New federal legislation (HR 6201 - Families First Coronavirus Response Act) was fast tracked due to the current Coronavirus (COVID-19) situation and therefore has some conflicting as well as vague elements. Propel HR has consulted with employment law counsel as well as national and international employment law organizations including SHRM and NAPEO regarding this. All sources are stating that employers will have to wait for the Department of Labor and specifically the Secretary of Labor to provide better interpretation and guidance regarding the Families First Coronavirus Response Act. We are monitoring this closely and will keep you informed as the situation continues to develop and as clarity is provided.

The following is a summary of the new regulation as well as current known best practices for working through the challenges that are presenting for many businesses across the nation. Please contact your Propel HR Specialist with any questions and to discuss your specific needs regarding employees and the business operation.

**HR 6201 Summary:**

This new legislation has three elements all of which go into effect no later than April 2, 2020 and end on December 31, 2020. It is recommended that until that time and/or until additional guidance regarding the law is communicated, employers should refer to existing law and their existing policies to address current employment and business operation matters.

1. **EMPLOYER TAX CREDITS** – Employers required to provide paid leave under the HR 6201 Act are eligible for a 100 percent refundable payroll tax credit on the wages paid for the leave. These tax credits will be applied quarterly and administered by the IRS. The credits will be applied against employer only payroll tax liability, with any excess credits refunded to the employer at their full value.

2. **EXPANDED FAMILY MEDICAL LEAVE ACT**

   - Applies to all companies with less than 500 employees.
• Employee eligibility is that the employee must be employed with the company when the law is in effect and have at least 30-days of service with the employer.

• The ONLY qualifying reason for this expanded leave is that the employee is unable to work or telework because they have to care for a child (age 18 and under) if the child’s school or childcare facility is closed due to a COVID-19 factor.

• The employee’s job must be held for the employee for up to twelve weeks. *Employers with 25 or less employees are not required to restore the employee following the leave if the position no longer exists due to economic conditions or other operational changes caused by a COVID-19 factor.

• The first ten days of this leave may be unpaid (see Emergency Paid Sick Leave). The remaining ten weeks must be paid at no less than two thirds of the employee’s regular rate, not to exceed $200.00 per day and $10,000 total under this section of the act.

• Part-time employees and/or employees whose schedule varies from week to week, will have a six-month look back period to determine their average hours per day. Those without six months of service will have their average hours based on the reasonable expectation of hours per day at the time of hire.

• The Secretary of Labor has authority to issue regulations to exclude certain health care providers and emergency responders from the definition of eligible employees and has the authority to exempt small businesses with fewer than 50 employees if the requirements of the Act would jeopardize the viability of the business. *Further clarification and guidance will be needed on this element of the Act.

3. EMERGENCY PAID SICK LEAVE

• Applies to all companies with less than 500 employees.

• Employee eligibility for this paid sick leave includes six categories:

  1. Employee ordered by Federal, State, or local authority to quarantine or isolate

  2. Employee advised by health care provider to self-quarantine due to COVID-19
3. Employee is experiencing symptoms of COVID-19
4. Employee is caring for an individual who is subject to the first or second listed category directly above
5. Employee is caring for their child (age 18 and under) because the school is closed or childcare provider is unavailable due to COVID-19
6. Employee is experiencing a similar condition specified by the Secretary of HHS

- Employers are required to provide 80 hours of paid sick leave at the employee’s regular rate of pay for category 1-3 above and 2/3 of their regular rate for category 4-6 above to full-time employees and a pro-rata amount to part-time employees in addition to any other existing paid leave program the employer may have. *It is believed but not confirmed that these two weeks of paid leave may be applied during the ten days of unpaid leave under the Expanded Family Medical Leave Act since the qualifying event for that leave is also a category under this section.
- Maximum pay of $511.00 per day and $5,110.00 total for the first three categories and maximum pay of $2,000.00 total for the 4th through 6th
- The Secretary of Labor has authority to issue regulations to exclude certain health care providers and emergency responders from the definition of eligible employees and has the authority regarding ONLY category #5 to exempt small businesses with fewer than 50 employees if the requirements of category #5 would jeopardize the viability of the business. *Further clarification and guidance will be needed on this element of the Act.

Until further guidance and clarification is provided and until the new law is mandated on April 2, 2020, Propel HR recommends companies follow current regulations regarding leaves of absence and related matters as well as following company policies as they apply, and being consistent with how similarly situated matters are addressed. Note: Anti-retaliation and anti-discrimination laws still apply under current regulations and under the new COVID-19 Acts.

Below please find several recommended best practices. We will provide additional information regarding this topic as it becomes available. Please contact your Propel HR Specialist with questions and to discuss case-by-case matters.
Best Practices:

- Document all employer actions, including basis for decisions made to best protect the company.

- Require the employee to provide a written or emailed request for all leave situations. If a phone request is the only option, document the date/time/name of employee/specific request.

- The employer is permitted to request a doctor’s note or completion of a Physician Certification Form if the leave request involves a medical matter. The note and/or form must be limited in scope. Contact Propel HR to assist with this type of request.

- Be sure to consider any possible State laws in place or also being enacted due to COVID-19 as the federal act discussed in this summary is in addition to other applicable laws.

- Prior to April 2, 2020, Employers may require employees not working due to a COVID-19 matter to use any applicable paid time off sources if your current policies address this (ex: PTO is used for vacation, medical, and personal or family related reasons). Clarification is needed once the Act is in place.

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