

MEMORANDUM

To: CLPHA
From: Reno & Cavanaugh, PLLC
Date: March 25, 2020
Re: Families First Coronavirus Response Act – H.R. 6201

The Families First Coronavirus Response Act (the “Families First Act”), H.R. 6201, was signed into law on March 18, 2020. Below is a summary of the Families First Act, with a focus on the sections related to family, medical, and emergency leave. Note that Congress, the Centers for Disease Control and Prevention (the “CDC”), and HUD continue to develop guidance, directives, and laws in response to the COVID-19 pandemic generally, and with regard to operational policies specifically. Note also that Reno & Cavanaugh, PLLC is not an employment law firm. This memorandum is therefore limited to a review of the Families First Act and does not address any questions regarding specific employee circumstances or review of entity-specific leave policies.

General Overview

The Families First Act provides emergency supplemental appropriations in response to the COVID-19 pandemic. The Families First Act has eight divisions:

- Division A – Second Coronavirus Preparedness and Response Supplemental Appropriations Act 2020

Provides the following:

- Department of Agriculture Appropriations
 - \$500 Million for the Special Supplemental Nutrition Program for Women, Infants, and Children, \$400 Million to the Commodity Assistance Program, and \$100 Million for nutrition assistance to the Commonwealth of the Northern Mariana Islands, Puerto Rico, and American Samoa through September 30, 2021;
 - that certain households will be eligible for emergency assistance if a child’s school is closed for 5 or more consecutive days;
- Department of Defense Appropriations – \$82 Million for SARS-CoV-2 and COVID-19 related health services through September 30, 2022;
- IRS Appropriations – \$15 Million for taxpayer services through September 30, 2022;
- Department of Health and Human Services Appropriations
 - \$64 Million Indian Health Services for SARS-CoV-2 and COVID-19 related health services through September 30, 2022;
 - \$250 Million for Aging and Disability Services Programs through September 30, 2021;

- \$1 Billion to the Public Health and Social Services Emergency Fund to pay claims of providers for reimbursement for SARS-CoV-2 and COVID-19 related health services, to remain available until expended;
- Department of Veterans Affairs Appropriations –\$30 Million each for Medical Services and Medical Community Care for SARS-CoV-2 and COVID-19 related health services through September 30, 2022;

- Division B – Nutrition Waivers

Provides for certain waivers to expand who qualifies for certain nutrition benefits, including free lunch programs for children and through the Supplemental Nutrition Assistance Program.

- Division C – Emergency Family and Medical Leave Expansion Act (EFMLEA) (see below)

- Division D – Emergency Unemployment Insurance Stabilization and Access Act of 2020

Provides for up to \$1 Billion in state grants for unemployment insurance provided a state has taken steps to (or will) ease eligibility requirements and access to unemployment compensation by waiving work search requirements and the waiting week, and not charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers. The Emergency Unemployment Act also provides full federal funding for extended unemployment compensation until December 31, 2020.

- Division E – Emergency Paid Sick Leave Act (EPSLA) (see below)

- Division F – Health Provisions

Provides that testing for COVID-19 and medical visits related to COVID-19 testing will be free, e.g. covered by either insurance or government programs without deductibles or copays.

- Division G – Tax Credits for Paid Sick and Paid Family and Medical Leave

Provides for certain tax credits to employers for leave paid pursuant to the Families First Act.

- a. Employers will be able to claim a refundable tax credit equal to 100% of the EFLMEA and EPLSA wages paid, along with certain qualified health plan expenses that are allocable to the wages paid, subject to the same caps that are imposed by the EFLMEA and EPLSA.
- b. Self-employed individuals may receive refundable tax credits equal to 100% of

the qualified family leave equivalent for EFMLEA and EPLSA.

c. Please be sure to obtain situation-specific advice from your tax advisor.

- Division H – Budgetary Effects

Division C – Emergency Family and Medical Leave Expansion Act

The Emergency Family and Medical Leave Expansion Act (the “Leave Expansion Act”) goes into effect on April 2, 2020, and is effective through December 31, 2020.

The Leave Expansion Act provides that where an employee is

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

such employee receives unpaid leave for the first 10 days of such leave, although the employee may elect to substitute accrued vacation leave, personal leave, or medical or sick leave for such unpaid leave. Thereafter, the employer is required to provide paid leave for each day after the initial 10 days, where paid leave “is not less than two-thirds of an employee’s regular rate of pay” calculated generally by the number of hours the employee would have worked normally, but “in no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate.”

The Leave Expansion Act applies to “an employee who has been employed for at least 30 calendar days by the employer” and applies to employers with “50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.” The Leave Expansion Act does provide that the Secretary of Labor may issue regulations that exclude health care providers and emergency responders and exempt employers with less than 50 employees from the requirements of the Leave Expansion Act. The Leave Expansion Act further provides that an employer of a health care provider or emergency responder “may elect to exclude such employee” from the requirements under the Leave Expansion Act.

Division E – Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act (the “Sick Leave Act”) goes into effect on April 2, 2020, and is effective through December 31, 2020.

Under the Sick Leave Act, an employer shall provide to each employee employed by the employer paid sick time (80 hours for full-time employees and for part-time employees, the number of hours equal to the number of hours such employee works on average over a 2 week period) to the extent that the employee is unable to work (or telework) due to a need for leave

because:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order 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 symptoms of COVID-19 and seeking a medical diagnosis.*
- (4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).*
- (5) The employee is caring for a son or daughter of such employee 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 precautions.*
- (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.¹*

Provided that such paid sick time shall not exceed (a) \$511 per day and \$5,110 in the aggregate for a use described in paragraph (1), (2), or (3); and (b) \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6).

Provided further that compensation shall not be less than the greater of (a) the employee's regular rate of pay, (b) the minimum wage rate in effect under section 6(a)(1) of the Fair Labor Standards Act, or (c) the minimum wage rate in effect for such employee in the applicable State or locality, whichever is greater, in which the employee is employed; provided further that paid sick time for use described in paragraphs (4), (5), or (6) above shall be 2/3 the amount described in this paragraph.

Employers covered under the Sick Leave Act include employers engaged in commerce or in any industry or activity affecting commerce that (1) are private entities and have fewer than 500 employees, or (2) are public agencies that employs 1 or more employees, which includes a political subdivision of a State and any agency of a political subdivision of a state.²

The Sick Leave Act provides that an employer of a health care provider or an emergency responder may exclude such employee from the requirements of the Sick Leave Act. The Sick Leave Act further provides that the Secretary of Labor may issue regulations to exclude health care providers and emergency responders and exempt employers with less than 50 employees from the requirements of the Sick Leave Act.

¹ Note that the Sick Leave Act prohibits "any employer to discharge, discipline, or in any other manner discriminate against any employee who" (1) takes leave in accordance with the Sick Leave Act and (2) filed any complaint or institute any proceeding under the Sick Leave Act. (See § 5104.)

² Note that subsection 5110(2)(B)(ii) provides that:

For purposes of clause (i)(IV) [sic], a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

No later than March 25, 2020, the Secretary of Labor is required to make publicly available a model notice of the requirements under the Sick Leave Act to be posted by each employer “in conspicuous places on the premises of the employer where notices to employees are customarily posted.”