

COVID-19 RELIEF BILL (H.R. 6201) AND ITS POTENTIAL IMPACT ON EMPLOYERS

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EMPLOYMENT LAW ALERT - FOR IMMEDIATE RELEASE

After two days of intense negotiations, in the early morning hours of March 14, 2020, the U.S. House of Representatives passed the Families First Coronavirus Response Act (H.R. 6201) by a vote of 363 to 40. Before the vote, President Donald Trump tweeted that he fully supports the bill as it provides “free CoronaVirus tests, and paid sick leave for our impacted American workers.” The U.S. Senate is expected to consider the bill this week and can approve it as passed, reject it, or make modifications to it, which the House would then have to re-approve. It is likely that additional relief measures, possibly including additional tax or industry-specific provisions, may be considered in the near term, and the House has already indicated its intent to consider a “technical corrections” to H.R. 6201 bill shortly. President Trump further stated that he had directed the Labor and Treasury Department secretaries to issue regulations providing greater flexibility to small businesses.

In short, the bill is not law yet and its effects on and obligations for employers may change significantly as the Senate considers this legislation in the coming days. This Alert is provided merely as guidance to employers as to what is proposed in H.R. 6201. The sweeping bill provides a number of relief measures in response to the coronavirus crisis, including free coronavirus testing and an expansion of the free school lunch program. Below, I will address only the provisions that directly impact employers.

PROPOSED AMENDMENT TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993

The bill proposes expanding the Family and Medical Leave Act of 1993 (“FMLA”) to require employers (with one or more employees) to allow employees (who have been on the employer’s payroll for 30 days) to take up to twelve weeks of FMLA leave for the following reasons:

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

Employees must give employers as much notice of their need for this leave “as is practicable.” Employers may require that a request for leave under this amendment be supported by documentation.

As with traditional FMLA leave, employers must return the employee to the same or equivalent position upon their return to work. The bill provides an exception to this requirement for employers with 25 or fewer employees if the position does not exist when the employee returns due to economic conditions or other changes in the operating conditions of the employer “that affect employment” and “are caused by a public health crisis” during the leave period. In order to qualify for this exemption, the employer will have show that it made reasonable attempts to return the employee to an equivalent position for a period of one year following the leave/conclusion of public health crisis.

PAID SICK LEAVE FOR PUBLIC HEALTH EMERGENCIES

Under H.R. 6201, employers with one or more employees must provide two weeks of paid sick leave at the employees’ regular rate of pay to allow employees to quarantine or seek a diagnosis or care for coronavirus. Paid leave is also available to care for a family member for the same reasons or to care for a child whose school has closed or childcare provider is unavailable due to coronavirus. Full-time employees are entitled to 80 hours

of leave, while part-time employees are entitled to compensation for the typical number of hours they work in a two-week period. Employees are eligible for paid sick leave for public health emergencies immediately upon commencement of employment. During a public health emergency, employees may first use the two-week paid sick leave for public health emergencies and then may use accrued paid leave time for any additional leave. An employer may not require its employees to first use their accrued sick leave time before providing the paid sick leave for public health emergencies mandated by the bill. An employer's failure to provide the required sick leave will be subject to the remedies set forth in the Fair Labor Standards Act.

TAX CREDITS FOR PAID SICK LEAVE AND FMLA DUE TO PUBLIC HEALTH CRISIS

The bill provides for a series of refundable tax credits for employers who provide paid sick leave or paid FMLA due to coronavirus and also includes tax relief for self-employed individuals. Those provisions include a tax credit for a maximum of \$7156 per employee to cover the employer's costs of providing up to two weeks of paid coronavirus-related sick leave to employees. A similar second tax credit of a maximum of \$10,000 per employee would compensate companies for providing coronavirus-related family leave to employees.

CONCLUSION

It remains to be seen whether the Senate will approve the House bill, reject it or make modifications to it. While nothing is certain in these uncertain times, it is anticipated that the Senate will enact some version of this emergency relief bill given the President's endorsement of the bill. In addition, further legislation, technical corrections and regulations are expected to be issued, which will hopefully provide clarification and guidance to employers regarding what additional obligations they may have as a result of the coronavirus crisis. Ansa Assuncao, LLP's legal team will continue to keep you apprised of the status of these changes and can advise employers on specific employment and legal issues arising from the coronavirus. Please contact a member of our team for assistance.

Ansa Assuncao, LLP is a national law firm headquartered in Philadelphia, Pennsylvania that can advise employers on employment and legal issues arising from the Coronavirus. Please contact Ryan R. Corkery, Esq., a partner at the Ansa firm for assistance. Mr. Corkery may be reached at 267-528-0733 or via e-mail at ryan.corkery@ansalaw.com.