

March 20, 2020 - **Updated February 10, 2021**

February 2021 update: Please see the **2021 Extended Payroll Tax Credits for Paid Leave** document for important updated information (as of February 11, 2021) about how the December 2020 COVID-19 relief bill impacted the Families First Coronavirus Response Act's leave mandate and tax credit.

Families First Coronavirus Response Act (HR 6201)— Preliminary Summary and UMC Impact

On Wednesday, **March 18, 2020**, the Senate passed the *Families First Coronavirus Response Act* (H.R. 6201 or “the Act”). President Trump signed the Act shortly thereafter, enacting it into law. The Act seeks to ease some of the health and economic consequences of the COVID-19 (coronavirus) pandemic, by providing:

- Paid sick leave
- Expanded family and medical leave
- Food assistance
- Funding to help states provide unemployment insurance
- Financial assistance for testing
- Tax credits for employers related to sick and family leave

Wespath has prepared the following summary to help you understand parts of the Act that may have an impact to your annual conference, local churches and other affiliated organizations.

Impact on Health Plans

The Act requires group health plans (and health insurance issuers) to cover the following healthcare products and services without cost-sharing. This coverage begins with the date of enactment (**March 18**) and will continue through the emergency period as declared by the Secretary of the Department of Health and Human Services (HHS). At this time, the end date for this emergency period is not yet determined.

Healthcare products and services to be covered without cost-sharing include:

- FDA-approved COVID-19 diagnostic testing products
- Administration of such testing products
- Any items and services furnished during visits to a provider (whether an office visit, urgent care visit or emergency room visit) that result in an order for such a diagnostic product, to the extent that such items and services relate to the administration of the product or the evaluation of the person to determine the need to administer such a product

Impact on HealthFlex

HealthFlex had already determined to cover testing for COVID-19 without cost-sharing requirements prior to the federal government’s action (see **HealthFlex and Health-Related Resources**). Technically the Act will not add anything to what HealthFlex is already **covering**; HealthFlex coverage is in compliance with the Act’s provisions.

In addition to what is mandated by the Act, HealthFlex has also determined to cover without cost-sharing any MDLIVE telemedicine visit, for a 90-day period.

Impact on Sponsors of Other Health Plans

Annual conferences that sponsor their own group health plan will want to work with their third-party administrator or insurer, since the definition of the items and services required for coverage have some technical aspects that these providers should be knowledgeable about.

Expansion of FMLA Leave Required for Certain Employers

The Act expands the Family and Medical Leave Act (FMLA)¹ to require employers with fewer than 500 employees to provide *up to 12 weeks of job-protected leave*, during periods when an employee is unable to work (including remote or telework) due to a need to care for a child under 18. This new leave requirement applies only when the child's primary or secondary school is closed or the child care provider is unavailable, due to an emergency with respect to COVID-19 declared by federal, state or local authorities.

An employee who has been employed for at least 30 days by the employer is eligible for this new leave. This is different from the normal, more stringent eligibility requirements under the FMLA (normally, an employee must be employed for at least 12 months and for at least 1,250 hours with the employer during the previous 12-month period in order to be eligible for job-protected leave).

- This new eligibility for job-protected leave expires on **December 31, 2020**.

This expanded leave must be provided on a paid basis after the first 10 days. Employees may elect to substitute any accrued vacation leave, personal leave, etc., in order to receive pay during the first 10 days. After the initial 10-day period, the rate of pay provided during the leave must be at least two-thirds of an employee's regular rate of pay, based on the number of hours the employee is normally scheduled to work (with special rules applying when an employee's work schedule varies).

- The required rate of pay is **capped at \$200 per day and \$10,000 total per employee**.

Emergency Paid Sick Leave

The Act also requires employers with fewer than 500 employees to provide *two weeks of paid emergency sick leave* to all employees in the event of a qualified need related to the coronavirus public health emergency. The sick leave applies to hourly/non-exempt workers under the Fair Labor Standards Act (FLSA)² and to exempt employees. This new requirement for paid emergency sick leave expires on **December 31, 2020**.

Under the requirement, employers described above must provide each employee up to two weeks of paid sick leave if the employee is unable to work (including telework) because of any of the following reasons related to COVID-19:

1. The employee is subject to a federal, state or local quarantine or isolation order;
2. The employee has been advised by a healthcare provider to self-quarantine;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual for whom reasons 1 or 2 above apply;
5. The employee is caring for a child whose school or place of care has been closed or whose child care provider is unavailable, due to COVID-19 precautions; or

¹ Though FMLA usually applies to private-sector employers with 50 or more employees and public or private elementary or secondary schools, regardless of the number of employees, among others, the Act applies this new FMLA leave to such employers with *fewer than 500 employees*.

² FLSA applies broadly to all but very small employers.

6. The employee is experiencing any other substantially similar condition that may be specified by the Secretary of HHS, in consultation with the Secretaries of the Treasury and Labor, through regulatory guidance.

Full-time employees are entitled to **80 hours of paid leave**. *Part-time employees* are entitled to **“a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.”**

The required paid leave ends with the employee’s next scheduled work shift following the end of the qualifying need. In general, the required sick pay is calculated based on the employee’s regular rate of pay or, if higher, the applicable minimum wage rate. In the case of leaves to care for a family member or child (reasons 4 through 6 above), however, the required compensation is two-thirds of the regular rate of pay.

- The maximum amount of required sick pay per employee is **\$511 per day** and **\$5,110 total**.
- In the case of leaves to care for a family member or child, the maximum amount of required sick pay per employee is **\$200 per day** and **\$2,000 total**.

Other Considerations

This sick leave is to be given in addition to any required paid leave provided by state or local law. Not paying this sick leave will be treated as a minimum wage violation under the FLSA. The Act also prohibits discrimination or retaliation against employees who take leaves under the Act.

Within seven days from enactment, the Secretary of Labor will provide a model notice to employees. Normally employers post these notices in areas that are readily accessible to employees (e.g., kitchens and breakrooms). Given the circumstances with so many employees quarantined away from their normal workplaces, employers may be required to notify employees directly by letter or email.

Effective Date

- The Act requires that the new leave provisions take effect **April 2, 2020** (15 days after the date of enactment).

Tax Credits for Paid Sick and Family and Medical Leave

Significantly, some of the costs of providing employees with paid sick leave or FMLA leave due to a COVID-19 emergency will be covered via a series of tax credits available to employers that are subject to the new leave requirements.

The employer tax credits, which are refundable, would be applied against the employer portion of Social Security taxes (FICA) for each quarter and would be equal to the “qualifying” paid leave wages paid by the employer. Because these tax credits are applied against employment taxes, even tax-exempt employers—including most United Methodist Church-related employers—could benefit from them. The tax credits would apply with respect to both the FMLA-expanded paid leave as well as the emergency paid sick leave. Similar rules are available with respect to self-employed individuals.

Wespath is closely monitoring developments related to COVID-19. Please check our **webpage** for periodic updates at Wespath.

DISCLAIMER: *The information above should not be considered legal or tax advice. Annual conferences, local churches or other UMC employers should consult with counsel in considering the application of the Act to their circumstances.*