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House Democrats Introduce the Families First Coronavirus Response Act

On March 12, 2020, House Democrats introduced the Families First Coronavirus Response Act (H.R. 6201) to bolster the federal government's response to the Coronavirus outbreak and address the severe impacts of the Coronavirus on Americans' personal safety and financial security. The Families First Coronavirus Response Act is expected to be considered in the House on Thursday or Friday but its passage in the Senate will likely face opposition. This Alert provides a summary of the key provisions of the Act that impact employers and employers as group health plan sponsors. The full text the Act is [here](#) and a House summary of H.R. 6201 is available [here](#).

The Families First Coronavirus Response Act has four sections that will be broadly relevant to employers and employers as group health plan sponsors: (1) an emergency paid sick leave benefit to be paid through Social Security, (2) an amendment to the Family and Medical Leave Act, (3) a provision requiring employers to provide paid sick days for public health emergencies and personal and family care, and (4) provisions for providing Coronavirus testing without cost.

(1) Emergency Paid Leave Benefits. This section provides an emergency paid sick leave benefit to be paid through Social Security for individuals impacted by Coronavirus. Specifically, it covers individuals who are quarantined, have a current diagnosis, are acting as a caregiver for someone with a diagnosis, or where there is a school or care facility closure as a result of Coronavirus. The benefit is not available or it is reduced (unclear) if the individual is otherwise being paid through an employer or a state plan. The benefit is available for any month in which an employee must take 14 days or more off and for a period of up to three months. The amount payable is 2/3 of the individual's average monthly earnings with a cap of \$4,000. This is available retroactively for periods beginning January 19, 2020 and ends one year after enactment.

(2) Amendment to the Family and Medical Leave Act. This section includes an amendment to the Family and Medical Leave Act with a two year duration beginning on the date of enactment. It provides for public health emergency leave for individuals employed for at least 30 days by an employer with one or more employee. Notably, the definitions section expands the eligible family members an employee may take leave to care for to include caring for domestic partners, a parent of a domestic partner, a sibling, grandparent, or next of kin. Leave is available when a public health emergency has been declared where the employee works, where they commute, or if their physical presence could jeopardize the health of others due to Coronavirus symptoms or where the employee may face exposure. Leave is also available to care for a "family member" with such exposure or symptoms. It also covers caring for a child where their care facility or school has been closed. This leave **may not** be taken intermittently or on a reduced work schedule. An employee may elect to substitute any accrued paid leave but cannot be required to do so. Certification must also be provided within three weeks of the date the employee takes leave. Reinstatement is generally required except for employers with fewer than 25 employees where the position no longer exists.

(3) Paid Sick Days for Public Health Emergencies and Personal and Family Care. This section requires paid sick days to be provided by employers that can be used for an employee's own illness, where the employee's

physical presence could jeopardize the health of others due to exposure to communicable diseases, to care for family members (child, spouse, parent or parent-in-law, domestic partner, parent of a domestic partner, or anyone related by blood or affinity) or to address domestic violence or stalking. It can also be used for school or certain mandated worksite closures, or to attend certain school meetings. Covered employers are defined as having one or more employee. Employers must provide one hour of paid sick time for every 30 hours worked with a limit of 56 hours per accrued per year. Employees begin earning this time on commencement of employment and can use it beginning on the 60th calendar day after hire. However, in the event of a public health emergency employees may immediately use accrued sick time regardless of how long they have been employed. Paid sick time will carryover from year to year subject to the 56 hour cap. The amount payable is the greater of the employee's regular rate of pay or the applicable state or federal minimum-wage. Paid sick leave must be reinstated for employees who separate but are hired within a 12 month period. There is also a provision for additional paid sick time for public health emergencies. This provision requires that on the date a public health emergency is declared employers will provide additional paid sick time in the amount of 14 days for a full-time employee or for a part-time employee the number of hours they would have been regularly scheduled to work over a 14 day period. Employers with fewer than 50 employees will be reimbursed for this additional 14 days of paid sick time by submitting an affidavit to the Secretary of Labor with reimbursement to come from the Treasury Department. Certification for use of non-emergency sick time is required within 30 days after the first day of use. The employer shall not delay the commencement of the period of time on the basis that the employer has not yet received the certification. Any records related to the use of this paid sick time should be maintained in a separate folder and treated as confidential. Employers are also required to include notice of this new paid sick time in any employee handbook and a posting is also required.

(4) **Coronavirus Testing Without Cost.** This section includes several provisions for Coronavirus testing without cost. The first section states that any group health plan or health insurance issue or offering individual health insurance, including grandfathered health plans, must provide coverage without cost sharing during any portion of this emergency for Coronavirus testing, any diagnostic products for the detection of the Coronavirus, and any healthcare provider office visits, urgent care visits, or emergency room visits that result in an order for Coronavirus testing. Subsequent sections address testing without cost sharing for Medicare, Medicaid, CHIP, TRICARE, and a state option to provide coverage for uninsured individuals to be reimbursed through the National Disaster Medical Systems portion of the Public Health Services Act. American Indians and Alaskan Natives will not experience cost sharing for testing, including those referred for care away from an Indian Health Service or tribal health care facility.

We will continue to monitor this very fluid situation and provide the latest information on the Coronavirus pandemic, including emerging legal challenges and practical recommendations.

Compliance Alert is presented by the Compliance Practice Group of Alliant Employee Benefits

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