

**To:** Interested Parties  
**From:** Forbes Tate Partners (FTP)  
**Subject:** Families First Coronavirus Response Act (H.R. 6201)

Congress has approved and the President signed the second phase of a legislative response to the growing COVID-19 pandemic. The law is titled the Families First Coronavirus Response Act (H.R. 6201) and focuses on individuals negatively impacted by the outbreak.

Topline information about this package includes:

- employers with fewer than 500 employees and all public agencies must provide up to 80 hours (full-time employees) or two weeks (part-time employees) of paid sick time for COVID-19-related needs (with certain exceptions);
- employers with fewer than 500 employees must provide up to 10 weeks of paid family and medical leave for an employee to care for a child for COVID-19-related needs (with certain exceptions), paid at 2/3 of regular rates;
- a 100 percent business tax credit for employers to pay for the paid sick and family and medical leave benefits;
- expanded unemployment insurance benefits;
- mandated free COVID-19 testing; and
- additional resources for nutritional assistance to low-income children and adults.

Full information about this legislative package is provided below:

### **Supplemental Appropriations – \$2.471 billion**

Will provide an additional \$2.471 billion in funding spread across programs administered by the Departments of Agriculture, Defense, Health and Human Services, Treasury, and Veterans Affairs:

- Department of Agriculture – \$1 billion:
  - \$500 million for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
  - \$400 million for The Emergency Food Assistance Program (TEFAP), which provides low-income Americans emergency food assistance at no cost;
  - \$100 million for grants for nutrition assistance to the Northern Mariana Islands, Puerto Rico, and American Samoa; and
  - will also permit the Department of Agriculture (USDA) to approve state plans to provide emergency Supplemental Nutrition Assistance Program (SNAP) assistance to households with children who received subsidized meals at schools if their schools are closed for at least five consecutive days during a public health emergency.
- Department of Defense – \$82 million:
  - \$82 million for the Defense Health Program to cover the costs associated with diagnostic testing for coronavirus.
- Department of Health and Human Services – \$1.314 billion:
  - \$1 billion to reimburse providers for the costs associated with providing diagnostic testing for coronavirus to individuals without health insurance;



- \$250 million to the Administration for Community Living (ACL) to provide home-delivered and pre-packaged meals to low-income seniors;
- \$64 million for the Indian Health Services to cover the costs associated with diagnostic testing for coronavirus.
- Department of Veterans Affairs – \$60 million:
  - \$60 million for the Veterans Health Administration to cover the costs associated with diagnostic testing for coronavirus.
- Department of Treasury – \$15 million:
  - \$15 million for operations support for the Internal Revenue Service (IRS) to implement tax credits for paid sick and family and medical leave.

### **Emergency Paid Sick Leave**

Will create a new, one-year paid sick leave benefits program designed specifically to address COVID-19. The program will become effective 15 days after the Act's enactment and expire on December 31, 2020.

Under the plan, private-sector employers with fewer than 500 employees and all public agencies regardless of size will be required to provide employees with emergency paid sick leave. Emergency paid sick leave is available for immediate use by the employee regardless of how long the individual has been employed by the employer.

Emergency paid sick leave applies only to sick time needs related to COVID-19. It is available to employees unable to work or telework due to a need for leave because: (1) the employee is subject to federal, state, or local quarantine or isolation orders related to COVID-19; (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (3) the employee is experiencing COVID-19 symptoms and seeking a medical diagnosis; (4) the employee is caring for an individual who is subject to an order described in bullet #1 or has been advised as described in bullet #2 ("individual" not defined); (5) the employee is caring for a child because the child's school, place of care, or child care provider is closed or unavailable due to COVID-19; or (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from these emergency paid sick leave requirements. Moreover, the Secretary of Labor is authorized to issue regulations to:

- exclude certain health care providers and emergency responders from the definition of eligible employee, including by allowing such employers to opt those individuals out; and
- exempt small businesses with fewer than 50 employees if the paid sick leave requirements would jeopardize the businesses' viability.

Covered employers will be required to provide 80 hours of paid sick time (or the equivalent of 10 eight-hour days) to full-time employees on top of any other existing paid leave programs. Part-time employees are required to receive the number of hours that they work, on average, over a 2-week period. An employer is prohibited from requiring an employee to use other paid leave first.



Covered employers must pay employees their full wages, not to exceed \$511 per day and \$5,110 in the aggregate, for a use described in points #1, 2, or 3 above. For all other uses of paid sick time (points #4, 5, or 6 above) the employer must pay employees two-thirds of their wages, not to exceed \$200 per day and \$2,000 in the aggregate.

Employers will receive a 100 percent refundable payroll tax credit on the wages required to be paid (below).

### **Emergency Family and Medical Leave Benefits**

Will create a new, one-year emergency family and medical leave benefits program designed specifically to address COVID-19. The program will become effective 15 days after the Act's enactment and expire on December 31, 2020.

Under the program, private-sector employers with fewer than 500 employees will be required to provide employees with public health emergency leave under an expansion of the Family and Medical Leave Act (FMLA). An employee must have been employed with their employer for at least 30 calendar days in order to use the emergency leave.

Leave is available only to employees who are unable to work or telework due to a need for leave to care for a son or daughter under 18 years of age if their school, place of care, or child care provider is closed or unavailable due to a public health emergency related to COVID-19 (declared by a federal, state, or local authority). The FMLA's "son or daughter" definition applies, which includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis (in loco parentis refers to one who is acting and intending to act as a parent, with no requirement of a legal or biological relationship).

An employer of an employee who is a health care provider or an emergency responder may elect to exclude that employee from the public health emergency leave. Moreover, the Secretary of Labor is authorized to issue regulations to:

- exclude certain health care providers and emergency responders from eligibility for the public health emergency leave expansion; and
- exempt small businesses with fewer than 50 employees if the above requirements would jeopardize the businesses' viability.

The first 10 days of public health emergency leave may be unpaid; during these 10 days, an employee may elect to substitute any accrued vacation, personal, medical, or sick leave.

Covered employers must provide 10 weeks of paid leave. Leave must be paid at an amount no less than two-thirds of the employee's wages based on the number of hours the employee would otherwise normally be scheduled to work. However, the paid leave may not to exceed \$200 per day and \$10,000 in the aggregate.

Employees are entitled, upon return from leave, to be restored to their job position or to an equivalent position with equivalent employment benefits, pay, and other terms/conditions of employment. However, an employer with fewer than 25 employees does not have to restore an employee who took a public health emergency leave to their position if all of the following apply:



- the position held by the employee when the leave began no longer exists due to economic conditions or other changes to operating conditions that affect employment and were caused by the public health emergency during the period of leave;
- the employer made a reasonable effort to restore the employee to an equivalent position with equivalent benefits, pay, and employment terms/conditions; and
- the reasonable effort to restore the employee fails, the employer makes reasonable efforts for a period of 1-year to contact the individual if an equivalent position becomes available.

Allows employers to receive a 100 percent refundable payroll tax credit for the wages required to be paid (below).

### **Tax Credit for Paid Sick and Paid Family and Medical Leave**

Will provide employers and self-employed individuals a refundable tax credit equal to 100 percent of qualified paid sick leave and family leave wages paid by an employer. For qualified sick leave wages, the amount of wages taken into account is capped at \$511 per day for most employees but only \$200 per day for employees using sick leave to care for a family member or a child whose school or place of care has been closed. For qualified family and medical leave wages, the amount of qualified family leave wages taken into account for each employee is capped at \$200 per day and \$10,000 for all quarters.

### **Coronavirus Testing**

The bill will dramatically expand testing for coronavirus throughout the U.S. by establishing requirements for providing coronavirus diagnostic testing at no cost to consumers, including by reimbursing providers to provide testing to those without insurance and requiring all private health insurers and government programs like Medicare and Medicaid to cover the cost of diagnostic testing.

### **Emergency Unemployment Insurance Stabilization**

Will provide \$1 billion in additional funds for emergency grants to states to offset the cost of processing and paying unemployment insurance benefits. For each state 50 percent of their allotted funds will be available within 60 days while the remaining 50 will be held back unless the state experiences an increase in unemployment of 10 percent or more. Finally, states will be given access to interest-free loans to help pay regular unemployment benefits through the end of the calendar year and states which experience an increase in unemployment of 10 percent or more will receive 100 percent federal funding for Extended Benefits.

### **Nutrition Waivers**

Will expand access to nutritional assistance for children and low-income adults through a variety of means, including by giving states more flexibility to provide nutritional assistance to students, giving child and adult care centers the ability to provide meals outside of the school or center setting, waiving physical presence and administrative requirements under WIC, and providing more flexibility under the SNAP program and suspending the program's work and work training requirements.

### **Temporary Increase of Medicaid FMAP and Medicaid Allotments for Territories**

Will temporarily increase the federal Medicaid FMAP by 6.2 percent for every state and territory through the end of the public health emergency. The territories will also receive an increase in Medicaid allotments through the end of fiscal year 2021.