
Virus Relief Expands Paid Leave, With Growing Calls For More – Law360 – Rachel Demarest Gold Quoted

FEATURED ATTORNEY



Rachel Demarest Gold

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By Braden Campbell

Law360 (March 18, 2020, 8:46 PM EDT) — As an emergency sick leave measure moves to the president’s desk as part of a coronavirus relief package passed by the [U.S. Senate](#) on Wednesday, workers’ advocates and employers are already angling to address perceived flaws through a new round of legislation.

The Families First Coronavirus Response Act, which [the president signed Wednesday](#), guarantees workers paid time off for reasons related to the virus, including caring for kids whose schools have closed. But its exclusion of certain workers and the high costs it imposes on businesses have advocates on both sides looking for more relief.

“It’s important for workers to come first, and their needs to be addressed, and so we hope there will be a package that will meet everybody’s needs in this crisis,” said Sherry Leiwant, co-president of paid leave advocacy group [A Better Balance](#).

Incomplete Relief for Workers

The bill has several provisions aimed at helping the millions of people affected by the virus, including the first-ever federal paid sick time mandate. It requires most private employers with fewer than 500 employees to provide two weeks of paid time off to workers if they are unable to work for reasons tied to the virus, including if they are subject to quarantine or have to care for a loved one who is.

Additionally, employers must pay employees at their full wage if they are taking time off for themselves, or at two-thirds of their regular pay if they have to care for a family member, up to certain caps. The bill also amends the Family and Medical Leave Act to give workers long-term paid time off, at partial pay, if they can’t work because their child’s school has closed.

But the bill leaves out a sizable chunk of the workforce by carving out large employers, said Leiwant, whose group has played a key role in passing sick leave mandates in several states and cities.

“There are millions ... who work for larger companies who do not have paid sick time,” she said.

A recent analysis of [U.S. Department of Labor](#) data by the progressive Economic Policy Institute pegged that number at 6.8 million workers, while many more at large companies may get less paid time off than what’s provided for under the bill.

The extended leave provisions also cover narrower circumstances than advocates would like, and include language giving the secretary of labor discretion to exempt businesses with fewer than 50 workers if he finds it would jeopardize their business, Leiwant said.

High Costs for Business

Employers’ advocates likewise have reservations about the bill, which adds another expense for businesses already reeling from the crisis.

“Hopefully this will relieve some of the workers’ immediate financial burdens,” said Rachel Demarest Gold, an attorney at [Abrams Fensterman Fensterman Eisman Formato Ferrara Wolf & Carone LLP](#) who advises employers. *“But businesses ... have to come up with unanticipated lump-sum expenses at the same time their entire workflow has stopped. It’s just devastating.”*

The bill attempts to make this burden more manageable by providing businesses a quarterly tax credit for any money they pay out pursuant to the new mandate. That provision, along with caps on how much an employer must pay a given worker and the possible exemption of some smaller businesses, make the bill more palatable, said James Paretti, an employment policy expert with management-side firm [Littler Mendelson PC](#). But they may not be enough.

“The idea you’re going to have to exist and make payroll and do all these things with the hope that next year you’ll get paid back” is tough for many employers to stomach, he said.

Eyes on the Next ‘Phase’

The act — which also eases workers’ access to unemployment benefits, shores up federal food and medical aid programs, and bars insurers from charging for coronavirus tests — is the second coronavirus-related measure to clear Congress after an \$8.3 billion spending package [passed earlier this month](#). And it likely won’t be the last.

Lawmakers and the White House have already started discussing a “phase three” that reportedly could see the government shell out more than \$1 trillion to prop up the ailing economy, and workers and businesses alike are hoping for a piece of the pie.

“We would like to get broader coverage and broader money to workers in that third package,” said Leiwant.

The desires of the workers’ side in another coronavirus relief measure track their qualms with the new bill, she said: eliminating the large employer carveouts, expanding the circumstances in which workers get paid leave and nixing the labor secretary’s authority to issue exemptions.

Some of these provisions were added to assuage businesses’ concerns after Republicans balked at a [more expansive bill](#) the House passed over the weekend. Still, Leiwant said she’s optimistic a larger third bill could address workers’ and employers’ concerns.

On the business side, advocates are hoping for “industry-specific relief” that bails out especially hard-hit employers, suspension of payroll taxes, and other financial help, Littler’s Paretti said.

“The phrase of the day is ‘bridge loans,’ where the government will make money available to small businesses to maintain their operations,” he said. But at this point, it’s hard to guess how the legislative process might play out.

“The House passed the broadest expansion of leave laws since the Family and Medical Leave Act of 1993” in last week’s version of the relief bill, Paretti said. “By Monday, it was essentially repealed and replaced. So, lots and lots of moving parts.”

— Editing by Philip Shea and Kelly Duncan.