Legislative Update on H.R. 6201

Coronavirus Disease (COVID-19) Response Legislation

March 20, 2020

President Trump signed the first coronavirus response measure (PL 116-123) into law on March 6. That law provided about $8 billion for immediate response efforts to the Health and Human Services Department, State Department, U.S. Agency for International Development, and Small Business Administration.

On March 18, the House has revised and passed the "Families First Coronavirus Response Act" (H.R. 6201). As of March 19, HR 6201 has passed the Senate and the president has signed off.

<u>The key labor provisions of the "Families First Coronavirus Response Act" are summarized below.</u>

Coronavirus Emergency Leave

The bill would require private sector employers with fewer than 500 workers, but more than 50 workers, and government entities to provide as many as 12 weeks of job-protected leave under the Family and Medical Leave Act (FMLA) for employees to:

- Comply with a quarantine requirement or recommendation.
- Provide care to a family member who's complying with a quarantine requirement or recommendation.
- Provide care for children younger than 18 whose school or daycare is closed due to the coronavirus.

Under the bill, the first 10 days of leave could be unpaid or a worker could use vacation days, personal leave, or other available paid leave. After the first 10 days, workers would receive a benefit from their employers that will be at least two-thirds of their normal pay rate; will be capped at $10,000 per employee.

The measure also would amend the FMLA to allow individuals to use unpaid leave if they are diagnosed with the virus, caring for a family member, or caring for a child whose school or day care has closed because of a public health emergency through Dec. 31, 2020.

The bill authorizes the Department of Labor to issue regulations to:

- Exclude certain health-care providers and emergency responders from paid leave benefits.

- Exempt small businesses with fewer than 50 employees from the paid leave requirements.

Emergency Sick Leave

Private sector employers with fewer than 500 workers and government entities would have to provide employees with paid sick time off to:

- Self-quarantine.
- Obtain a medical diagnosis or care for coronavirus.
- Provide care for a family member who has been diagnosed or is in quarantine or for a child whose school or day care has closed due to coronavirus.

The legislation would require that full-time employees receive 80 hours of sick leave and part-time workers receive time off that's equivalent to their scheduled or normal work hours in a two-week period. This sick leave would not carry over to subsequent years.

The bill requires that workers be paid at least their normal wage. If not then the federal, state, or local minimum wage must be paid. When providing care to a family member, workers would only be paid two-thirds of their regular earnings.

Employers with similar existing paid leave policies would be required to provide workers with the emergency paid sick time.

Employers would be prohibited from:

- Requiring workers to use any other available paid leave before using the sick time.
- Requiring a worker to find a replacement to cover their hours during time off.
- Discharging or discriminating against workers for requesting paid sick leave or filing a complaint against the employer.

The legislation would establish civil penalties for a violation of paid sick leave requirements.

Workers under a multiemployer collective bargaining agreement and whose employers pay into a pension plan would have access to paid emergency leave.

Employer Tax Credits

In order to offset the costs of the new sick and family leave requirements, the bill would create payroll tax credits. The credit would be as follows:

- The sick leave credit for each employee would be for wages of as much as $511 per day while the employee is receiving paid sick leave to care for themselves, or $200 if the sick leave is to care for a family member or child if their school is closed.
- The limit would be the excess of 10 days over the aggregate number of days taken into account for all preceding calendar quarters.

- The family leave credit for each employee would be for wages of as much as $200 per day while the employee is receiving paid leave, or an aggregate of $10,000. The credit would be in effect for wages through the end of 2020.
- The credit would be refundable if it exceeded the amount the employer owed in payroll tax.
- Employers would not be eligible for the tax credit if they are already receiving a credit for paid family and medical leave established by the 2017 tax law (Public Law 115-97). They would have to include the credit in their gross income.
- State and local governments could not receive the credit under the bill.

The payroll tax, which funds Social Security, is a 6.2% tax on wages imposed on both employers and employees. The bill would not affect employees' share of the payroll tax.

The bill would require the Treasury Department to issue regulations or guidance related to the proper use of the credit, record keeping and to waive penalties for underpayments in anticipation of the credit.

Self-Employed Tax Credit

In addition, the bill would establish a refundable credit against self-employment tax. It would cover 100% of self-employed individuals' sick-leave equivalent or 67% if they were taking care of a sick family member or child if their school was closed. Under the bill:

- The sick-leave equivalent amount would be the lesser of their average daily self-employment income, or $511 per day if caring for them or $200 if caring for a family member. It would be available for 10 days over the number of days taken into account in preceding years.
- Self-employed individuals could receive a family leave credit for as many as 50 days for the lesser of $200 or their average daily self-employment income.
- Self-employed individuals would have to submit documentation, as required by the Treasury Department.
- The measure would establish alternate requirements for self-employed individuals who also receive sick-leave pay from an employer.

Unemployment Insurance

The bill would provide up to $1 billion for emergency transfers to states in fiscal 2020 to process and pay unemployment benefits. Each state would receive a proportional amount based on the share of federal unemployment taxes paid by its employers.

Currently, eligible laid-off workers can receive regular unemployment benefits for as long as 26 weeks in most states. Under the bill, after those 26 weeks, individuals in states with rising unemployment can qualify for an additional 13 weeks of benefits — or 20 weeks in some states — through the Extended Benefits (EB) program that is funded by the Federal Government.

To qualify, states would need to experience a 10% spike in unemployment claims over the past year. The bill would also waive interest payments that states owe for the rest of 2020 on federal advances to their unemployment accounts.