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U.S. House Passes Families First Coronavirus Response Act

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Litigation

UPDATE: *The bill continues to go through amendments and we expect more changes in the coming day. [Check here for the latest update.](#)*

This past weekend, the U.S. House of Representatives passed the “Families First Coronavirus Response Act” to help address the spread of COVID-19 (the novel coronavirus) and help mitigate its economic effects.

This past weekend, the U.S. House of Representatives passed the “Families First Coronavirus Response Act” (Response Bill) to help address the spread of coronavirus (COVID-19) and help mitigate its economic effects.

While the Response Bill is not yet law, and will likely undergo further amendment before it's passed, it contains important expansions to entitlements that will impact employers. Once passed by the Senate and signed into law, the Response Bill would take effect no later than 15 days after signing and remain in effect until Dec. 31, 2020.

Emergency Paid Sick Leave

Under the Emergency Paid Sick Leave Act (EPSLA) portion of the Response Act, employers with 1-500 employees must provide paid sick leave to their full- and part-time employees as follows:

<u>Employee Status</u>	<u>Amount of EPSLA Paid Sick Leave</u>
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Full-time employees	80 hours
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Part-time employees	Average number of hours they work over a two-week period.
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All employees are eligible for EPSLA paid sick leave regardless of how long they have been employed by the employer.

Employees may take paid sick leave for any the following reasons:

- To self-isolate because the employee is diagnosed with coronavirus;
- To obtain a medical diagnosis or care because the employee is experiencing symptoms of coronavirus;
- To comply with a recommendation or order by a public official or health care provider on the basis that presence on the job would jeopardize others because of exposure to or symptoms of coronavirus;
- To care for an employee's family member who is self-isolating due to a diagnosis of or symptoms of coronavirus and needs to obtain a diagnosis or medical care;
- To care for a family member if a public official or health care provider has determined presence of the family member in the community would jeopardize others due to exposure to or symptoms of coronavirus;

- To care for the child of such employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to coronavirus.

Paid sick leave under the bill is available for immediate use once the bill is enacted. Employers may not require employees to use any other paid sick leave the employer offers before using EPSLA paid sick leave. The employee's right to take this paid sick leave ends when the employee returns to work following the leave and will not carry over to next year. Notice must be provided in any employment handbook and in a conspicuous place where notices are customarily posted.

Important Note: For covered employers who currently offer paid sick leave – either at their discretion or due to state or local law – the bill specifically provides the employers must provide EPSLA paid sick leave *in addition to* leave already provided under company policy. In other words, existing sick or PTO policies do NOT count as EPSLA paid sick leave.

Expansion of the Family and Medical Leave Act (FMLA)

The Emergency Family and Medical Leave Expansion Act portion of the Response Bill creates a new "public health emergency leave" (PHE leave). For PHE leave, it also expands the application of FMLA to employers having just one employee (rather than 50) and to employees that have been employed for at least 30 calendar days (rather than 12 months and 1,250 hours). Like the EPSLA paid sick leave discussed above, the new PHE leave requirement does not apply to employers with more than 500 employees.

The first 14 days of PHE leave may consist of unpaid leave, but employees can choose to substitute accrued vacation, personal, or medical or sick leave for the unpaid leave. *After the 14 days of unpaid leave, employers must pay for PHE leave at two-thirds the employee's regular rate of pay for the number of hours the employee would normally be scheduled.* For employees with varying weekly schedules, employers should calculate the hours by averaging the number of hours the employee worked in the preceding 6-month period. Covered employees may take PHE leave to:

- Comply with a recommendation or order from a public health official or health care provider on the basis that presence on the job would jeopardize others because of exposure to or symptoms of coronavirus;
- Care for a "family member" whose presence in the community would jeopardize others because of exposure to or symptoms of coronavirus;
- Care for the child of such employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to coronavirus.

The legislation provides a broad definition of "family member" that includes a parent, spouse, son or daughter who is under 18, as well as an individual who is a pregnant woman, senior citizen, individual with a disability, or has access or functional needs and who is a son or daughter of the employee, a next of kin of the employee for whom the employee is next of kin, or a grandparent or grandchild of the employee.

PHE leave is job-protected leave (like traditional FMLA leave) such that employees are entitled to the same or an equivalent position upon their return to work. However, there is a limited exception for businesses employing under 25 people if the position no longer exists due to "economic conditions or other changes in operating conditions."

Tax Credits for EPSLA Paid Sick Leave and Public Health Emergency Leave

The Response Bill provides for refundable tax credits for employers equal to 100 percent of EPSLA paid sick leave and paid PHE leave under FMLA (subject to certain caps).

Gould & Ratner LLP Coronavirus/COVID-19 Response Team

Gould & Ratner's [Human Resources and Employment Law Practice](#) has established a Coronavirus/COVID-19 Response Team to assist its clients with any questions they may have regarding the impacts of Coronavirus/COVID-19. Please contact [David Michael](#) or the attorney with whom you normally work at the firm.