



H.R. 6021: Paid Leave and Unemployment Insurance Responses to COVID-19

March 17, 2020

This Insight provides summary information on the paid leave and unemployment insurance (UI) provisions in the House-passed version of H.R. 6201, the Families First Coronavirus Response Act, including the technical corrections made by H.Res. 904. For a general discussion of current workplace leave policies and UI programs and benefits, including considerations related to COVID-19, see CRS Insight IN11233, *Workplace Leave and Unemployment Insurance for Individuals Affected by COVID-19*. For additional legislation introduced related to UI and COVID-19, see CRS Report R45478, *Unemployment Insurance: Legislative Issues in the 116th Congress*.

Paid Leave Provisions in H.R. 6201

H.R. 6201, as amended by H.Res. 904 (amendment text available at [Congressional Record, March 16, 2020, p. H1698](#)) contains two paid leave provisions: (1) providing for paid family and medical leave in certain instances for needs related to a COVID-19 public health emergency and (2) providing for paid sick leave for a similar but more expansive set of needs. In terms of private-sector coverage, the provisions apply only to eligible employees who are employed by employers with fewer than 500 employees. The bill also includes tax credit provisions to help employers cover costs related to paid leave requirements; self-employed individuals, including [gig workers](#), are similarly eligible for tax credits if they are unable to perform services in their trade or business for reasons discussed below.

Both provisions allow employers of health care providers and emergency responders to exclude such employees from the application of the leave provisions. Further, both provisions would allow the Secretary of Labor to issue regulations that exempt from the new leave provisions: (1) certain health care workers and emergency responders and (2) employers with fewer than 50 employees if the leave requirements “would jeopardize the viability of the business as a going concern.”

Both paid leave provisions would take effect no later than 15 days after the bill’s enactment and expire on December 31, 2020.

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IN11249

Division C—Emergency Family and Medical Leave Expansion Act

H.R. 6201, as amended by H.Res. 904, proposes to temporarily extend [Family and Medical Leave Act \(FMLA\)](#) leave to include leave needed to care for the employee’s minor child whose school or care provider is unavailable due to a COVID-19 public health emergency. Such FMLA-leave may be used by employees who have been employed by their current employer for at least 30 calendar days and work for a covered employer. Covered employers are private-sector employers employing fewer than 500 employees, and certain public agencies, including state and local governments.

The first 10 days of the new FMLA leave may be unpaid; although the employee may elect to use other paid leave during that period. Employers would be required to compensate employees for the remainder of FMLA-leave taken for qualifying public health emergencies (i.e., up to 10 work weeks) at two-thirds of their regular rate of pay. Such paid leave is capped at \$200 per day and \$10,000 total per employee.

FMLA leave is generally job-protected, but this requirement would not apply to employers with fewer than 25 employees if the employee used FMLA-leave for public health needs and certain conditions are met. Whereas FMLA provides that [employees may seek damages or equitable relief for FMLA violations](#), H.R. 6201 provides that such liability would not apply to employers with fewer than 50 employees for violations related to FMLA-leave for a public health emergency.

Division E—Emergency Paid Sick Leave Act

The bill would require covered employers to temporarily provide paid sick leave to employees to attend to certain COVID-19-related medical and caregiving needs if the employee is unable to work (including telework). Such needs include (1) the employee’s self-isolation or quarantine in compliance with an official order or as advised by a health care provider due to concerns related to COVID-19; (2) to care for an individual subject to such an order or medical advice to self-isolation or quarantine; (3) to seek a medical diagnosis when the employee is experiencing COVID-19 symptoms; (4) to care for the employee’s child, generally a minor child, whose school or care provider is unavailable due to a COVID-19 public health emergency; and (5) 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.

Full-time employees would be entitled to 80 hours of paid sick leave, and part-time employees the equivalent of 2 weeks of leave. For leave taken for the employee’s quarantine, self-isolation, or medical diagnosis, sick leave is compensated at the greater of the employee’s regular rate of pay, the federal minimum wage, or the minimum wage rate in the applicable state or locality of employment; such paid leave is capped at \$511 per day and \$5,110 total per employee. For caregiving and other needs, the employer must compensate the employee at two-thirds of such a rate; such paid leave is capped at \$200 per day and \$2,000 total per employee. The provisions apply broadly to public-sector employers and to private-sector employers with fewer than 500 employees.

Unemployment Insurance Provisions in H.R. 6201

The UI provisions in Division D of H.R. 6201, which were not amended by H.Res. 904, would give states more flexibility to address COVID-19 through expanded benefit eligibility as well as additional administrative funding, among other UI measures. Unlike workplace leave policies, the UI system generally treats public-sector workers similarly to private-sector workers. UI benefits replace a proportion of wages for those workers who are temporarily or permanently separated from their jobs, but are otherwise able, available, and searching for work. Depending on state law, UI benefits may [replace up to 60%-66% of total wages and are often subject to a benefit cap of half of the state’s average weekly wage](#), although some states have lower benefit caps.

Division D—Emergency Unemployment Insurance Stability and Access Act of 2020

The UI provisions in Division D of H.R. 6201 would

- Provide \$1 billion in “emergency administrative grants” to states in calendar year 2020 [for administrative purposes](#). Half of this amount would be available to all states who meet certain requirements related to [Unemployment Compensation](#) eligibility notifications and claims access. The second half of this amount would be available to states that experience at least a 10% increase in UC claims over the previous calendar year and meet certain other requirements related to easing UC eligibility requirements for individuals affected by COVID-19. There would be reporting requirements to U.S. Department of Labor (DOL) and committees of jurisdiction within one year for states that receive these grants.
- Waive any federal UI requirements related to [work search](#), [one-week waiting periods](#), [quits for good cause](#), and [employer tax assessments](#) for state programs (i.e., under [Section 303 of the Social Security Act](#) and [Federal Unemployment Tax Act \[FUTA\] Section 3304](#)) if a state modifies its UC laws “on an emergency temporary basis as needed to respond to the spread of COVID-19.”
- Temporarily waive interest payments and the accrual of interest on [federal advances \(loans\) to states to pay UC benefits](#) through December 2020. However, these provisions would not reduce any underlying loan principal.
- Require DOL to provide assistance to states in establishing, implementing, and improving [Short-Time Compensation \(work sharing\) programs](#).
- Temporarily make [Extended Benefits \(EB\)](#) 100% federally financed (under permanent law: 50% state, 50% federal) from enactment until the end of December 2020, but only for states that receive emergency administrative grants. This bill would also temporarily remove the current incentive in EB law for states to have a [waiting week](#) for their regular UC programs through December 2020.

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