



COVID-19 Legislation

Questco is keeping our commitment to update you on all legislation and information surrounding COVID-19. This message is to inform you of what we now know on the **H.R. 6201 bill** that was passed Wednesday, March 18th. This bill includes paid leave guarantees for certain workers and employer tax credits, among other measures.

Emergency Family and Medical Leave Expansion Act

Under the bill, eligible employees may take leave if the employee is unable to work or telework because they must care for a child (under the age of 18) whose school or care provider is closed or unavailable due to a coronavirus emergency. A “public health emergency” is defined as an “emergency with respect to COVID-19 declared by a Federal, State or local authority.”

- Requires employers with fewer than 500 employees to provide up to twelve (12) weeks of job-protected leave, ten (10) weeks of which would be paid. The first 10 days for which an employee takes leave could be unpaid leave, or the employee could choose to substitute any accrued vacation, personal or sick leave (including in certain instances the emergency paid “sick” leave described below).
- After the initial 10 days, the employer would be required to provide paid leave based on an amount not less than two-thirds of an employee’s regular rate of pay up to \$200 per day or \$10,000 in the aggregate.
- For hourly employees with varying schedules, the employee’s paid leave rate should equal the average number of hours that the employee was scheduled per day over the six-month period prior to the leave.
- The leave applies to employees who have been employed for at least 30 calendar days.
- The Secretary of Labor has the regulatory authority to exempt employers with few than 50 employees if the provision of FMLA leave “would jeopardize the viability of the business as a concern.”
- Employers with 25 or more employees would be required to reinstate employees after their FMLA leave period ends.
- Employers with fewer than 25 employees do not have to reinstate an employee if they are experiencing significant economic hardship.

This EFMLA provision will be effective no later than 15 days after the date of enactment (April 2, 2020) through December 31, 2020.

Emergency Paid Sick Leave

The Emergency Paid Sick Leave Act requires certain employers to provide employees with two weeks (80 hours) of paid sick time if the employee is unable to work (or telework) for the following coronavirus-related reasons:

- The employee is subject to a Federal, State or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis;
- The employee is caring for an individual who is subject to a quarantine or isolation order or advised to self-quarantine by a health care provider;
- The employee is caring for a child whose school or care provider is closed or unavailable due to COVID-19 protections;
- The employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services (HHS).

Private sector employers with fewer than 500 employees, government employers, and all other non-private entity employers with more than one employee are required to provide their employees with paid sick leave. The bill entitles employees of covered employers to pay sick leave regardless of how long the employee has worked for the employer.

- Full-time employees would be entitled to 80 hours of paid leave.
- Part-time employees are entitled to “a number of hours equal to the number of hours that such employee works, on average, over a two-week period.”
- Paid leave ends with the employee’s next scheduled work shift following the end of the qualifying need.
- Required sick pay is calculated based on the employee’s regular rate of pay, or if higher, the applicable minimum wage rate.
- If an employee is on sick leave to care for a family member or child, however, the required sick pay is based on two-thirds of the regular rate of pay.
- The maximum amount of required sick pay per employee is \$511 per day and \$5,110 in the aggregate.
- If leave is to care for a family member or child, the maximum amount of required sick pay per employee is \$200 per day and \$2,000 in the aggregate.
- The bill imposes notice requirements and prohibits employers from discharging, disciplining or discriminating against employees who take paid sick leave.
- The Secretary of Labor will provide a model notice within seven days of enactment.
- The employer is prohibited from requiring employees to look for or find replacement employees to cover hours during which the employee is using the paid sick time.

There is an exception for health care providers and emergency responders. Employers who are health care providers or emergency responders may elect to exclude their employees from the public health emergency leave provisions of the bill.

This Emergency Paid Sick Leave provision will be effective no later than 15 days after the date of enactment (April 2, 2020) through December 31, 2020.

Employer Tax Credits

Employer tax credits are available to offset the costs associated with the paid emergency leave and sick leave required under this bill. The employer-related credits, which are refundable, would be applied against the employer portion of social security taxes for each quarter “qualifying” paid leave wages are paid by the employer. This tax credit will apply to both the FMLA-expanded leave as well as the emergency paid “sick” leave. The amount of tax varies based on the type of leave.

Tax Credit for Expanded FMLA Leave

Employers are provided a quarterly refundable tax credit equal to 100 percent of the “qualified family leave wages” that the employer is required to pay for a given quarter. The amount of the qualified leave wages that would be taken into account for purposes of the credit per employee is \$200 for any day for which the employer pays the employee qualified family leave wages, up to the maximum amount for all calendar quarters of \$10,000 per employee.

Tax Credit for Emergency “Sick” Leave

Employers are provided a quarterly refundable tax credit equal to 100 percent of the “qualified sick leave wages” that the employer is required to pay for any given quarter. The amount of qualified sick leave wages for purposes of the credit would vary depending upon the reason for the leave.

For employees that must self-isolate, obtain a coronavirus diagnosis or comply with self-isolation recommendation from a public official or health care provider, the amount of qualified sick leave wages taken into account is capped at \$511 per day.

There is an allowable increase in the amount of tax credit equal to the amount “of the employer’s qualified health plan expenses as are properly allocable to the qualified family (or sick) leave wages for which such credit is allowed.”

This Employer Tax Credit provision will be effective no later than 15 days after the date of enactment (April 2, 2020) through December 31, 2020.

Free Coronavirus Testing

Group health plans and health insurance issuers of group to cover FDA-approved COVID-19 diagnostic testing products. The cost covered includes items and services furnished during a provider visit (office, telehealth, urgent care and emergency room visits) to the extent those items and services relate to the furnishings or administration of the testing product or the evaluation of the individual’s need for the testing product.

The mandated coverage must be provided without “any cost sharing (including deductibles, copayments and coinsurance) requirements or prior authorization or other medical management requirements.”

This does not extend to COVID-19 treatment.

*This provision for free testing provision is effective **immediately** until the Secretary of HHS determines that the public health emergency has expired.*

Questco is actively monitoring how these provisions will be administered and monitored. The governing regulatory agencies have the authority to minimize the compliance burdens and remove the financial burdens to employers who must pay the wages in advance of receipt of the tax credits. The exact protocol for enabling that is still under review by the authorities. We are poised to adjust our systems and processes to respond once further guidance is available.

As always, please do not hesitate to contact us with any questions or concerns. We will continue to support, guide and educate you as quickly as possible during this unprecedented and challenging time.

Sincerely,

Jason Randall, CEO

