

Congress Passes H.R. 6201 – “Families First Coronavirus Response Act”

Today, the Senate advanced the Families First Coronavirus Response Act (H.R. 6201). After much debate, the package now heads to the President to be signed into law.

The final bill includes some significant policy changes from the original proposals that were intended to address both the impacts on small businesses and individuals. We expect lawmakers to continue to address economic measures for small businesses and individuals through future legislative packages.

Lawmakers and the Administration remain engaged in ongoing negotiations to produce additional measures, and AVMA continues to ensure the concerns of the profession are heard as this dynamic situation unfolds.

The Final Bill includes:

- (1) **FMLA COVID-19 Benefit** – This benefit provides up to 12 weeks of family and medical leave benefits related to the coronavirus to be paid at 2/3rds of regular pay rates after the first 10 days which are unpaid. The leave is only available for child care in the event of school closure or if the employee’s child care provider is unavailable due to the public health emergency.
- (2) **COVID-19 Sick Leave** – This benefit applies up to 80 hours of additional paid sick leave for employees related to the coronavirus. There are daily and aggregate caps on the sick leave benefit of either \$511 per day and \$5,110 in the aggregate if the employee is sick or quarantined, and \$200 per day and \$2,000 in aggregate if the employee is caring for someone else.
- (3) **Potential Exemption** – There is language granting authority to the Dept. of Labor to create regulations that can exempt small businesses with fewer than 50 employees from the leave requirements when the imposition of the requirements would jeopardize the viability of the business as a going concern.
- (4) **Tax Credits** – tax credits for employers intended to mitigate the impacts of the expanded leave provisions; and
- (5) **COVID-19 Testing** – free testing for the coronavirus during the emergency.

BELOW IS A SUMMARY OF THE KEY PROVISIONS FOR VETERINARY PRACTICES:

Emergency Family and Medical Leave Expansion Act of 2020

- Amends the Family and Medical Leave Act (FMLA) of 1993 by adding a period that begins on the date of enactment and expires on December 31, 2020 for a qualifying need related to the public health emergency with respect to the coronavirus declared by a Federal, State, or local official.
- It applies to employers with fewer than 500 and is for employees who have been employed at least 30 days.
- It applies to employees with a need for leave to care for the child of the employee under 18 years of age if the school or place of care has been closed, or the child care provider is unavailable due to the public health emergency. A child care provider is defined as a provider who is compensated for providing child care on a regular basis.
- Provides the Department of Labor with authority to create regulations that can exempt small businesses with fewer than 50 employees from the requirements when the imposition of the requirements would jeopardize the viability of the business as a going concern.
- It provides for up to 12 weeks of leave. The initial 10 days of leave are unpaid. However, the employee may elect to substitute any available vacation leave, personal leave, or medical or sick leave instead. The employer must provide paid leave for additional any leave after the first 10 days up to the 12 weeks at an amount not less than 2/3rds of the employee's regular rate and number of hours. There is a calculation for those with varying numbers of hours worked.
- The paid leave shall not exceed \$200 per day and \$10,000 in the aggregate.
- The restoration to position provisions of the FMLA does not apply to an employer with fewer than 25 employees under specific conditions, including the employee takes leave under the public health emergency, the position held by the employee no longer exists due to economic conditions or changes in operating conditions caused by the public health emergency during the leave period. There are also specific conditions that require such an employer to make reasonable efforts restore the employee to an equivalent position.

Emergency Paid Sick Leave Act

- Requires employers with fewer than 500 employees to provide 80 hours of sick leave for full time employees, and for part-time employees, hours equal to the number of hours the employee works on average over a two-week period, to the extent the employee is unable to work or telework. The sick time may be used for any of the following:
 - The employee is subject to a quarantine or isolation order related to COVID-19.
 - The employee has been advised by a health care provider to self-quarantine due to COVID-19.
 - The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - The employee is caring for an individual who is subject to a quarantine order or has been advised to self-quarantine.
 - The employee is caring for their child as a result of child care or school closures or if the child care provider is unavailable due to COVID-19 precautions.

- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
- Compensation for paid sick time shall be as follows:
 - Regular Pay Rate up to a maximum of \$511 per day and \$5,110 in the aggregate, for employees using the sick leave for the following:
 - The employee is subject to a quarantine or isolation order related to COVID-19.
 - The employee has been advised by a health care provider to self-quarantine due to COVID-19.
 - The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - Two-Thirds of the Regular Pay Rate up to a maximum of \$200 per day and \$2,000 in the aggregate, for employees using the sick leave for the following:
 - The employee is caring for an individual who is subject to a quarantine order or has been advised to self-quarantine.
 - The employee is caring for their child as a result of childcare or school closures or if the child care provider is unavailable due to COVID-19 precautions.
 - The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
- Provides the Department of Labor with authority to create regulations that can exempt small businesses with fewer than 50 employees from the specific requirement to allow an employee to use the leave to care for their child as a result of child care or school closures or if the child care provider is unavailable due to COVID-19 precautions. The regulatory exemption would only be available if the imposition of the requirements would jeopardize the viability of the business as a going concern.
- Paid sick time shall not carry over from one year to the next.
- For employers with existing sick leave policies, the paid sick time available under this Act is in addition to such paid leave.
- The paid sick time is available for immediate use regardless of how long the employee has been employed. The employer may not require the employee to use other paid leave provided by the employer before using the leave under this Act.
- These provision sunset on December 31, 2020.

Tax Credits for Paid Sick and Family and Medical Leave

- Tax Credit for Paid Sick Leave
 - An employer will receive a quarterly 100% refundable credit against the 6.2% and 1.45% payroll taxes for the qualified sick leave wages paid by the employer.
 - In calculating the credit, the amount of qualified sick leave wages taken into account with respect to any individual shall not exceed \$511 per day.
 - This limit is intended for an employee who is subject to a quarantine or isolation order related to COVID-19, has been advised by a health care provider to self-quarantine due to COVID-19, or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - For other permissible uses of the sick leave the individual amount may not exceed \$200 per day. These circumstances are where The

employee is caring for an individual who is subject to a quarantine order or has been advised to self-quarantine, the employee is caring for their child as a result of child care or school closures or if the child care provider is unavailable due to COVID-19 precautions, or the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

- There is also a formula limitation on the aggregate number of days allowed when calculating the quarterly credit.
 - The credit is also limited such that it cannot exceed the federal payroll taxes paid on all wages paid that quarter by the employer.
 - If the amount of the credit calculation exceeds the amount of federal payroll taxes on all wages paid that quarter by the employer, the excess shall be treated as an overpayment that is refundable to the employer.
 - There is also a provision to increase the tax credit by the employer's qualified health plan expenses allocable to the qualified sick leave wages.
 - Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain group health plans, but only to the extent such amounts are excluded from the gross income of employees.
 - The Secretary of Treasury shall prescribe the allocation method, but it shall be proper if made pro rata among covered employees and pro rata on the basis of periods of coverage during leave.
 - There is also a provision for application of the tax credit for paid sick leave for self-employed individuals.
 - The credit ends December 31, 2020
- Tax Credit for Required Paid Family Leave
 - An employer will receive a quarterly 100% refundable payroll tax credit for the qualified family leave wages paid by the employer. In calculating the credit, the amount of qualified family leave wages taken into account with respect to any individual shall not exceed \$200 a day, and in the aggregate with respect to all calendar quarters \$10,000.
 - The credit is also limited such that it cannot exceed the federal payroll taxes paid on all wages paid that quarter by the employer.
 - If the amount of the credit calculation exceeds the amount of federal payroll taxes on all wages paid that quarter by the employer, the excess shall be treated as an overpayment that is refundable to the employer.
 - There is also a provision to increase the tax credit by the employer's qualified health plan expenses allocable to the qualified sick leave wages.
 - Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain group health plans, but only to the extent such amounts are excluded from the gross income of employees.
 - The Secretary of Treasury shall prescribe the allocation method, but it shall be proper if made pro rata among covered employees and pro rata on the basis of periods of coverage during leave.
 - There is also a provision for application of the tax credit for paid sick leave for self-employed individuals.

Coverage of Testing for COVID-19

- Includes provisions that will require insurers and government programs to provide coverage for testing for COVID- 19 and provides that they shall not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements, during the public health emergency.
- Also requires coverage without cost sharing for health care provider office visits, urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product for COVID-19 to the extent they are related to administering the test or determining the need for the individual to be tested.