



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

March 20, 2020

TO: Members
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Families First Coronavirus Response Act: Summary of Modifications to H.R. 6201

On March 18, 2020, the President signed into law H.R. 6201, designated as the Families First Coronavirus Response Act. This office distributed a memorandum on March 17, 2020, providing a summary and preliminary fiscal analysis of the key provisions of H.R. 6201, as passed by the House. Prior to consideration by the U.S. Senate, the House of Representatives passed a resolution authorizing the Clerk of the House to make "technical and conforming corrections" to the bill, changes that were not incorporated in the Fiscal Bureau memorandum of March 17. This memorandum provides a description of the key changes made by the House Clerk's correction. These changes were included in the legislation signed into law on March 18.

Emergency Family and Medical Leave Expansion Act

As passed by the House, H.R. 6201 would have amended the Family and Medical Leave Act (FMLA) of 1993 to permit eligible employees to take leave for the following qualifying needs: (a) to comply with a recommendation or order by a public official having jurisdiction or a health care provider on the basis that the physical presence of the employee on the job would jeopardize the health of others because of the exposure of the employee to coronavirus or exhibition of symptoms of coronavirus by the employee and the employee is unable to both perform the functions of the position and comply with such recommendation or order; (b) to care for a family member with respect to whom a public official having jurisdiction or a health care provider makes a determination that the presence of the family member in the community would jeopardize the health of other individuals in the community because of exposure of the family member to coronavirus or exhibition of symptoms of coronavirus by the family member; or (c) to care for the son or daughter (under 18 years of age) of the employee if the school or place of care has been closed, or the child care provider of the child is unavailable due to the public health emergency.

The House Clerk's correction instead permits eligible employees to take FMLA leave related to the COVID-19 public health emergency only if the employee is unable to work or telework due to a need to care for the employee's son or daughter under 18 years of age if the school or place of

care has been closed, or the child care provider is unavailable, due to the public health emergency.

As passed by the House, H.R. 6201 specified that, in general, the first 14 days of FMLA leave related to the public health emergency would be unpaid, and that an employer must provide paid leave for qualifying periods of leave related to the public health emergency that exceed 14 days in an amount that is not less than two-thirds of the employee's regular rate of pay and that is based on the number of hours the employee would otherwise be normally scheduled to work. In addition, the bill specified that an employer may not require that an employee substitute paid leave for unpaid leave taken for the public health emergency.

The House Clerk's correction generally provides up to 10 days of unpaid FMLA leave related to the COVID-19 public health emergency, and requires an employer to provide paid leave for qualifying periods of leave related to the public health emergency that exceed 10 days in an amount that is not less than two-thirds of the employee's regular rate of pay and that is based on the number of hours the employee would otherwise be normally scheduled to work. The Clerk's correction also eliminates the prohibition on requiring an employee to substitute paid leave for unpaid leave taken for the public health emergency.

The House Clerk's correction additionally specifies that: (a) paid FMLA leave related to the public health emergency may not exceed \$200 per day and \$10,000 in total; and (b) an employer of a health care provider or an emergency responder may elect to exclude such an employee from the application of the FMLA leave provisions related to the public health emergency.

Emergency Paid Sick Leave Act

As passed by the House, H.R. 6201 would have allowed employees paid sick leave for any of the following uses: (a) to self-isolate, if the employee is diagnosed with coronavirus; (b) to obtain medical diagnosis or care for coronavirus symptoms; (c) to comply with a recommendation or order by a public official or health care provider if the employee's physical presence on the job would jeopardize the health of others because of coronavirus or coronavirus symptoms; (d) to care for or assist the employee's family member who is diagnosed with or experiencing symptoms of coronavirus or whose physical presence on the job would jeopardize the health of others because of coronavirus or coronavirus symptoms; or (e) to care for the employee's child, if the school or place of care has been closed or the child care provider is unavailable due to coronavirus.

The House Clerk's correction specifies that employees are entitled to paid sick leave to the extent that the employee is unable to work or telework because the employee: (a) is subject to a federal, state, or local quarantine or isolation order related to COVID-19; (b) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (c) is experiencing COVID-19 symptoms and seeking medical diagnosis; (d) is caring for an individual who meets the criteria of (a) or (b); (e) is caring for his or her son or daughter, if the school or place of care of the son or daughter has been closed, or the son or daughter's child care provider is unavailable due to COVID-19 precautions; and (f) is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor. An employer of an employee who is a health care provider or emergency

responder may elect to exclude such employee from the application of the paid sick time requirements.

As passed by the House, H.R. 6201 would have specified that if an employer's policy already provides paid sick leave (on the day before the date of enactment of the bill), paid sick time under the bill would have been available to employees in addition to existing paid sick leave policies. Employers could not have changed their existing paid sick leave policies on or after the bill's enactment or required employees to search for or find a replacement employee while the employee is using paid sick time.

The House Clerk's correction removes the language of the "employees with existing policies." However, the bill retains the provision that an employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under the bill.

As passed by the House, H.R. 6201 would have defined 12 terms in Division E - Paid Sick Leave Act. The House Clerk made a technical correction, removing the following definitions from this section: "child," "coronavirus," "domestic partner" (including the term "committed relationship"), "family member," "parent," and "public health emergency."

In addition, as passed by the House, H.R. 6201 defined "paid sick time" as an increment of compensated leave that is provided by an employer for use during an absence from employment for a reason described in the bill and is calculated based on the employee's required compensation and the number of hours the employee would otherwise be normally scheduled to work. An employee's required compensation is generally not less than the greater of the following: (a) the employee's regular rate of pay; (b) the minimum wage rate in effect; or (c) the minimum wage rate in effect for the employee in the applicable state or locality. An employee's required compensation when caring for family members would be two-thirds of the employee's required compensation. In the case of part-time employees with varying schedules (where an employer is unable to determine with certainty the number of hours an employee would have worked if such employee had not taken paid sick time), the employer would be required to use the following in place of such a number: (a) a number equal to the average number of hours that the employee was scheduled per day over the six-month period ending on the date on which the employee takes the paid sick time, including hours for which the employee took leave of any type; or (b) if the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

The House Clerk modified the definition for "paid sick time" to include a limitation on compensation to \$511 per day and \$5,110 in the aggregate if the paid sick time is due to the employee being subject to a federal, state, or local quarantine or isolation order, a self-quarantine advised by a health care provider, or if the employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis. The modification also limits compensation to \$200 per day and \$2,000 in the aggregate if the paid sick time is due to the employee caring for a quarantined or isolated individual (by federal, state, or local order, or by health care provider advisement), caring for a son or daughter if the school or place of care has been closed or child care provider is unavailable due to COVID-19

precautions, or if 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.

The House Clerk's correction adds a provision for regulatory authorities. Under the provision, the Secretary of Labor has the authority to issue regulations for good cause: (a) to exclude certain health care providers and emergency responders from the definition of employee under the bill, including by allowing the employer of such health care providers and emergency responders to opt out; (b) to exempt small businesses with fewer than 50 employees from the requirements of the bill when the imposition of such requirements would jeopardize the viability of the business as a going concern; and (c) as necessary, to carry out the purposes of the bill, including to ensure consistency between emergency paid sick leave, FMLA leave, and associated tax credits for paid sick leave and paid FMLA leave.

Refundable Federal Tax Credits for Qualified Emergency Leave

As passed by the House, H.R. 6201 created a refundable payroll tax credit to certain private sector and nonprofit employers equal to 100% of the "qualified sick leave wages" paid by the employer in a calendar quarter. H.R. 6201 also created a refundable payroll tax credit to certain private sector and nonprofit employers equal to 100% of the "qualified family leave wages".

The House Clerk's correction would increase the credit amount for both refundable payroll tax credits by the amount of the employer's qualified health plan expenses (amounts incurred by the employer to provide and maintain a group health plan under federal law) which are allocable to such qualified sick leave wages and qualified family leave wages. The House Clerk's correction would increase the amount of sick and family leave credits that may be claimed by the amount of hospital insurance tax imposed on the qualified sick and family leave wages associated with each credit.

As passed by the House, H.R. 6201 created a refundable self-employment tax credit for self-employed individuals equal to 100% of the "qualified family leave equivalent amount" of the individual. This amount is determined by multiplying the number of days (not to exceed 50) during the taxable year that an individual is unable to perform services in the trade or business (for reasons which would otherwise qualify the individual for paid leave under the family and medical leave credit) by the lesser of \$200 or the average daily self-employment income of the individual.

The House Clerk's correction would specify that only 67% of the individual's average daily self-employment income can be used in calculating the maximum daily credit amount.

As passed by the House, the refundable self-employment tax credits for self-employed individuals created under H.R. 6201 for the sick leave equivalent credit and the family leave equivalent credit included daily limits for the amount of self-employment income an individual may use as a basis for the credit, but did not specify an aggregate limit for the credit.

The House Clerk's correction would specify that the sick leave equivalent credit for self-employed individuals be reduced by the amount by which the sum of such required wages and the

individual's qualified sick leave equivalent amount exceeds \$2,000 (or \$5,110 if the higher limit would have applied under the sick leave credit). Similarly, the House Clerk's correction would stipulate that the family leave equivalent credit for self-employed individuals be reduced by the amount by which the sum of such required wages and the individual's qualified family leave equivalent amount exceeds \$10,000.

As passed by the House, H.R. 6201 requires the Secretary of the Treasury to prescribe any necessary regulations and guidance to fulfill the provisions of each payroll tax credit and self-employment tax credit. H.R. 6201 transfers moneys from the general fund to the Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund in the amount of money which would have been transferred to each trust fund under prior law, but that will not be transferred as a result of the credits provided under H.R. 6201.

The House Clerk's correction would provide that the Social Security Equivalent Benefit Account established under the Railroad Retirement Act would also receive transfers in the manner just described.

Health Provisions

As passed by the House, H.R. 6201 increased the federal medical assistance percentage (FMAP) by 6.2 percentage points during any calendar quarter during which the public health emergency for COVID-19 (coronavirus disease of 2019) is in effect. The FMAP is used to determine the share of total benefit costs incurred by state Medicaid programs that is paid with federal Medicaid funds. In order to qualify for the FMAP increase, the original bill required states to meet certain conditions related to Medicaid eligibility policies during the public health emergency. Among these, the bill would specify that the state could not terminate or deny the enrollment of any individual for a reason other than a failure to satisfy financial, categorical, or state residency requirements, for the duration of the federal public health emergency. In addition, the state could not conduct periodic income checks, including automated income checks (for the purpose of determining income eligibility), more frequently than once every 12 months.

With respect to these provisions, the House Clerk's correction specifies, instead, that states must ensure that any person who was enrolled as of the date of enactment of the bill or who enrolls during the public health emergency shall be considered as eligible for benefits through the end of the month in which the public health emergency period ends, unless the person requests a voluntary termination of eligibility or the person ceases to be a resident of the state.

BL/bh