

NDA COVID-19 Legislative Update

Below is a summary of H.R. 6201, the Families First Coronavirus Response Act

Emergency Paid Sick Leave- Only applies to employers with fewer than 500 employees

- Requires employers with fewer than 500 employees to provide full-time employees two weeks (80 hours) of paid sick leave (pro-rated for part-time employees), paid at the employee's regular rate, limited to \$511 per day, due to the following circumstances:
 - The employee is under a mandatory federal, state or local quarantine related to COVID-19;
 - The employee has been advised by a health care provider to self-quarantine because of COVID-19; and
 - The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- Requires employers with fewer than 500 employees to provide full-time employees two weeks (80 hours) of paid sick leave (pro-rated for part-time employees), paid at two-thirds the employee's regular rate, limited to \$200 per day, due to the following circumstances:
 - The employee is caring for an individual subject to a mandatory or advised quarantine related to COVID-19;
 - The employee is caring for a child whose school or place of care has closed due to COVID-19; and
 - The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.
- Employees are immediately eligible for this benefit.
- Employers are required to post notices of the new paid sick leave policy in conspicuous places on the premises of the employer. These notices must be prepared or approved by the Secretary of Labor. The Secretary of Labor will be publicly releasing a model notice for employers to use by March 25.
- Each quarter, businesses subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified sick leave wages paid by the employer.
 - The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their expenses for qualified sick leave exceed the taxes they would owe.
 - Any wages paid by the employer under this legislation are not subject to payroll taxes under section 3111(a).
 - The legislation grants an employer an additional tax credit against Medicare taxes paid.
 - Employers with group health plans can claim a tax credit against employer-paid health care costs while the employee is on leave. This allows employers to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.
 - The Secretary of the Treasury is provided with regulatory authority to provide relief should cash flow issues occur.
- The new paid sick leave provisions are in addition to existing sick leave benefits already offered by the employer.
- Employers are prohibited from retaliating against any employee who takes leave in accordance with the new law. The failure to pay sick leave under the law will be treated as a failure to pay minimum wages in violation of the Fair Labor Standards Act.

- The Secretary of Labor is authorized to exempt small businesses with fewer than 50 employees from these requirements when the imposition of such requirements would jeopardize the viability of the business as a going concern.
- These provisions go into effect no later than April 2 and expire on December 31, 2020.

Emergency Family and Medical Leave- Only applies to employers with fewer than 500 employees

- Requires employers with fewer than 500 employees and government employers, who have been on the job for at least 30 days, to provide up to 12 weeks of job-protected leave under the Family and Medical Leave Act for a “qualifying need” related to a public health emergency. A “qualifying need” applies to circumstances where an employee is:
 - Unable to work, onsite or remotely, due to a need to care for a minor child if the child’s school or place of child care has been closed or is unavailable due to a public health emergency.
- After 10 days, during which time the employee can take unpaid or paid leave (if available), employees will receive a benefit from their employers that will be no less than two-thirds of the employee’s normal pay. An employee can choose to substitute accrued vacation, personal, or sick leave, but an employer may not require an employee to do so. Qualified paid family leave benefits are capped at \$200 per day and \$10,000 total.
- The Secretary of Labor is authorized to exempt small businesses with fewer than 50 employees from these requirements when the imposition of such requirements would jeopardize the viability of the business as a going concern. The requirements to restore the employee to their position after the paid leave is taken do not apply to businesses with less than 25 employees if the position no longer exists due to operational changes caused by the public health emergency. Employers with fewer than 50 employees are exempt from civil actions brought by employees for violations of this section.
- Each quarter, businesses will be entitled to a fully refundable tax credit equal to 100% of the qualified paid family leave wages paid by the employer.
 - The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their expenses for qualified sick leave exceed the taxes they would owe.
 - Any wages paid by the employer under this legislation are not subject to payroll taxes under section 3111(a).
 - The legislation grants an employer an additional tax credit against Medicare taxes paid.
 - Employers with group health plans can claim a tax credit claimed against employer-paid health care costs while the employee is on leave. This allows employers to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.
 - The Secretary of the Treasury is provided with regulatory authority to provide relief should cash flow issues occur.
- The Secretary of Labor is authorized to exempt small businesses with fewer than 50 employees from these requirements when the imposition of such requirements would jeopardize the viability of the business as a going concern. The requirements to restore the employee to their position after the paid leave is taken do not apply to businesses with less than 25 employees if the position no longer exists due to operational changes caused by the public health emergency. Employers with fewer than 50 employees are exempt from civil actions brought by employees for violations of this section.
- These provisions go into effect no later than April 2 and expire on December 31, 2020.