

Phase Two of Federal Government's Coronavirus Response: Emergency Paid Leave Mandates with Employer Tax Credits

Overview

On March 14, 2020, the U.S. House of Representatives approved the *Families First Coronavirus Response Act* (H.R. 6201). Technical corrections were made on March 16, 2020. The bill includes two new paid leave mandates on employers with less than 500 employees that will have significant impacts on employers' ability to maintain or resume operations.

- 1) **Emergency Family and Medical Leave Expansion Act:** Businesses with *less than 500 employees* will be required to offer Family Medical Leave Act (FMLA) leave benefits to all employees. Eligible employees must have been on the employer's payroll for 30 days. The first two weeks of leave may be unpaid leave, but thereafter employers must continue to offer FMLA paid leave for ten weeks compensated at two-thirds of the employee's regular rate of pay. This leave can be utilized for an employee's COVID-19 quarantine or treatment, care for an at-risk family member, or care for a child due to school closings or child care disruption. As with traditional FMLA, this leave is job-protected, meaning the employee must be returned to the same or equivalent job position.
 - Employers will receive a 100% refundable tax credit from the federal government for qualified family leave wages paid by an employer for each calendar quarter, capped at \$200 per day and \$10,000 for all calendar quarters.
 - The tax credit is allowed against the payroll tax imposed by section 3111(a) (the employer portion of Social Security taxes).
 - The benefit expires on December 31, 2020.
 - Regulatory Authority or Exemption: The U.S. Secretary of Labor has authority to exempt a small business with fewer than 50 employees from this section "when the imposition of such requirements would jeopardize the viability of a business as a going concern."
- 2) **Emergency Paid Sick Leave Act:** Businesses with *less than 500 employees* will be required to offer full-time employees 10 days (80 hours) and part-time employees a two-week hourly average of paid sick leave, on top of any other existing paid leave program, to quarantine or seek a diagnosis or preventive care for COVID-19. Or, pursuant to the emergency FMLA expansion, leave is paid at two-thirds the employee's regular rate of pay if taken to care for a family member or to care for a child whose school has closed.
 - Employers will receive a 100% tax credit for all wages that are paid, capped at \$511 per day, and \$5,110 altogether for each employee.
 - The tax credit is allowed against the payroll tax imposed by section 3111(a) (the employer portion of Social Security taxes).
 - The benefit expires on December 31, 2020.

Our Position:

Restaurants are committed to serving our employees and our customers during this crisis. But the downturn in our industry has many restaurants struggling to stay open.

The House bill admirably provides federal support to allow employers to offer leave to employees suffering from coronavirus.

However, the mechanism to do so, with small businesses paying for it, and then having to wait to be reimbursed in the form of tax credits, creates challenges for restaurants that are already struggling to maintain cash-flow. In fact, many restaurants are being forced to curtail operations or completely close.

Congress and the Administration must immediately rework the emergency paid leave mandate to administer it within the federal government and not place it on restaurant owners.

The National Restaurant Association is the leading business association for the restaurant and foodservice industry, representing:

15.1 million

employees, nearly 10% of the nation's workforce



1 million

locations across the country



\$825 billion

in sales – making up 4% of the U.S. GDP

