On March 18, 2020, President Trump signed into law, H.R. 6201, the Families First Coronavirus Response Act. This legislation has also been referred to as “Phase II” of the Coronavirus response. Congress is currently considering “Phase III” of the government’s response to the pandemic. It is important to note that it is expected that legislation could make changes to H.R. 6201 to provide clarity or address issues that may arise. That package is expected to make its way to the President by the end of the month.

Overview

What are the main provisions of H.R. 6201?

This legislation provides increased resources for food and nutrition programs, ensures free coronavirus testing, expands emergency paid leave benefits, requires employers to provide paid sick leave to previously not covered employees and establishes tax credits to help companies pay for these benefits. These leave benefits are designed for employers and employees to take leave necessary to deal with the Coronavirus while minimizing the cost to the employees and employers.

How does H.R. 6201 affect my credit union?

The main impacts that will be felt by credit unions are the expanded paid sick and family leave provisions for employers (with under 500 employees) in order for employees to deal with coronavirus related leave. Employers receive a payroll tax credit to offset the cost of this new leave. The tax credits included in the legislation are designed to help businesses cover this paid leave over the long term and assistance to cover short term costs of the paid leave will be provide by the IRS through returning deposited cash.

When will it apply?

Both the proposed FMLA changes and the proposed paid sick leave would take effect not later than 15 days after enacted (March 18, 2020) and subject to regulations/guidance issued by the Department of Labor. They would only remain in place until the end of 2020.
**Details on Mandatory Employer Paid Sick and Family and Medical Leave**

_What are the specifics for the new FMLA leave?_

It applies to those with under 500 employees. To be eligible for paid leave, employees must have been on the employer’s payroll for 30 days and may use emergency FMLA leave for the following reasons:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
- The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.
- The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter.

The first two weeks of leave may be unpaid; the employee may choose to substitute accrued paid time off or other medical or sick leave during this period, but an employer cannot require an employee to do so. After the first two weeks of unpaid leave, employers must continue paid FMLA leave at a rate of no less than two-thirds of the employee’s usual rate of pay.

As with traditional FMLA leave, this leave is job-protected, and an employer must return the employee to the same or equivalent position upon their return to work. The bill outlines an exception for employers with less than 25 employees if the employee’s job no longer exists due to the coronavirus pandemic, which requires employers to make reasonable efforts to restore the employee to an equivalent position over a one-year period.

The bill grants the Secretary of Labor the authority to issue regulations exempting: (1) certain health care providers and emergency responders from taking leave under the bill; and (2) small business with fewer than 50 employees from the requirements of the bill if it would jeopardize the viability of the business.

Please note that this amendment to the FMLA would expire on December 31, 2020.

_What are the specifics of the emergency paid sick leave?_

For those employers with fewer than 500 employees:
Employees are eligible for up to 10 days of paid sick leave. Compensation for paid sick time for shall be as follows:

- Regular Pay Rate up to a maximum of $511 per day and $5,110 in the aggregate, for employees using the sick leave for the following:
  - The employee is subject to a quarantine or isolation order related to COVID-19.
  - The employee has been advised by a health care provider to self-quarantine due to COVID-19.
  - The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

- Two-Thirds of the Regular Pay Rate up to a maximum of $200 per day and $2,000 in the aggregate, for employees using the sick leave for the following:
  - The employee is caring for an individual who is subject to a quarantine order or has been advised to self-quarantine.
  - The employee is caring for their child as a result of childcare or school closures or if the childcare provider is unavailable due to COVID-19 precautions.
  - The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

- Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA. Employees who have worked for less than six months prior to leave are entitled to the employee’s reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

- Provides the Department of Labor with authority to create regulations that can exempt small businesses with fewer than 50 employees from the specific requirement to allow an employee to use the leave to care for their child as a result of child care or school closures or if the child care provider is unavailable due to COVID-19 precautions. The regulatory exemption would only be available if the imposition of the requirements would jeopardize the viability of the business as a going concern.
• For employers with existing sick leave policies, the paid sick time available under this Act is in addition to such paid leave.

• The paid sick time is available for immediate use regardless of how long the employee has been employed. The employer may not require the employee to use other paid leave provided by the employer before using the leave under this Act.

How is this different for FMLA?

H.R. 6201 requires that ten of these twelve weeks be paid at a rate of no less than two-thirds of the employee’s usual rate of pay. (FMLA leave for all other purposes remains unpaid.)

How do employees find out if they can receive sick leave?

H.R. 6201 requires employers to provide notice of eligibility to employees. The Department of Labor is required to create model notification within 7 days after enactment (by March 25, 2020) of the bill for employers to provide.

What if my credit union is too small to afford to paid sick leave normally?

H.R. 6201 includes a refundable payroll tax credit to reimburse—dollar-for-dollar—local businesses for paid sick leave and family and medical leave wages paid to employees that are affected by COVID-19. Private sector employers with fewer than 500 employees may obtain a credit for wage replacement: Employers receive 100% payroll tax credit (refundable as needed) for required paid sick leave wages plus certain health care expenses of the employer. This applies to both emergency paid sick leave and emergency family and medical leave.

Does this leave rollover?

No, this paid leave does not carry over to the next year.

Details on Tax Credits for Sick and Medical Leave

How does the employer payroll tax credit work?

Employers, including not-for-profits such as credit unions, who provide leave under the Act are to be reimbursed via a payroll tax credit. The employer payroll tax credit is computed using wages paid and claimed against the employer’s share of the Social Security payroll tax in each calendar quarter. The Social Security payroll tax rate is generally 12.4% of wages, with 6.2% paid by employers and 6.2% paid by employees.
The tax applies to workers’ earnings up to an annual limit, $137,700 in 2020. The tax credit is refundable. If an employer’s tax credits exceed its payroll tax liability, the excess can be received as a payment from the Treasury.

Employers that claim this credit are required to include the amount claimed in gross income, for income tax purposes, offsetting the reduction in gross income from deducting wages paid (preventing a double benefit). Additionally, employers cannot claim this credit for any wages taken into account for the purposes of calculating the employer tax credit for paid family and medical leave. Employers may also elect not to have the credit apply. The credit does not apply to state or local governments.

The tax credit is allowed against the tax imposed by section 3111(a) U.S.C (the employer portion of Social Security taxes). The amount of qualified family leave wages taken into account for each employee is capped at $200 per day and $10,000 for all calendar quarters. If the credit exceeds the employer’s total liability under section 3111(a) U.S.C for all employees for any calendar quarter, the excess credit is refundable to the employer. The tax credits can be claimed for a period to begin within 15 days following enactment (March 18, 2020) and when guidance from the Department of Labor is issued, and ending December 31, 2020. Treasury has broad regulatory authority to advance funds to employers to protect businesses concerned about cash flow. In a March 14th press release, Treasury stated that “employers will be able to use cash deposited with the IRS to pay sick leave wages. Additionally, for businesses that would not have sufficient taxes to draw from, Treasury will use its regulatory authority to make advances to small businesses to cover such costs.” A summary of the tax provisions can also be found here.