



TO: AIA Elected Leadership
AIA Component Executives

FROM: Tim Hawk, FAIA, Government Advocacy Committee Chairman

DATE: March 19, 2020

RE: AIA Update on Federal Relief Packages Approved Post COVID-19 Outbreak

There is a lot of action on Capitol Hill to help mobilize relief for small business owners and workers during these unprecedented times. We feel that it is important that AIA members stay abreast of these developments and want to provide periodic updates as the information develops.

Overview of Congressional and Administration Policy Activities That Will Impact Firms and Members (Federal Aid/Programmatic Changes)

H.R. 6201 The Family First Coronavirus Response Act:

As of March 18, 2020, H.R. 6201, the Family First Coronavirus Response Act, has been passed by the House and Senate and signed into law.

This is a bipartisan bill that was negotiated by Speaker Pelosi and Treasury Secretary Steven Mnuchin. The emergency legislation that will provide individuals affected by the novel coronavirus paid leave, food assistance and increased unemployment insurance. The legislation increases Medicaid funding to states and provides emergency funding for several nutrition programs and federal health programs. Additionally, H.R. 6201 would provide tax credits to employers to offset the costs of providing emergency sick leave. It also would require insurers, Medicare, Medicaid, and other federal health programs to fully cover testing and related services for the virus.

H.R. 6201 is the second coronavirus response legislation passed by Congress. The first coronavirus response measure was signed into law on March 6 and provided about \$8 billion for immediate

response efforts to the Health and Human Services Department, State Department, U.S. Agency for International Development, and Small Business Administration.

The House, Senate and White House have already begun working on a third emergency response measure that could top \$1trillion dollars and will likely contain more provisions intended to help employers and employees in many sectors impacted by the virus.

We will update you on additional measures as those are finalized. There are many competing proposals being negotiated in real time. This memo focuses on the policies that have already been passed as of March 18, 2020.

Below is a detailed summary of the provisions of H.R. 6201 affecting employers, followed by more general points on the HHS Funding, Health Care and Nutrition sections of the bill. Firms are encouraged to talk to their counsel about their specific situation under these changes.

Provisions of H.R. 6201 Affecting Large and Small Employers:

Coronavirus Emergency Leave

The agreement would create an emergency paid leave program to directly respond to the coronavirus. Private sector employers with fewer than 500 workers and government entities would have to provide as many as 12 weeks of job-protected leave under the Family and Medical Leave Act for employees who must:

- Comply with a requirement or recommendation to quarantine because of exposure to or symptoms of coronavirus.
- Provide care to a family member who's complying with such a requirement or recommendation.
- Provide care for child younger than 18 whose school or day care has closed because of coronavirus.

The first 10 days of leave could be unpaid, though a worker could choose to use accrued vacation days, personal leave, or other available paid leave for unpaid time off. Following the 10-day period, workers would receive a benefit from their employers that will be at least two-thirds of their normal pay rate. (Capped at \$10,000 per employee.)

The measure also would modify the FMLA to allow individuals to use unpaid leave if they are diagnosed with the virus, caring for a family member, or caring for a child whose school or day care has closed because of a public health emergency through Dec. 31, 2020.

The Labor Department would be authorized to issue regulations to:

- Exclude certain health-care providers and emergency responders from paid leave benefits.

- Exempt small businesses with fewer than 50 employees from the paid leave requirements if it would “jeopardize the viability of business as a going concern.” (added Monday night in technical correction amendment).

Workers under a multiemployer collective bargaining agreement and whose employers pay into a pension plan would have access to paid leave.

Emergency Sick Leave

Private sector employers with fewer than 500 workers and government entities would have to provide employees with paid sick time off to:

- Self-quarantine.
- Obtain a medical diagnosis or care for coronavirus.
- Provide care for a family member who has been diagnosed or is in quarantine or for a child whose school or day care has closed due to coronavirus.

Full-time employees would receive 80 hours of sick leave under the new emergency leave program and part-time workers would be granted time off that’s equivalent to their scheduled or normal work hours in a two-week period. Paid sick time could be carried over from year to year.

Sick workers would have to be paid at least their normal wage or the federal, state, or local minimum wage, whichever is greater. They would be paid, however, at two-thirds of their regular earning for providing caregiving to a family member.

Employers with similar existing paid leave policies would be required to provide workers with the emergency paid sick time. An employer couldn’t require a worker to use any other available paid leave before using the sick time.

Employers would be prohibited from:

- Requiring a worker to find a replacement to cover their hours during time off.
- Discharging or discriminating against workers for requesting paid sick leave or filing a complaint against the employer.

An employer could be subject to civil penalties for a violation of paid sick leave requirements.

Workers under a multiemployer collective bargaining agreement and whose employers pay into a pension plan would have access to paid emergency leave.

Employer Tax Credits

The measure would provide payroll tax credits to employers to cover wages paid to employees while they are taking time off under the bill's sick leave and family leave programs.

The payroll tax, which funds Social Security, is a 6.2% levy on wages imposed on both employers and employees. Employees' share wouldn't be affected by the bill.

The tax credits for paid sick leave and family leave the bill would create were increased from earlier versions of the bill to include amounts employers pay for an employee's health care plan while they are on leave. The credit would be refundable if it exceeded the amount the employer owed in payroll tax.

Employers couldn't receive the credit if they're also receiving a credit for paid family and medical leave established by the 2017 tax overhaul (Public Law 115-97). They would have to include the credit in their gross income.

More details:

- State and local governments cannot receive the credit.
- The credit would be in effect for wages through the end of 2020.
- The Treasury Department would have to issue regulations or guidance to ensure employers don't manipulate the credit, to minimize compliance and record-keeping burdens, to waive penalties for underpayments in anticipation of the credit, and to establish a process to recapture credits when there's an adjustment.
- The measure would authorize the transfer of amounts equal to the credit, as well as lost revenue from wages that are exempt from payroll tax, to the Social Security and disability insurance trust funds from the general fund.

Self-Employed Tax Credit

The measure would provide a similar refundable credit against self-employment tax. It would cover 100% of self-employed individuals' sick-leave equivalent or 67% if they were taking care of a sick family member or child if their school was closed.

Their sick-leave equivalent amount would be the lesser of their average daily self-employment income, or \$511 per day if caring for themselves or \$200 if caring for a family member. It would be available for 10 days over the number of days taken into account in preceding years.

Self-employed individuals could receive a family leave credit for as many as 50 days for the lesser of \$200 or their average daily self-employment income.

More details:

- Self-employed individuals would have to submit documentation, as required by the Treasury Department.
- The measure would establish alternate requirements for self-employed individuals who also receive sick leave pay from an employer.
- It would also establish rules for the credit to be provided in U.S. territories.

Unemployment Insurance

Emergency Transfers: The measure would provide as much as \$1 billion for emergency transfers to states in fiscal 2020 to process and pay unemployment benefits.

Each state would receive a proportional amount based on the share of federal unemployment taxes paid by its employers.

More details:

- States will receive half of their allocation within 60 days of the bill's enactment if they certify that they meet certain requirements, such as ensuring that workers can apply for benefits online or by phone.
- States would receive the remaining funds if their unemployment claims increased by at least 10% over the same quarter in the previous year. They would have to waive certain eligibility rules for claimants and charges for employers affected by Covid-19.
- States could modify certain unemployment policies, including rules related to job searches and initial payment waiting periods, on an emergency temporary basis to address the effects of Covid-19.
- The Labor Department announced guidance March 12 to clarify that states can make other changes to their unemployment policies to cover affected workers. For instance, current law allows states to pay benefits when workers are quarantined, or when they leave their jobs due to a risk of exposure or to care for a family member, the department said.

Extended Benefits: Eligible laid-off workers can receive regular unemployment benefits for as long as 26 weeks in most states.

After exhausting those benefits, individuals in states with rising unemployment can qualify for an additional 13 weeks of benefits – or 20 weeks in some states – through the Extended Benefits (EB) program.

The bill would waive a state matching requirement and provide full federal funding for the EB program for the rest of 2020. To qualify, states would need to experience a 10% spike in unemployment claims over the past year and qualify for a full emergency funding transfer under the measure.

Interest-Free Loans: The bill would waive interest payments that states owe for the rest of 2020 on federal advances to their unemployment accounts.

Provisions Affecting Healthcare and Other Community Programs:

HHS Funding & Health-Care Provisions

Nutrition: The measure would appropriate \$250 million for Health and Human Services Department programs that aid elderly Americans, divided as follows with no state match required:

- \$160 million for home-delivered nutrition services.
- \$80 million for congregate nutrition services that provide food in group settings, such as adult day care centers and meal sites.
- \$10 million for nutrition services for American Indians.

Medicaid Funding: States would be eligible for a 6.2 percentage point increase in their federal medical assistance percentages (FMAP). They would have to provide coverage of coronavirus testing without cost sharing and meet other criteria, such as not imposing more stringent eligibility standards or additional premiums.

States could cover tests for uninsured people through their Medicaid programs and receive a 100% FMAP to cover the cost.

Test Coverage: Insurers would be required to cover coronavirus tests and related services, such as provider visits for testing, without cost-sharing or prior authorization requirements. The cost-sharing prohibition would also apply to Medicaid, Medicare, TRICARE, veterans' health programs, the Indian Health Service, and coverage provided to federal civilian employees.

The bill would appropriate \$1 billion to allow the National Disaster Medical System to reimburse provider costs associated with testing uninsured individuals.

Major insurance companies – including BlueCross BlueShield Association companies, Humana Inc., and UnitedHealth Group Inc. – have committed to waiving coronavirus test co-pays according to Vice President Mike Pence. Medicare currently covers testing without any patient cost-sharing.

Mask Liability: The measure would make personal respiratory protective devices a covered countermeasure under the Public Readiness and Emergency Preparedness Act and provide liability protections for certain emergency response products.

Nutrition Assistance

The measure would provide:

- \$500 million in emergency funding for the WIC program.
- \$400 million for the Commodity Assistance Program for the emergency food assistance program (TEFAP), \$100 million of which could be used for costs related to the distribution of goods.
- \$100 million for grants to the Northern Mariana Islands, Puerto Rico, and American Samoa for nutrition assistance provided in response to the virus.

SNAP Benefits for Kids: If a school is closed for at least five consecutive days because of a coronavirus-related public health emergency, states could adjust their Supplemental Nutrition Assistance Programs (SNAP) to provide additional aid to households with children eligible for free or reduced-price school meals.

Additional benefits would have to be equal to the value of the meals for each eligible child in a household. Benefits could be distributed through an electronic benefits transfer card system. The Agriculture Department could purchase food commodities to ensure it can distribute them in areas where a public health emergency has been declared. “Such amounts as are necessary” would be appropriated for the meal provisions.

SNAP Work Requirements: The measure would waive federal work requirements for SNAP eligibility.

Other SNAP Benefits: States that make their own emergency or disaster declarations related to Covid-19 could request emergency allotments of food aid to support increased participation in SNAP and address temporary food needs.

Meal Program Waivers: The package would allow USDA to waive statutory requirements for several food programs to ensure that meals can be provided during the emergency and to implement safety measures related to preventing the spread of Covid-19

USDA has [granted waivers](#) to 17 states as of March 12 to allow school systems to continue serving meals during prolonged coronavirus-related closures. Several other states also have waiver requests pending.

WIC Waivers: The measure would allow states to request waivers for the requirement that WIC recipients certify their eligibility in person and for deferring biometric and bloodwork requirements. USDA could also modify or waive WIC administrative requirements that a state can't meet due to the Covid-19 outbreak.