



TFH | LEGAL

## **TIME OFF RELATED TO THE CORONAVIRUS**

### **Questions and Answers**

*By Lisa F. Harper, Esq.*

#### **Do I have to allow time off for employees who are ill, quarantined, taking care of ill or quarantined family members or children out of school or child care as a result of this crisis and do I have to pay for it?**

Yes, the U.S. Congress passed [H.R. 6201](#) known as the Emergency Family and Medical Leave Expansion Act on March 18 which the President then signed. The Act provides, among other things, for paid sick time for employees of employers with 500 or fewer employees for time off related to illness from a coronavirus, required quarantine, care required for household members who are experiencing illness from a coronavirus or under a quarantine for the same; or for care for a child due to school or care facility closures due to the virus. For paid sick time required under HR 6201, full time employees receive up to 80 hours of this paid time off, while part time employees are entitled to the time off that the employee works, on average, over a two week period. The rate paid for this sick time is the greater of the employee's regular rate of pay or the applicable minimum wage, although the rate may not exceed \$511 per day or \$5110 in the aggregate.

In addition, the Act amends and specifically with respect to the coronavirus expands the Family Leave Act coverage to employers with fewer than 500 employees (with some exceptions) and provides for up to 12 weeks of job protected leave for employees who are unable to work because they must care for a child (under 18 years old) whose school or care provider is closed or unavailable due to a coronavirus emergency. The first 10 days of the leave can be unpaid or the employer can require that the employee use accrued paid time off. After the first ten days, the employee must be paid at least 2/3 of his or her regular earnings up to \$200 a day or \$10,000 in the aggregate.

#### **If I know my employees have Children at home not in school, do I have to tell them to go home and take the leave under HR6201?**

No, you have to do so if the employee asks for such leave.

#### **What are the repercussions if I don't follow the requisites of HR 6201.**

The penalties applied under the Fair Labor Standards Act will apply to violations of this law. That could allow the employee to recover back pay as well as 100% of the employees' attorneys' fees.



TFH | LEGAL

**Does this leave have to be paid in connection with a local jurisdiction or other governmental shelter at home order or other order shutting down my business?**

There is an argument that if the employees have not already requested such leave, that the leave mandated by the governmental order will not change the nature of that leave into paid leave. BUT – there is no clear guidance on this issue and the outcome is uncertain.

**Recovery of Amounts Paid for Leave under HR 6201 through Tax Credits**

HR 6201 provides for recovery of the amounts paid (or some portion thereof) for the new paid sick time and expanded FMLA through credits against payroll taxes due from the employer. In the event that such tax credits are insufficient to cover the amounts to which the employer is allowed to recover, the Act provides for a refund to be issues to the employer.

**What if employees simply want to take time off because of a general fear of the virus threat?**

An employer is currently not required to let a healthy employee take time off due to general anxiety about this virus. If an employee is at an increased risk for complications from coronavirus due to an underlying health condition, then he or she may be entitled to time off in Georgia due to the Governor's March 23, 2020 Executive Order requiring sheltering in for such people. If the increased risk does not fall under the Governor's Order, the employee should be urged to consult his or her physician about steps that he or she can take to protect his or her health and to the extent that any work related changes are requested, the employer may, but is not required, to allow them.