

In Brief

March 16, 2020

KEY INFORMATION ABOUT THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 11, 2020, the House of Representatives introduced the *Families First Coronavirus Response Act* (the “Families First Bill”) which, if signed into law, provides FY2020 supplemental funding, emergency waivers, free Coronavirus testing and paid sick leave, and expands protections under the *Family and Medical Leave Act* (FMLA) and food assistance programs. The Families First Bill was passed by the House and now moves to the Senate. While passing bipartisan legislation as a response to the Coronavirus pandemic is anticipated, the Senate may modify the current version of the Families First Bill. The key provisions of the 110-page bill passed by the House are summarized below.

The Emergency Family and Medical Leave Expansion Act

For purposes solely related to the Coronavirus emergency, the Families First Bill amends the FMLA through December 31, 2020, to cover more employers and employees, and require that leave be paid in part. For Coronavirus emergency purposes:

- ❖ a “covered employer” is any employer with **less than 500 employees and government employers**; and
- ❖ an “eligible employee” is anyone who has been employed for **at least 30 calendar days** by the covered employer from whom they are requesting leave.

An eligible employee would have the right to take up to **12-weeks of job protected leave** for any of the following reasons:

- ❖ to comply with a requirement or recommendation to quarantine due to exposure to or symptoms of Coronavirus;
- ❖ to care for a family member who is complying with a requirement or recommendation to quarantine due to exposure to or symptoms of Coronavirus; and
- ❖ to care for the employee’s child if the child’s school or place of care has been closed, or the child-care provider is unavailable due to Coronavirus.

The term “family member” for Coronavirus covered leave includes the employee’s parent, spouse and child (under 18), as well as an individual who is: a pregnant woman or senior citizen, has a disability, access or functional needs, and who is the employee’s child, next of kin, grandparent or grandchild.

For Coronavirus covered leave, the first 14 days the employee takes may be unpaid. While the employee may substitute any accrued paid leave for unpaid leave, an employer cannot require an employee to do so. After the first 14 days, **the employer must provide paid leave** to the employee for the duration of their leave that is not less than 2/3 of the employee’s regular rate of pay for the number of hours the employee would normally be scheduled to work. Special calculation rules apply to employees whose schedule varies from week to week.

The Emergency Paid Sick Leave Act

Like the emergency expansion of FMLA, this part of the Families First Bill applies to employers with **less than 500 employees and government employers** and requires employers to provide each employee with **paid sick leave** at their regular rate of pay for the following reasons:

- ❖ to quarantine, seek diagnosis or preventative care for Coronavirus;
- ❖ to care for a family member subject to quarantine, diagnosis or preventative care for Coronavirus;
- ❖ to care for the employee's child if the child's school or place of care has been closed, or the child-care provider is unavailable due to Coronavirus.

Full-time employees are entitled to 2 weeks (80 hours) of sick leave for the above reasons. Part-time employees are entitled to the number of hours they normally work, on average, over a 2-week period.

This emergency paid sick leave is in addition to any paid sick leave the employer already provides to employees, and employers cannot require an employee to use other paid sick leave first. Also, all employees are eligible for this emergency paid sick leave irrespective of how long they have worked for an employer. The provisions for emergency paid sick leave terminate on December 31, 2020.

Tax Credits for Paid Sick Leave and Paid Family and Medical Leave

Under the Act, employers are entitled to refundable tax credits for qualified Coronavirus sick leave wages and qualified Coronavirus family leave wages paid by an employer in each calendar quarter.

Waivers

The Families First Bill modifies USDA food assistance and nutrition programs during the Coronavirus emergency to:

- ❖ Allow all child and adult care centers to operate as non-congregate (take food to go).
- ❖ Allow for waiver of the meal pattern requirements in child nutrition programs if there is a disruption in food supply.
- ❖ Allow for nationwide school meal waivers.
- ❖ Grant waivers to allow participants to be certified for the Special Nutrition Program for Women, Infants and Children (WIC) without being physically present at the WIC clinic.
- ❖ Allow for waiver of the administrative requirements that may be barriers to serving WIC participants.
- ❖ Suspend the work and work training requirements for the Supplemental Nutrition Assistance Program (SNAP).
- ❖ Allow states to request waivers to provide certain temporary, emergency SNAP benefits.

Supplemental Funding

The Families First Bill provides FY2020 supplemental funding for emergency purposes for WIC, the Emergency Food Assistance Program, nutrition assistance grants for U.S. territories, nutrition programs that assist the elderly, the cost of diagnostic testing for Coronavirus, the implementation of tax credits for

paid sick and paid family and medical leave. It also provides funding for emergency grants to states for processing and paying unemployment insurance benefits.

The Families First Bill also includes a provision which would allow the Department of Agriculture to approve state plans to provide emergency Electronic Benefit Transfer (EBT) food assistance to households with children who would otherwise receive free or reduced-price meals if not for their schools being closed due to the Coronavirus emergency. Eligibility is dependent on the child's school being closed for no less than 5 consecutive days.