

House Significantly Changes Paid Leave Legislation Through “Technical Corrections”

After passing the Families First Coronavirus Response Act early Saturday morning, the House of Representatives sent the bill to the House Clerk for “technical corrections.” The stated purpose was to permit the clerk to “correct section numbers, punctuation, and cross references, and to make other necessary technical and conforming corrections.”

Last night, the House approved the corrected version, which includes significant, substantive amendments from the version on which we reported earlier this week, as follows:

Amendments to the Family and Medical Leave Act

- Conditions FMLA leave on the employee’s inability to telework. In other words, if the employee can work from home, he or she would not be entitled to take FMLA leave.
- Would only permit FMLA leave to care for a child whose school or child care provider is closed because of a public health emergency. FMLA leave would not be permitted for quarantine requirements/recommendations for the employee or a family member.
 - Note that an employee who is experiencing symptoms of, or infected with, COVID-19 may nevertheless be entitled to FMLA leave under current law.
- Provides that the first 10 days of the FMLA leave may be unpaid. This was 14 days in the original version. Employees retain the ability to substitute paid leave during this unpaid portion of FMLA.
- Continues to require that the rest of FMLA leave (up to 12 workweeks) be paid at 2/3 of the employee’s normal compensation. But sets a \$200 per day/\$10,000 aggregate cap on the amount of paid leave that employers must provide.
- Expressly permits employers to exclude health care providers and emergency responders from being able to take FMLA leave.

Emergency Paid Sick Leave Act

- Requires 80 hours of paid leave for full-time employees (same as before), but likewise conditions that leave on the employee’s inability to telework.
- Caps the dollar value of sick leave employers are required to provide, as follows:
 - \$511 per day/\$5,110 aggregate for sick leave taken because the employee is subject to a quarantine/isolation order or is experiencing symptoms and is seeking a diagnosis.
 - \$200 per day/\$2,000 aggregate for sick leave taken to care for someone else who is subject to a quarantine/isolation order or to care for a child whose school/care provider is closed.

The revised legislation continues to apply only to employers with fewer than 500 employees, which has been a point of significant interest and debate.

To be clear, this legislation has not yet been passed by the Senate or signed into law by the President. We continue to monitor this legislation as it makes its way through Congress, and expect the Senate to consider it this week, and perhaps as early as today. We will continue to keep you updated on this legislation and other legal impacts of the COVID-19 pandemic.

Please contact [Justin Furrow](#), [Jim Catanzaro](#), or your relationship attorney if you have questions or need additional information.

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