

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

Overview:

Early in the morning of March 14, 2020, the House of Representatives passed [H.R. 6201](#) by a wide margin (read [summary](#)). It is expected to be taken up by the Senate early next week.

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 for any of the following reasons:
 - To obey a required or recommended quarantine regarding coronavirus;
 - To care for an at-risk family member obeying a required or recommended quarantine regarding coronavirus; and
 - To care for a child if the child’s school or place of care has been closed or otherwise unavailable, due to coronavirus.
 - The first 14 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 14-day period, workers would receive a benefit from their employers that will be at least two-thirds of their normal pay rate.
 - The Department of Labor shall issue regulations to exclude employers with fewer than 50 employees.
 - 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)
 - Qualified paid sick leave wages are those required to be paid under the Emergency Family and Medical Leave Expansion Act (above)
 - 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
 - If the credit exceeds the employer’s total liability for OASDI for all employees for any calendar quarter, the excess is refundable
 - No deduction is allowed for 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

- 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 the employee is required to seek a diagnosis or preventive care for coronavirus; or,
 - paid at two-thirds the employee's regular rate if the employee is on leave to care for a family member who is seeking a diagnosis or preventive care for coronavirus, or whose school has closed or child care provider is unavailable.
 - Full-time employees would receive 80 hours of sick leave, while part-time workers would be granted time off equivalent to their scheduled or normal work hours in a two-week period.
 - 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)
 - Qualified paid sick leave wages are those required to be paid under the Emergency Paid Sick Leave Act (above)
 - 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 coronavirus

- 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 tax credit is refundable if it exceeds the employer's OASDI liability
 - No deduction is allowed for 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 coronavirus
 - Eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus 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) appear to be 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. Larger employers or those with higher-paid employees will likely find themselves not getting as much tax credit as the cost of making the FMLA and Emergency Paid Sick Leave payments due to the caps on the credit.
4. 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.
5. Why should the tax credits for employees or the self-employed be less for when the individual has to be away to care for a child or family member than when they are quarantined or sick themselves. Is not the effect the same on the business?