

TAX IMPLICATIONS OF THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 18, the Senate approved the Families First Coronavirus Response Act (H.R. 6201) to provide affected individuals with paid sick and family leave, create tax credits for affected employers, allow for emergency state unemployment insurance grants, and more. It expands on the existing Family and Medical Leave Act (FMLA). This bill will become effective upon the President's signature.

As the coronavirus (COVID-19) event has moved rapidly, markets keep reacting sharply, and people are learning to be adaptable, our elected officials are trying to blunt some of the extreme reactions by the following initiatives based on employee size.

FOR EMPLOYERS WITH UNDER 500 EMPLOYEES:

- Emergency paid sick leave (EPSLA)
Private sector employers with fewer than 500 workers and all public sector employers would have to provide paid sick leave of 80 hours for full-time employees and average hours for a two-week period for part-time employees due to an isolation or quarantine order or advisory, or experiencing symptoms; or caring for a family member or for a child whose school or place of care is closed due to a public emergency. This amount is immediately available regardless of the employee's length of employment. Employers cannot require employees to find a replacement worker or use other sick leave before this sick time. This sick leave expires December 31, 2020.
- Emergency family and medical leave (EMFLEA)
Private sector employers with fewer than 500 workers would have to provide as many as 12 weeks of job-protected leave to certain employees through December 31, 2020. The emergency leave is generally available when an employee who has been employed for at least 30 days is unable to work or telework due to a need to care for a child whose school or place of care is closed, or childcare provider is unavailable. The first 10 days could be unpaid, although a worker could choose to use other accrued leave. Employers would be required to pay employees minimum of two-thirds of their wages, not to exceed \$200 per day and a maximum of \$10,000.
- Tax credits for paid sick and family and medical leave
These credits are refundable to the extent they exceed the employer's payroll tax and are comprised of three components:
 - The EPSLA credit is the lesser of the employee's leave pay or either \$511 per day while employee is receiving paid sick leave to take care of themselves or \$200 if the sick leave is for family member. The EMFLEA credit for each employee is the amount of the leave pay limited to \$200 per day, and a maximum of \$10,000.
 - The amount of EPSLA and EMFLEA credits are increased by the portion of the employer's "qualified health plan expenses," that are allocable to qualified sick leave wages or qualified family and

- medical leave wages. These are amounts paid by the employer to provide and maintain a group health plan but only those amounts that are excluded from the gross income of the employees.
- The credits allowed to employers for wages paid under EPSLA and EFMFLEA are increased by the amount of the tax imposed (1.45% hospital portion of FICA) on qualified sick leave wages or qualified family leave wages.

FOR EMPLOYERS WITH UNDER 50 EMPLOYEES, IN ADDITION TO THE ABOVE:

- The legislation gives the Secretary of Labor the authority to exempt small businesses with fewer than 50 employees from the bill's paid leave requirements if those requirements would jeopardize the viability of the business.
- The Labor Department is authorized to issue regulations relating to family and medical leave to exclude certain health care providers and exempt small businesses with fewer than 50 employees.

FOR EMPLOYERS WITH UNDER 25 EMPLOYEES, THE ABOVE MIGHT APPLY ALONG WITH:

- Job restoration
Generally, eligible employees who take emergency paid leave are entitled to be restored to the position they held when the leave commenced or to obtain an equivalent position with their employer. H.R. 6201 limits this rule for employers with fewer than 25 employees. In such circumstances, if an employee takes emergency leave, then the employer does not need to return the employee to their position if the position does not exist due to economic or operation conditions, that employer makes reasonable effort to restore employee to an equivalent position, and if neither option is viable, than employer makes additional effort to contact employee within a year if equivalent position is available.

In addition, the Act provides as much as \$1 billion for emergency unemployment insurance transfers to states in fiscal 2020 to process and pay unemployment benefits. Individuals in states with rising unemployment can qualify for an additional 13 weeks (20 in some states) for unemployment benefits.

Events are rapidly changing each day. Please contact Cray Kaiser at 630-953-4900 for up to date information and more details of this bill.

Thank you for your patience and understanding during this challenging time. We wish you, your family, and your business health and safety. We will continue to support you as best as we can while keeping each other's health a priority.