

**H.R. 6201, *Families First Coronavirus Response Act*
Paid Leave Provisions, Including Technical Corrections***

Division C: *Emergency Family and Medical Leave Expansion Act*

Amends the *Family and Medical Leave Act* (FMLA) to require employers with fewer than 500 employees to provide all employees paid leave because of a qualifying need related to a public health emergency. Division C includes new definitions of covered employee and covered employer applicable only to the new entitlement to leave. Division C is effective not later than 15 days after the bill's enactment. These requirements expire on December 31, 2020.

Paid Leave Mandate. The first 10 days for which an employee takes the “emergency” FMLA leave may consist of unpaid leave. However, 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 two weeks of mandated emergency paid sick leave under Division E of H.R. 6201. The remainder of emergency FMLA leave taken by an employee must be **paid leave** provided by the employer. Therefore, a covered employer must provide at least 10 weeks of qualifying paid emergency FMLA leave to a covered employee.

Employer Pay Calculation. Paid leave must be at least two-thirds of an employee's regular rate of pay and reflect the number of hours an employee would otherwise be normally scheduled to work. The paid leave shall not exceed \$200 per day and \$10,000 in the aggregate.

Covered Employee. An employee who has been employed for at least 30 days by the employer is eligible for the new leave entitlement. Under current law, the FMLA 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.

Employer Threshold. Employers with fewer than 500 employees. Under current law, the FMLA applies to employers with 50 or more employees.

Special Rules for Certain Employers. An employer with fewer than 50 employees is 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. Under the FMLA, absent this special rule, an employee may bring a private civil action against an employer for violations of the terms of the FMLA.

Employers of a health care provider or an emergency responder may elect to exclude such employees from Division C's requirements.

Regulatory Relief for Certain Employers. The Secretary of Labor is given the authority to issue regulations for good cause to: (1) exclude certain health care providers and emergency responders from the definition of eligible employee; and, (2) exempt employers with fewer than 50 employees from the requirements of Division C if such requirements would jeopardize the viability of the business as a going concern.

Qualifying Need Related to Public Health Emergency. 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.

Employers with fewer than 25 employees are not required to restore the employee to their position upon completion of emergency FMLA leave if: (1) the position does not exist due to economic conditions caused by the public health emergency; (2) the employer makes reasonable efforts to restore the employee to an equivalent position; and, (3) an equivalent position does not become available in the following year. Under the FMLA, an employee taking FMLA leave is entitled to be restored to their position or an equivalent position with equivalent pay and benefits.

Definition of Public Health Emergency. “Public health emergency” is defined as an emergency with respect to COVID-19 declared by a federal, state, or local authority.

Division E: *Emergency Paid Sick Leave Act*

Requires employers with fewer than 500 employees to provide two weeks of paid emergency leave immediately to all employees because of a qualifying need related to a coronavirus public health emergency. Division E is effective not later than 15 days after the bill’s enactment. These provisions expire on December 31, 2020.

Paid Sick Leave Requirement. The employer shall immediately provide each employee two 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 points 1 or 2 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.

Compensation for Care of Family Members. With respect to any paid sick time used by an employee for the care of a family member described in points 4-6 above, required compensation is two-thirds of the employee’s regular rate of pay.

Pay Calculations. An employee is entitled to the equivalent of two weeks of paid sick leave. For part-time and hourly employees, this equals the number of hours such employee works on average over a two-week period. For full-time employees, this equals 80 hours. Paid leave under Division E shall not exceed \$511 per day and \$5,110 in the aggregate for uses described in points 1-3, and \$200 per day and \$2,000 in the aggregate for uses described in points 4-6.

Employer. The requirement applies to all employers with fewer than 500 employees.

Employer Exemptions. The Secretary of Labor is given the authority to: (1) issue regulations for good cause to exempt businesses with fewer than 50 employees from the requirements of the above point 5 when the imposition of such requirements would jeopardize the viability of the businesses as a going concern; (2) exclude certain health care providers and emergency responders from these requirements, including by allowing such employers to opt out; and, (3) carry out the purposes of the Division E, including to ensure consistency between Divisions C, E, and G.

Carryover. Paid sick leave shall not carry over from one year to the next.

Leave Sequencing. An employer may not require an employee to use existing paid leave provided by the employer before the employee uses paid leave provided under Division E.

Enforcement. An employer who does not provide paid leave as required by Division E 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.

Compliance Guidelines. The Secretary of Labor is directed to issue guidelines to assist employers in calculating the amount of paid sick leave within 15 days.

Rule of Construction. Nothing in Division E shall be construed to require an employer to reimburse an employee for unused sick leave following an employee's termination, resignation, retirement, or other separation from employment.

Division G: Tax Credits for Paid Sick and Paid Family and Medical Leave

Provides specific levels of reimbursement to covered employers and certain individuals in the form of payroll credits and tax credits for the leave payments required by Divisions C and E.

**Prepared by Committee on Education and Labor Republicans*