

**ATTORNEY WORK PRODUCT  
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TO : Mark Ortega  
FROM : The Lambos Firm, LLP  
RE : H.R. 6201 and its Correction Bill—Families First Corona Virus Response Act  
DATE : March 24, 2020

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In the late hours of March 13, 2020, the U.S. House of Representatives passed H.R. 6201, the Families First Corona Virus Response Act. The bill passed the House with bi-partisan support and now with technical corrections that were passed on March 16, 2020. The Senate passed the bill on March 18, 2020 and it was signed by the President. The sections of the bill relevant to this memorandum will become effective 15 days after enactment. The law will sunset on December 31, 2020.

The purpose of this memorandum is to explain certain provisions of the bill as they pertain to expanded family and medical leave and paid sick leave. Among other things, the bill has provisions for emergency funding for nutritional and other social service program funding, veteran's health service funding, and COVID-19 testing. The sections of the bill that we are focusing on are the Emergency Family and Medical Leave Expansion Act (FML Expansion Act) and the new Emergency Paid Sick Leave Act (Paid Sick Leave Act). **The FML Expansion Act and Paid Sick Leave Act only apply to employers with fewer than 500 employees.**

**Summary  
Paid Sick Leave Act and the FML Expansion Act**

**Paid Sick Leave Act**

The Paid Sick Leave Act provides any employee of a covered employer regardless of how long they have been employed the immediate entitlement to:

- 10 days of pay (80 hours) for full-time employees in the event that the employee is:
  - (1) Subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
  - (2) Advised by a health care provider to self-quarantine due to concerns related to COVID-19;
  - (3) Experiencing symptoms of COVID-19 and seeking medical diagnosis;
  - (4) Caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

- (5) Caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID-19; or
- (6) Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
- An amount that equals the number of hours a part-time employee works over a two-week period.
- Payments made shall be calculated based on the employee's regular rate of pay.
  - Payments made under the Act are capped at \$511 per day and \$5,110 in the aggregate if the leave is for reasons (1), (2), or (3) noted above. If the leave is for the reasons stated in (4), (5), or (6) noted above, the payment is capped at \$200 per day or \$2,000 in the aggregate.
  - In the event the leave is used for the reasons stated in (4), (5), or (6) noted above, then the required compensation shall be based on 2/3 of the employee's regular rate of pay but still capped at \$200 per day.

This paid leave is in addition to any paid leave the employer already provides. An employer is prohibited from modifying its paid sick leave policies after the enactment of the Paid Sick Leave Act to avoid paying the wages guaranteed by the Act. Moreover, an employer may not require an employee to use other paid leave provided before the employee uses paid sick time provided under the Paid Sick Leave Act. An employee cannot simultaneously receive a wage replacement under the Act from his or her employer and benefits under another employer-provided benefit program or State or local benefit program.

The Paid Sick Leave Act is not preempted by other Federal, State, or local law, collective bargaining agreements, or employer policies. This means that if the employee is entitled to more generous benefits under Federal, State, or local law, collective bargaining agreements, or employer policies, the Paid Sick Leave Act does not abrogate those rights.

Employers will be required to post notices of the provisions of the Paid Sick Leave Act in conspicuous places on their premises. A model notice issued by the Department of Labor should be publicly available within 7 days of enactment.

### **FML Expansion Act**

The FML Expansion Act extends the protections provided by the Family and Medical Leave Act (FMLA). It requires employers to provide 12 weeks of job-protected leave and certain wages to employees who have been employed for a period of 30 days. Leave for these employees is provided if :

- The employee is unable to work (or telework) due to the need for leave to care for his or her son or daughter under 18 years of age if the son or daughter's school or place of care has been closed, or the child care provider of the son or daughter is unavailable due to a public health emergency. A public health emergency means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

Leave under the FML Expansion Act is unpaid during the first 10 workdays of leave. During that period, the employee would be entitled to pay under the Paid Sick Leave Act or be able to utilize other paid leave provided by his or her employer. An employer may not require an employee to substitute other available leave for expanded family and medical leave. However, an employee may not receive wages under the FML Expansion Act and payments from other benefit programs simultaneously.

### **Calculation of Leave—Cap on Wage Replacement**

After the initial two weeks of leave, employers are required to pay wages in an amount that is not less than 2/3 of the employee's regular rate of pay based on the number of hours the employee would regularly work. In circumstances like the situation presented by our longshore workforce, where an employee has a varying schedule, the employer is under the obligation to determine an average daily number of hours for the employee. This is determined by averaging the employee's daily work hours over a six-month period. After the employee's period of leave, the employee should be restored to his or her position.

There is a monetary cap on the wages that are to be paid. Even at the reduced rate of 2/3 of an employee's regular rate of pay, many in the longshore workforce earn amounts in excess of the cap in the bill. Wage payments required by the FML Expansion Act are capped at \$200 per day and \$10,000 in the aggregate.

### **Intermittent Leave and Employee Notice**

Employees are required to provide their employers with notice of leave that is foreseeable as is practicable. Moreover, it is likely because the employee will be taking leave related to child care issues, the employee will be taking leave intermittently, which is not prohibited.

### **Hardship Exemption**

Employers with fewer than 50 employees may be exempt from the requirements of the FML Expansion Act when the imposition of the requirements would jeopardize the viability of the business as an on-going concern.