

Impact of H.R. 6201 “Families First Coronavirus Response Act” on NAR Members

Overview:

Congress has passed the Families First Coronavirus Response Act ([H.R. 6201](#)) with broad bipartisan support (read [summary](#)).

Major Provisions Affecting REALTORS®, Brokers, and Real Estate Associations:

- **Emergency Family and Medical Leave (FMLA) Expansion Act (section 3102)**
 - Employees of employers with fewer than 500 employees, who have been on the job for at least 30 days, have a right to take up to 12 weeks of job-protected leave under FMLA if they meet the following condition:
 - They are caring for a son or daughter if the school or place of care for the child has been closed, or the child care provider of the child is unavailable, due to COVID-19 precautions.
 - The first 10 days of leave could be unpaid, though a worker could choose to use accrued vacation days, personal leave, or other available paid leave for unpaid time off. Following the 10-day period, workers would receive a benefit from their employers that will be at least two-thirds of their normal pay rate.
 - The family leave pay is capped at \$200 per day and \$10,000 in total and is limited to 12 weeks of family leave pay in any one calendar year.
 - Employers of employees who are health care providers or emergency responders are allowed to elect out of providing paid family leave to these employees.
 - The Department of Labor is granted broad authority to exempt from the paid family leave requirement employers with fewer than 50 employees if the requirement to provide leave would jeopardize the viability of the business.
 - In effect from effective date of act through the end of 2020.
- **Payroll Credit for Required Paid Family Leave (section 7003)**
 - Provides employers with a refundable tax credit equal to 100% of qualified family leave wages paid.
 - The tax credit is allowed against the OASDI (employer’s portion of Social Security taxes paid) and is claimed on the employer’s quarterly employment tax returns. To assist with cash flow, employers can fund the family leave pay by accessing employment taxes that have been withheld and set aside for deposit with the IRS.

- The amount of qualified family leave wages taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters.
 - The credit is triggered only after a covered employee has taken 10 days of paid sick leave.
 - The credit is increased to cover the cost of an employee's health insurance premium if the employer is required by the Act to pay for it, and covered family leave pay is exempt from employment taxes otherwise imposed on the employer.
 - The employer's deduction for the cost of the family leave pay is reduced by the amount of the credit.
- **Tax Credit for Family Leave for Self-Employed Individuals (section 7004)**
 - Provides a refundable tax credit equal to 100% of a qualified family leave equivalent amount for eligible self-employed individuals.
 - Creditable against income and SE taxes and is refundable against the employer's payroll taxes.
 - Eligible individuals are those who would be entitled to receive paid leave pursuant to the Emergency Family and Medical Leave Expansion Act (above) if they were an employee.
 - The qualified family leave equivalent amount is capped at the lesser of \$200 per day or the average daily self-employment income for the tax year and is limited to 50 days.
 - The self-employed individual may only take into account those days they are unable to work for qualified reasons under the Emergency Family and Medical Leave Expansion Act and they must maintain certain documentation to be prescribed by the Treasury to establish their eligibility for the credit.
- **Emergency Paid Sick Leave Act (section 5102)**
 - Employers with fewer than 500 employees must provide employees with two weeks of paid sick leave that is:
 - paid at the employee's regular rate if (in connection with COVID-19) the employee:
 - is subject to a quarantine or isolation order;
 - has been advised to self-quarantine;
 - is experiencing symptoms; or,
 - paid at two-thirds the employee's regular rate if (in connection with COVID-19) the employee:
 - is on leave to care for an individual who is subject to an isolation order or who is a quarantined employee; or
 - is on leave to care for a son or daughter if the school or place of care for the child has been closed or the child care provider of the child is unavailable, due to COVID-19 precautions.

- Full-time employees can receive up to 80 hours of sick leave, while part-time workers are eligible for leave based on their scheduled or normal work hours in a two-week period.
 - Paid sick leave is calculated based on the employee's regular compensation but is capped at \$511 per day for employees who fall into the first three categories above and at \$200 per day for those in the two care-related categories.
 - Employers of employees who are health care providers or emergency responders are allowed to elect out of providing paid family leave to these employees.
 - The Department of Labor is granted broad authority to exempt from the paid family leave requirement employers with fewer than 50 employees if the requirement to provide leave would jeopardize the viability of the business.
 - Eligible employees are those employed for at least 30 calendar days by the employer.
 - Employers that already have existing paid leave policies must also provide workers with this emergency paid sick time.
 - An employer could be subject to civil penalties for a violation of paid sick leave requirements.
 - In effect from effective date of act through the end of 2020.
- **Payroll Tax Credit for Required Paid Sick Leave (section 7001)**
 - Employer shall receive a refundable tax credit equal to 100% of qualified paid sick leave wages paid for each calendar quarter.
 - The tax credit is allowed against the OASDI (employer's portion of Social Security taxes paid) and is claimed on the employer's quarterly employment tax returns. To assist with cash flow, employers can fund the family leave pay by accessing employment taxes that have been withheld and set aside for deposit with the IRS.
 - The amount of credit per employee is capped at \$511 per day for employees who must self-isolate, obtain a diagnosis, or comply with a self-isolate recommendation with respect to COVID-19.
 - The amount of the credit is capped at \$200 per day for employees caring for a family member or a child whose school or place of care has been closed.
 - The total number of days taken into account per employee may not exceed the excess of 10 over the total number of days taken into account in all preceding calendar quarters.

- The credit is increased to cover the cost of an employee's health insurance premium if the employer is required by the Act to pay for it, and covered family leave pay is exempt from employment taxes otherwise imposed on the employer.
 - The employer's deduction for the cost of the family leave pay is reduced by the amount of the credit.
- **Tax Credit for Sick Leave for Self-Employed Individuals (section 7002)**
 - Eligible self-employed individuals are able to claim a refundable tax credit equal to 100% of the qualified sick leave equivalent amount for those who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to COVID-19.
 - Eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to COVID-19 receive a credit equal to 67% of a qualified sick leave equivalent amount.
 - The tax credit is refundable and is creditable against income and SE taxes.
 - Eligible individuals are those who would be entitled to receive paid leave under the Emergency Paid Sick Leave Act if they were employees.
 - For those self-employed individuals who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation, the qualified sick leave equivalent amount is capped at the lesser of \$511 per day or the average daily self-employment income for the tax year.
 - The self-employed individual may only take into account those days they are unable to work for qualified reasons under the Emergency Paid Sick Leave Act and they must maintain certain documentation to be prescribed by the Treasury to establish their eligibility for the credit.

Additional Provisions:

- The legislation also requires insurers, Medicare, Medicaid, and other federal health programs to fully cover testing and related services for COVID-19, without cost-sharing.
- There is increased funding to Medicaid to allow states to cover tests for uninsured populations.
- Additional funds are appropriated for HHS programs aiding elderly Americans, such as home-delivered nutrition services, and for access to nutrition assistance programs such as WIC and SNAP.
- There is also increased funds for emergency transfers to state unemployment programs and increased flexibility for states to modify unemployment policies based on effects of COVID-19, such as waived work search requirements.

Observations and Concerns:

1. Larger real estate brokers (with 500 employees or more) are exempt from the requirements of the expansion of the FMLA, but will also not get the tax credit because the credit is available only for family leave wages required to be paid by the Emergency Family and Medical Leave Expansion Act. However, the current-law FMLA applies to private-sector employers with 50 or more employees in 20 or more workweeks in the current or preceding calendar year.
2. The payroll tax credit provided to employers will provide cash to them relatively quickly as it is creditable against their Social Security tax liability (employer's portion), which is generally due monthly or semi-weekly, depending on the amount due.
3. Self-employed individuals may not receive the benefit of the tax credits as quickly as do larger employers because they are creditable against the income or the SE tax, which are not due as quickly as are employer-paid Social Security taxes. However, with most self-employed required to pay quarterly estimated tax payments, they will not have to wait until the end of the tax year to see the cash.