

The Families First Coronavirus Response Act, H.R. 6201, as amended by H. Res. 904

Section-by-Section Summary

DIVISION A – Second Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020

Title I – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies

Food and Nutrition Service – Includes funding to ensure nutrition assistance programs have adequate resources to help those impacted by the COVID-19 public health emergency, including for:

- The Special Supplemental Nutrition Program for Women Infants and Children (WIC) – \$500 million to provide access to nutritious foods to low-income pregnant women or mothers with young children who lose their jobs or are laid off due to the COVID-19 emergency.
- The Emergency Food Assistance Program (TEFAP) – \$400 million to assist local food banks to meet increased demand for low-income Americans during the emergency. Of the total, \$300 million is for the purchase of nutritious foods and \$100 million is to support the storage and distribution of the foods.

In addition –

- The legislation includes a general provision that allows the Department of Agriculture to approve state plans to provide emergency Electronic Benefit Transfer (EBT) food assistance to households with children who would otherwise receive free or reduced-price meals if not for their schools being closed due to the COVID-19 emergency.
 - In order to be eligible, the child’s school must be closed for no less than 5 consecutive days
- Nutrition Assistance for U.S. Territories – \$100 million for USDA to provide nutrition assistance grants to Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands in response to the COVID-19 public health emergency.

Title II – Defense

Coverage of Testing for COVID-19 through the Department of Defense – Includes \$82 million for the Department of Defense to cover the costs of COVID-19 diagnostic testing for beneficiaries receiving care through the Defense Health Program.

Title III – Financial Services and General Government

Implementation of Tax Credits – Includes \$15 million for the Internal Revenue Service to implement tax credits for employers to cover employee paid sick and paid family and medical leave.

Because quarterly returns are not filed until some period of time after wages are required to be paid, the legislation recognizes that the Treasury Department and IRS will exercise broad discretion in ensuring that accrued tax credits are effectively advanced to employers as soon as possible.

For employers who have more than 25 percent of their work force on covered sick leave and therefore may not be able to fund such leave with current employment tax withholdings or other funds, the IRS plans to implement a system for employers to accelerate payment of credits provided for by the legislation.

Title IV – Health and Human Services

Coverage of Testing for COVID-19 through the Indian Health Service – Includes \$64 million for the Indian Health Service to cover the costs of COVID-19 diagnostic testing for Indians receiving care through the Indian Health Service or through an Urban Indian Health Organization.

Title V – Labor, Health and Human Services, Education, and Related Agencies

Senior Nutrition Program – Includes \$250 million for the Senior Nutrition program in the Administration for Community Living (ACL) to provide approximately 25 million additional home-delivered and pre-packaged meals to low-income seniors who depend on the Senior Nutrition programs in their communities. This funding will provide meals to low-income seniors:

- who are home-bound;
- who have disabilities;
- who have multiple chronic illnesses;
- as well as caregivers for seniors who are home-bound.

ACL's Senior Nutrition grants are provided to States, territories, and eligible tribal organizations and serve more than 2.4 million individuals annually.

Reimbursement for Diagnostic Testing and Services for COVID-19 in Uninsured Individuals – Includes \$1 billion for the National Disaster Medical System to reimburse the costs of COVID19 diagnostic testing and services provided to individuals without health insurance.

Coverage of Testing for COVID-19 through the Veterans Health Administration – Includes \$60 million for the Department of Veterans Affairs to cover the costs of COVID-19 diagnostic testing for veterans receiving care through Medical Services or through Medical Community Care.

Title VII – General Provisions

Ensures State Emergency Operations Centers receive regular and real-time reporting on aggregate testing and case data from health departments and share that data with the Centers for Disease Control and Prevention.

DIVISION B – Nutrition Waivers

Title I – Maintaining Essential Access to Lunch for Students Act

Waiver Exception for School Closures Due to COVID-19. Provides the Secretary of Agriculture the authority to issue waivers for state plans that increase costs to the federal government.

Title II – COVID-19 Child Nutrition Response Act

National School Lunch Program Requirement Waivers Addressing COVID19. Allows all child and adult care centers to operate as non-congregate (i.e. allows them to take food to go). Allows the Secretary of Agriculture to waive meal pattern requirements in child nutrition programs if there is a disruption to the food supply as a result of the COVID-19 emergency. Provides the Secretary of Agriculture the authority to issue nationwide school meal waivers during the COVID-19 emergency, which will eliminate paperwork for states and help more schools quickly adopt and utilize flexibilities.

Physical Presence Waiver Under WIC During Certain Public Health Emergencies. Provides the Secretary of Agriculture with the authority to grant waivers to allow participants to be certified for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) without being physically present at the WIC clinic.

Administrative Requirements Waiver Under WIC. This section provides the Secretary of Agriculture with the authority to waive administrative requirements that are barriers to serving WIC participants during the coronavirus outbreak.

Title III – SNAP COVID-19 Response Waivers

SNAP Flexibility for Low-Income Jobless Workers. Suspends the work and work training requirements for SNAP during this crisis.

Additional SNAP Flexibilities in a Public Health Emergency. Allows states to request special waivers from the Secretary to provide temporary, emergency CR-SNAP benefits to existing SNAP households up to the maximum monthly allotment, as well as give the Secretary broad discretion to provide much more flexibility for States in managing SNAP caseloads. Additionally, this language requires the Secretary to make State requests for waivers and the USDA response, as well as any USDA guidance on State flexibilities, publicly available online.

DIVISION C – Emergency Family and Medical Leave Expansion Act

Amendments to the Family and Medical Leave Act of 1993. This section provides 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 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:

- If the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years if their school or place of care has been closed, or a childcare provider is unavailable, due to a public health emergency.

For the first ten days for which the employee take leave, leave may consist of unpaid leave. The employee has the option to substitute any accrued vacation, personal, or medical or sick leave for unpaid leave. Note – Division E may provide coverage for sick leave that fills this gap based on criteria outlined in that section.

After the first ten days, an employer shall provide paid leave that will be no less than two-thirds of the employee's usual pay. However, in no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate.

Note – the Secretary of Labor has the authority to issue regulations for good cause to exclude certain health care providers and emergency responders from the definition of eligible employee, and may exempt small businesses with fewer than 50 employees from the requirements if the requirements would jeopardize the viability of the business.

Employment Under Multi-Employer Bargaining Agreements. The bill ensures employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan are provided with leave.

Special Rule for Certain Employers. Employers not subject to this section will not be penalized.

Special Rule for Health Care Providers and Emergency Responders. An employer of an employee who is a health care provider or an emergency responder may elect to exclude the employee from section 3102.

Effective Date. This Act takes effect not later than 15 days after the date of bill's enactment. And is in effect until December 31.

DIVISION D – Emergency Unemployment Insurance Stabilization and Access Act of 2020

Emergency Transfers for Unemployment Compensation Administration. This section provides \$1 billion in 2020 for emergency grants to states for activities related to processing and paying unemployment insurance (UI) benefits, under certain conditions.

- \$500 million would be used to provide immediate additional funding to all states for staffing, technology, systems, and other administrative costs.

Requirements are:

- Employers to provide notification of potential UI eligibility to laid-off workers
- Ensure that workers have at least two ways (for example, online and phone) to apply for benefits
- Notify applicants when an application is received and being processed and if the application cannot be processed, provide information to the applicant about how to ensure successful processing.

States required to report on the share of eligible individuals who received UI benefits and the state's efforts to ensure access within one year of receiving the funding. The funding would be distributed in the same proportions as regular UI administrative funding provided through annual appropriations.

\$500 million would be reserved for emergency grants to states which experienced at least a 10 percent increase in unemployment. Those states would be eligible to receive an additional grant, in the same amount as the initial grant, to assist with costs related to the unemployment spike, and would also be required to take steps to temporarily ease eligibility requirements that are limiting access to UI during

the COVID-19 outbreak, like work search requirements, required waiting periods, and requirements to increase employer UI taxes if they have high layoff rates.

Temporary Assistance for States with Advances. This section provides states with access to interest-free loans to help pay regular UI benefits through December 31, 2020, if needed.

Technical Assistance and Guidance for Short-Time Compensation Programs. This section requires the Secretary of Labor to provide technical assistance to states that want to set up work-sharing programs, in which employers reduce hours instead of laying employees off, and then employees receive partial unemployment benefits to offset the wage loss.

Full Federal Funding of Extended Unemployment Compensation for a Limited Period. For states that experience an increase of 10 percent or more in their unemployment rate (over the previous year) and comply with the above requirements, this section provides 100 percent federal funding for Extended Benefits, which normally require 50 percent of funding to come from states.

Extended Benefits (EB) are triggered when unemployment is high in a state and provide up to an additional 26 weeks after regular UI benefits (usually 26 weeks) are exhausted. This section also suspends the financial penalty within EB for states that waive the usual one-week waiting period for benefits.

DIVISION E – Emergency Paid Sick Leave Act

The 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, up to a limit.

Qualified reasons for sick leave:

- (1) The employee is subject to a federal, state or local quarantine or isolation order;
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (3) The employee is experiencing symptoms of COVID -19 and is seeking a medical diagnosis;
- (4) The employee is caring for an individual who is subject to an order as described in (1);
- (5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; and
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Labor.

Amount of leave:

- 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.

Notice. Employers shall post and keep posted information about this provision of law no later than 7 days after the date of enactment.

Prohibited Acts. It is unlawful for an employer to discriminate against an employee who takes leave in accordance with this act.

Enforcement

Employment under Multi-Employer Bargaining Agreements. 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.

Rules of Construction. Nothing in this Act may diminish the rights or benefits of employees under other federal, state, or local law, collective bargaining agreements, or existing employer policy.

Effective Date. Goes into effect 15 days after enactment.

Sunset. Will expire on December 31, 2020.

Definitions.

- Defines employer as an entity that employs fewer than 500 employees.
- Amount of Paid Leave – paid at an employees regular rate, but:
 - Limits paid leave to \$511 per day and \$5,110 in the aggregate for reasons 1, 2 and 3 in section 5102.
 - Limits paid leave to \$200 per day and \$2,000 in the aggregate for reasons 4, 5, and 6 in section 5102.

Regulatory Authorities. The Secretary of Labor shall have the authority to issue regulations for good cause to exclude certain health care providers and emergency responders from the definition of employee, and to exempt small businesses with fewer than 50 employees from the requirements.

DIVISION F – Health Provisions

Coverage of Testing for COVID-19. This section requires private health plans to provide coverage for COVID-19 diagnostic testing, including the cost of a provider (including telehealth), urgent care center and emergency room visits in order to receive testing. Coverage must be provided at no cost to the consumer.

Waiving Cost Sharing Under the Medicare Program for Certain Visits Relating To Testing For COVID-19. This section requires Medicare Part B to cover beneficiary cost-sharing for provider visits during which a COVID-19 diagnostic test is administered or ordered. Medicare Part B currently covers the COVID-19 diagnostic test with no beneficiary cost-sharing.

Waiving Cost Sharing Under the Medicare Advantage Program for Certain Visits Relating to Testing for COVID-19. This section requires Medicare Advantage to provide coverage for COVID-19 diagnostic testing, including the associated cost of the visit in order to receive testing. Coverage must be provided at no cost to the beneficiary.

Coverage at No Cost Sharing of COVID-19 Testing Under Medicaid and CHIP. This section requires Medicaid to provide coverage for COVID-19 diagnostic testing, including the cost of a provider visit in order to receive testing. Coverage must be provided at no cost to the beneficiary. It would also provide

states with the option to extend Medicaid eligibility to uninsured populations for the purposes of COVID-19 diagnostic testing. State expenditures for medical and administrative costs would be matched by the federal government at 100 percent.

Treatment of Personal Respiratory Protective Devices as Covered Countermeasures. This section requires certain personal respiratory protective devices to be treated as covered countermeasures under the PREP Act Declaration for the purposes of emergency use during the COVID-19 outbreak and ending October 1, 2024.

Application with Respect to TRICARE, Coverage for Veterans, and Coverage for Federal Civilians. This section ensures that individuals enrolled in TRICARE, covered veterans, and federal workers have coverage for COVID-19 diagnostic testing without cost-sharing.

Coverage of Testing for COVID-19 At No Cost Sharing for Indians Receiving Contract Health Services. This section ensures that American Indians and Alaskan Natives do not experience cost sharing for COVID-19 testing, including those referred for care away from an Indian Health Service or tribal health care facility.

Emergency FMAP Increase. This section provides a temporary increase to states' federal medical assistance percentage for the duration of the public health emergency for COVID-19. It requires states to maintain eligibility standards that are no less restrictive than the date of enactment.

Increase in Medicaid Allotments for Territories. This section provides an increase to the territories' Medicaid allotments for 2020 and 2021. It will ensure that territories that receive an FMAP increase under the previous section will have the necessary additional federal funds for their Medicaid programs.

Clarification Relating to Secretarial Authority Regarding Medicare Telehealth Services Furnished During COVID-19 Emergency Period. This section makes a technical change to the Medicare telehealth provision of the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123) to ensure that new Medicare beneficiaries are able to access telehealth services under the emergency authority granted to the Secretary.

DIVISION G – Tax Credits For Paid Sick And Paid Family And Medical Leave

Payroll Credit for Required Paid Sick Leave. This section provides a refundable tax credit equal to 100 percent of qualified paid sick leave wages paid by an employer for each calendar quarter. The tax credit is allowed against the tax imposed by the employer portion of Social Security taxes. Qualified sick leave wages are wages required to be paid by the Emergency Paid Sick Leave Act. Also allows certain health plan expenses to count as qualified sick leave wages.

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 for the employer portion of Social Security taxes 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.

Credit for Sick Leave for Certain Self-Employed Individuals. This section provides a refundable tax credit equal to the qualified sick leave equivalent amount for eligible self-employed individuals who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus. For eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus, the section provides a refundable tax credit equal to 67 percent of a qualified sick leave equivalent amount.

The credit is allowed against income taxes and is refundable. Eligible self-employed individuals are individuals who would be entitled to receive paid leave pursuant to the Emergency Paid Sick Leave Act if the individual was an employee of an employer (other than himself or herself). For eligible self-employed individuals who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation, the qualified sick leave equivalent amount is capped at the lesser of \$511 per day or the average daily self-employment income for the taxable year per day. For eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus, the qualified sick leave equivalent amount is capped at the lesser of \$200 per day or the average daily self-employment income for the taxable year per day.

In calculating the qualified sick leave equivalent amount, an eligible self-employed individual may only take into account those days that the individual is unable to work for reasons that would entitle the individual to receive paid leave pursuant to the Emergency Paid Sick Leave Act.

A self-employed individual must maintain documentation prescribed by the Secretary of the Treasury to establish his or her eligibility for the credit. To prevent a double benefit, the qualified sick leave equivalent amount is proportionately reduced for any days that the individual also receives qualified sick leave wages from an employer. The section contains rules to ensure that self-employed individuals in U.S. territories may claim the credit.

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 and

compliance and record-keeping relief. The section applies only to days occurring during the period beginning on a date selected by the Secretary of the Treasury 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. This section 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 and incorporate certain qualified health plan expenses.

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.

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, 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 which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

Credit for Family Leave for Certain Self-Employed Individuals. This section provides a refundable tax credit equal to 100 percent of a qualified family leave equivalent amount for eligible self-employed individuals.

The credit is allowed against income taxes and is refundable. Eligible self-employed individuals are individuals who would be entitled to receive paid leave pursuant to the Emergency Family and Medical Leave Expansion Act if the individual was an employee of an employer (other than himself or herself). The qualified family leave equivalent amount is capped at the lesser \$200 per day or 67 percent of the average daily self-employment income for the taxable year per day. In calculating the qualified family leave equivalent amount, an eligible self-employed individual may only take into account those days that the individual is unable to work for reasons that would entitle the individual to receive paid leave pursuant to the Emergency Family and Medical Leave Expansion Act.

A self-employed individual must maintain documentation prescribed by the Secretary of the Treasury to establish his or her eligibility for the credit. To prevent a double benefit, the qualified sick leave equivalent amount is proportionately reduced for any days that the individual also receives qualified sick leave wages from an employer. The section contains rules to ensure that self-employed individuals in U.S. territories may claim the credit.

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 and compliance and record-keeping relief. The section applies only to days occurring during the period beginning on a date selected by the Secretary of the Treasury which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

Special Rule Related to Tax on Employers. This section ensures that any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act will not be considered wages for purposes of section 3111(a). The Social Security OASDI trust funds are held harmless by transferring funds from the General Fund.