UPDATE: #3, March 16, 2020

Membership Update – CORONAVIRUS

House Moves to Offset Economic Impacts of COVID-19, But Much Still to Be Done for Small Businesses

Over the weekend, the U.S. House of Representative passed H.R. 6201 to address the impact of the coronavirus pandemic. The bill includes provisions for two weeks of paid sick leave and up to three months of paid leave for employees affected by the virus and giving small to mid-size business a tax credit to pay for these provisions. Companies with more than 500 employees are exempt and a hard-ship exemption for companies with less than 50 workers is also included.

Recognizing that most HCAOA members are small to mid-size businesses and that home care agencies would be significantly affected by this mandate, while large employers like McDonalds and Amazon would be exempt, HCAOA will send a letter to Senate leaders expressing our concern and urging them to improve the legislation in consideration of small businesses and our employees. More information to follow on what members can do as well.

According to Littler Attorneys James Paretti, Michael Lotito and Sebastian Chilco, many things can change when the Senate takes up its version of the legislation in the coming days. It is unclear whether the Senate will approve the House bill as passed, reject it, or make modifications to it, which the House would then have to re-approve. It is also likely that additional response measures, including additional tax provisions, or industry-specific relief provisions, may be considered in the near future, and the House
has already indicated its intent to take up a “technical corrections” bill with respect to H.R. 6201 shortly. – Littler, ASAP – News & Analysis

Below is a summary of the legislation, which will go to the Senate when they return today.

**H.R. 6201: Families First Coronavirus Response Act**

- Employers with more than 500 employees are exempt from the Emergency FMLA and sick leave provisions.
- Employers with less than 500 employees are subject to the following:
  - **Emergency Family and Medical Leave Expansion Act**
    - Emergency COVID-19 FMLA – 12 weeks leave, first two weeks can be unpaid, employee eligible for 2/3 pay
    - Employee must be with company for at least 30 days
  - **Emergency Paid Sick Leave Act**
    - Required sick leave for 80 hours
    - Paid at the employee’s regular rate for employee sick leave
    - Paid at 2/3 rate for FMLA to care for family member
  - **Tax Credits For Paid Sick and Paid Family and Medical Leave**
    - Employers are eligible for tax credits against employers portion of Social Security taxes (with caps)
    - Sick leave capped at $511/day
    - FMLA capped at $200/day and $10,000/quarter

**Emergency Family and Medical Leave Expansion Act**

Employees of employers with fewer than 500 employees and government employers, who have been on the job for at least 30 days, with the right to take up to 12 weeks of job-protected leave under the Family and Medical Leave Act to be used for any of the following reasons:

- To adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus;
- To care for an at-risk family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus; and
- To care for a child of an employee if the child’s school or place of care has been closed, or the child-care provider is unavailable, due to a coronavirus.
After the two weeks of paid leave, employees will receive a benefit from their employers that will be no less than two-thirds of the employee’s usual pay.

**Emergency Paid Sick Leave Act**

This section requires employers with fewer than 500 employees and government employers to provide employees two weeks of paid sick leave, paid at the employee’s regular rate, to quarantine or seek a diagnosis or preventive care for coronavirus; or paid at two-thirds the employee’s regular rate to care for a family member for such purposes or to care for a child whose school has closed, or child care provider is unavailable, due to the coronavirus.

- Full-time employees are entitled to 2 weeks (80 hours) and part-time employees are entitled to the typical number of hours that they work in a typical two-week period.
- The bill ensures employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan are provided with leave.

The Act, and the requirements under the Act, expire on December 31, 2020.

**Tax Credits For Paid Sick And Paid Family And Medical Leave**

**Payroll Credit for Required Paid Sick Leave**

- Provides a refundable tax credit equal to 100 percent of qualified paid sick leave wages paid by an employer for each calendar quarter.
- Tax credit is allowed against the tax imposed by section 3111(a) (the employer portion of Social Security taxes).
- Qualified sick leave wages are wages required to be paid by the Emergency Paid Sick Leave Act.

The section makes a distinction between qualified sick leave wages paid with respect to employees who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus.
For amounts paid to those employees, the amount of qualified sick leave wages taken into account for each employee is capped at $511 per day. For amounts paid to employees caring for a family member or for a child whose school or place of care has been closed, the amount of qualified sick leave wages taken into account for each employee is capped at $200 per day. The aggregate number of days taken into account per employee may not exceed the excess of 10 over the aggregate number of days taken into account for all preceding calendar quarters.

If the credit exceeds the employer’s total liability under section 3111(a) for all employees for any calendar quarter, the excess credit is refundable to the employer. Employers may elect to not have the credit apply. To prevent a double benefit, no deduction is allowed for the amount of the credit. In addition, no credit is allowed with respect to wages for which a credit is allowed under section 45S.

The Secretary of the Treasury is given broad authority to issue regulations and guidance necessary to carry out the purposes of the section, including regulations and guidance related to avoidance, penalty waivers with respect to deposit amounts, compliance and record-keeping relief, and benefit recapture. The Social Security OASDI trust funds are held harmless by transferring funds from the General Fund. The section applies only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary’s delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

**Payroll Credit for Required Paid Family Leave.**

- Provides a refundable tax credit equal to 100 percent of qualified family leave wages paid by an employer for each calendar quarter.
- The tax credit is allowed against the tax imposed by section 3111(a) (the employer portion of Social Security taxes).
- Qualified family leave wages are wages required to be paid by the Emergency Family and Medical Leave Expansion Act.

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 under section 3111(a) for all employees for any calendar quarter, the excess credit is refundable to the employer.
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2020.

To review H.R. 6201, click HERE.

CMS Letter Sent by Partnership Asking for States’ Flexibility

Last week, the Partnership for Medicaid Home-Based Care sent a letter to CMS
Administrator Seema Verma asking for regulatory relief during the pandemic. HCAOA
is a member of the Partnership along with more than 20 other home care providers,
associations, payors and supporting business groups, that are committed to advocating
for Medicaid home-based care.

In the letter from David Totaro, who serves as chairman of the Partnership and is a
member of the HCAOA Board of Directors, he urged Verma to grant blanket approval to
states submitting Section 1915 ( c ) , Appendix K waivers. Doing so would give states
flexibility to eliminate requirements that are inconsistent with the prevention of
community spread. Click here to review the letter.

HCAOA continues to monitor the country’s response to the COVID-19 pandemic and
will alert members as quickly as possible when any news breaks. In the next few days,
HCAOA will be conducting a brief survey our members to gauge the impact of COVID-19 on home care operations at this point.

**Register for COVID-19 Webinar, Thursday, March 19**

Due to the high interest in this free webinar, members may have experienced difficulty in registering last week. This has now been resolved so don’t miss out on this important education. Click [here](#) to register now.