

CLIENT NEWS BRIEF

Federal Families First Coronavirus Response Act: Temporary Employer-Paid Sick Leave and Employer-Paid FMLA Leave for Childcare

In response to the nationwide economic disruption and uncertainty resulting from the COVID-19 outbreak, Congress passed, and the President signed, the "Families First Coronavirus Response Act" (H.R. 6201), which became law on March 18, 2020. While H.R. 6201 provides federal assistance in a range of areas, this Client News Brief focuses on relief provided by H.R. 6201 in the form of employer-paid sick leave for individuals and families unable to work due to the virus or its effects.

Background

California public agency employees are granted a certain amount of annual sick leave by statute. Modified or additional paid leave may be available pursuant to collective bargaining agreements and/or agency policy. Up to half of an employee's sick leave may also be used to care for a sick family member.

Emergency Paid Sick Leave Act

Under the unique circumstances resulting from the COVID-19 outbreak, H.R. 6201 established the Emergency Paid Sick Leave Act (EPSLA), which requires all public agency employers, regardless of size, and private employers with fewer than 500 employees, to provide temporary paid sick leave to eligible employees. Until December 31, 2020, full-time employees in the following subgroups will receive 80 hours (approximately two work-weeks) of employer-paid sick leave not to exceed \$511 per day and \$5,110 in the aggregate for any of the following reasons:

1. Employees subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. Employees advised by a health care provider to self-quarantine due to COVID-19 related concerns; or
3. Employees experiencing COVID-19 symptoms and seeking a medical diagnosis.

Employees taking leave for the following reasons will receive 80 hours (approximately two workweeks) of employer-paid sick leave at 2/3 their regular pay amount not to exceed \$200 per day and \$2,000 in the aggregate:

4. Employees caring for an individual who meets the specifications in (1) or (2) above;
5. Employees caring for a son or daughter due to school or childcare closure based on COVID-19 precautions; or
6. Employees experiencing any other similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

March 2020
Number 17



Gabriela D. Flowers
Partner
Sacramento Office
gflowers@lozanosmith.com



Jenell Van Bindsbergen
Partner
Fresno Office
jvanbindsbergen@lozanosmith.com



Kate S. Holding
Associate
Sacramento Office
kholding@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

March 2020
Number 17

“Son or daughter” includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*, who is under 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability. Part-time employees in all categories get the number of hours of paid leave equal to their average work hours over a two workweek period. This sick leave is available to any employee, excluding employees who are healthcare providers and emergency responders. There is no requirement that an employee have worked for the employer for any particular length of time. Employers must also post a notice of these requirements in conspicuous place.

The EPSLA creates a completely new bank of sick leave that an employee can elect to use immediately. An employer cannot force an employee to use other existing leave before using this new sick leave.

FMLA Expansion

H.R. 6201 also allows employees to receive employer-paid leave under the Family and Medical Leave Act (FMLA), under limited circumstances. Qualifying employers are private entities with fewer than 500 employees, and all public agencies already required to comply with the FMLA. While employers with under 50 employees are typically excluded from the FMLA, this exclusion is retracted for purposes of the temporary FMLA expansion. In addition, an employer is not required to provide such leave to employees who are healthcare providers or emergency responders. Until December 31, 2020, employees unable to work (or telework) because of their son or daughter’s school closure or unavailability of the child care provider due to COVID-19, are eligible to take up to 12 weeks of FMLA leave, paid as follows:

- The first 10 days of the expanded FMLA leave are unpaid, but may run concurrently with alternative employer-paid leaves including paid leave under the EPSLA, should the employee choose to use paid leave.
- For the remaining 10 weeks, the employee is eligible to receive two-thirds of their average monthly earnings, not to exceed \$200 per day and \$10,000 in the aggregate.

“Son or daughter” has the same meaning as stated above, except it is limited to children under 18 years of age. Employees have access to this leave after having been employed for 30 days, with no minimum hours employed with the employer, rather than the typical 12 months and 1,250 hours employed over 12 months under the FMLA.

Tax Credit for Employer-Paid Social Security Taxes Not Available to Public Agencies

While the Act provides a tax credit for employer-paid social security taxes as an effort to reduce the financial burden from these new paid leave entitlements, this tax credit is only available for private employers and not for public employers. The Act does not seem to include reimbursement provisions for public entities that must provide the new paid leave. Additional guidance from the federal government on the topic of reimbursements may follow.

Takeaways

H.R. 6201’s paid leave provisions are effective April 1, 2020. Until then, employees are able to use existing qualifying leave time if they are forced to miss work due to COVID-19. Leave granted pursuant to H.R. 6201 is in addition to any paid or unpaid leave employers already provide.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

March 2020
Number 17

If you have any questions about H.R. 6201, FMLA or labor and employment issues related to COVID-19 in general, please contact the author of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.