

FEDERAL LEGISLATIVE UPDATE

On Thursday(3-12-20), the House of Representatives passed HR 6201. The bill is currently pending in the Senate and is expected to be voted on in short order amid the Covid-19 crisis. **President Trump has publicly expressed his support for the bill.** Importantly, this bill, would amend parts of the Family Medical Leave Act (“FMLA”), and creates the “Paid Sick Days for Public Health Emergencies and Personal and Family Care Act” which would apply to all employers with less than 500 employees. If passed by the Senate, the bill will affect all employers in various ways which are outlined in this Update. ***Keep in mind, EDA continues to lobby on behalf of dealers to seek amendments to the bill by the Senate which will be advantageous to equipment dealers.***

A general summary of the provisions included within HR 6201(as passed by the House of Representatives) are as follows:

- All employers will have to allow their employees to earn paid sick time.
- The Act defines paid sick time as:
 - o an increment of compensated leave that can be earned by the employee for use during an absence from employment for a reason described in the Act’s specified provision or provided by an employer during a public health emergency.
- The rate of pay for this mandated paid sick time at the employee’s normal rate of pay.
- Every employer must allow their employees to earn paid sick time at a minimum of one hour for every thirty hours worked.
- Employees will begin to accrue this time as soon as they begin work with a new employer.
- Mandated paid sick time will be available to employees as soon as they have worked with their employer for 60 days.
- Mandated paid sick time will roll over from year to year.
- If an employer already has an existing paid sick time program, they need not make changes *unless* it does not meet this minimum standard.
- If an employee is terminated, takes leave, or quits and is then reinstated by an employer within twelve (12) months, then the employer must also reinstate the already earned, mandated paid sick time as well.
- If an employee quits, is terminated, or is otherwise separated the employer does not have to otherwise compensate the employee for this mandated paid sick time.

This proposed bill also denotes certain approved uses for the mandated paid sick time. The following are all the proposed, acceptable uses listed in the bill:

- An absence resulting from a physical or mental illness, injury, or medical condition of the employee.
- An absence resulting from the employee obtaining professional medical diagnosis or care, or preventative medical care, for the employee.
- An absence resulting from the closure of an employee’s place of employment by order of a Federal or State public official with jurisdiction, or at the employer’s discretion, due to a public health emergency.
- An absence because a Federal or State public official with jurisdiction or a health care provider has determined that the employee’s presence in the community may jeopardize the health of

other because of the employee's exposure to a communicable disease during a public health emergency, regardless of whether the employee had actually contracted the communicable disease.

- An absence for the purpose of caring for a child, a parent, a spouse, a domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship;
 - o Who is a child, if the child's school or place of care has been ordered closed by a Federal or State Public Official with jurisdiction or at the discretion of the school or place of care due to a public health emergency, including if a school or entity operating the place of care is physically closed but is providing education or care to the child remotely; or
 - o Because a Federal or State public official with jurisdiction or a healthcare provider has determined that the employee's presence in the community may jeopardize the health of other because of the employee's exposure to a communicable disease during a public health emergency, regardless of whether the employee had actually contracted the communicable disease.
- An absence for the purpose of caring for a child, a parent, a spouse, a domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship;
 - o Who is a child, if the employee is required to attend a school meeting or a meeting at a place where the child is receiving care necessitated by the child's health condition or disability; or
 - o Who is otherwise in need of care.
- An absence resulting from domestic violence, sexual assault, or stalking if the time is to-
 - o Seek medical attention for the employee or the employee's spouse, child, parent, domestic partner, or an individual related to the employee, to recover from physical or psychological injury or disability caused by the domestic violence, sexual assault or, stalking;
 - o Obtain or assisted a related person in obtaining services from a victim services organization;
 - o Obtain or assist a related person in obtaining psychological or other counseling; or
 - o Seek relocation;
 - o Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from any domestic violence, sexual assault or stalking.

The bill, if passed would also mandate that employer give each employee 14 days of paid sick time in a public health emergency (PHE). **This provision would apply to any employer who employs over 1 employee.** This paid sick time will be available to each employee upon the announcement of a public health emergency, and if the bill is passed in the middle of a public health emergency then each employee is granted these 14 days of *additional paid sick time* as soon as the bill is passed. Here are some additional key points:

- The bill mandates that each employee get paid whatever their standard pay is over a 14-day period, whether it be an exempt employee, an hourly full-time employee, or a part time employee.

- The employee is not required to have worked 60 days with the employer before accessing this additional PHE time.
- The employee dictates when they use this PHE time. The employer cannot force them to use full days or weeks at a time. The increments employees choose to utilize this PHE time is solely up to them.
- Employers who employ 50 *or fewer* employees are to be reimbursed by the Federal Government for paying this additional paid sick time.
 - o In order to be eligible for reimbursement, the employer must submit via affidavit to the Secretary of Labor, evidence showing the paid sick time costs and periods of time taken by employees and paid by said employer.

This bill provides a list of information that employers post in the workplace. Employers are to post the following information:

- Information describing paid sick time available to employees under this Act,
- Information pertaining to the filing of an action under this Act,
- Details of notice requirement for a foreseeable period of time under the Act,
- Information that describes
 - o Protections that an employee has in exercising rights under this Act, and
 - o How the employee can contact the Secretary of Labor if their rights are violated.

This bill also gives rise to two separate legal rights of action. If passed, these causes of action need to be taken as seriously as Title 7, 9, FMLA, etc. The first cause of action is a right granted to individual employees under this Act. It could be brought as a class action if an employer violates this Act for a significant portion of employees. The second cause of action is one for the Secretary of Labor. Both causes of action have a statute of limitations of 2 years, that begins tolling when the harm last occurs. If there is reason to believe the violations were willful then the statute of limitations is 3 years since the date of the last harm.

Keep in mind that HR 6201 still pending in Senate, and there are likely to be changes before it is passed.