qualifying need related to a public health emergency.
- 2) Changes eligibility requirements for FMLA leave to include employees who are taking care of a child that is out of school to COVID-19
- 3) This requirement is effective April 1, 2020 and expires on December 31, 2020.

### **A. Paid Leave Mandate**

- 1) The first 10 days for which an employee takes the "emergency" FMLA leave may consist of unpaid leave.
- 2) An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave provided by the employer in lieu of this unpaid leave, including utilizing the new two weeks of federally mandated emergency paid sick leave as outlined in H.R. 6201, previously described in this memo.
- 3) The remainder of emergency FMLA leave taken by an employee must be paid leave provided by the employer. A covered employer must provide at least ten (10) weeks of qualifying paid emergency FMLA leave to a covered employee.
- 4) When combined with the newly required federal sick leave pay, the employer must pay for a total of twelve (12) weeks of total leave.

### **B. Employer Pay Calculation**

- 1) Employees must be paid at least two-thirds of their regular rate of pay and reflect the number of hours an employee would otherwise be normally scheduled to work.
- 2) The paid leave shall not exceed \$200 per day and \$10,000 in the aggregate over the ten (10) weeks.

**C. Which Employees Are Eligible for Emergency FMLA Leave**

- 1) An employee who has been employed for at least thirty (30) days by the employer is eligible for the new leave entitlement.
- 2) This differs from current FMLA law which requires that an employee be employed for at least 12 months and for at least 1,250 hours with the covered employer during the previous 12-month period to be eligible for leave.
- 3) Also, note that employees are eligible for two weeks of the new federal paid sick leave on day one of their employment while the emergency FMLA leave requires thirty (30) days of employment to be an eligible employee.

**D. Qualifying Event for Emergency FMLA Event**

- 1) An employee may only take the “emergency” FMLA leave if the employee is unable to work (or telework) due to a need to care for the employee’s child if the child’s school or place of care has been closed due to a public health emergency
- 2) A “public health emergency” is an emergency with respect to COVID-19 declared by a federal, state, or local authority.

**E. Miscellaneous**

- 1) Employers with fewer than 50 employees are not subject to a private right of action brought by an employee under the FMLA’s civil enforcement provisions, including for damages and attorney’s fees.
- 2) Employers of a health care provider or an emergency responder may elect to exclude such employees from Emergency FMLA Leave requirements.
- 3) The United States Secretary of Labor has authority to exempt the following from the Emergency FMLA Leave:
  - a) Certain health care providers and emergency responders from the definition of eligible employee;
  - b) Employers with fewer than 50 employees if the requirements of the Emergency FMLA Leave would jeopardize the viability of the business as a going concern.
- 4) Employers with fewer than 25 employees are not required to restore the employee to their position upon completion of emergency FMLA leave if:
  - a) the position does not exist due to economic conditions caused by the public health emergency;
  - b) the employer makes reasonable efforts to restore the employee to an equivalent position; and,
  - c) an equivalent position does not become available in the following year.

**Will my business be eligible for assistance through the Small Business Administration Disaster Loan Assistance Program in response to the Coronavirus?**

The U.S. Small Business Administration is offering designated states and territories low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of the Coronavirus (COVID-19). Both North and South Carolina have been designated as

a disaster area which means businesses who have been adversely impacted are eligible to apply for assistance. [Click here for more info on these SBA loans.](#)

*Please note that while this document is intended to help you comply with North Carolina and Federal law, it is in no way intended to serve as legal advice. Please consult a licensed attorney to address more specific questions that may arise concerning this issue.*