Congressional Action on COVID-19: Impacts on Short Line Railroads

As Congress contemplates emergency relief measures to address the coronavirus pandemic, we are actively monitoring developments that may impact short line railroads. Today, Congress passed the Families First Coronavirus Response Act (H.R. 6201), a $104 billion package focused on paid sick leave and unemployment benefits for workers and families. This bill applies to all companies (including all short line railroads) and requires companies with less than 500 employees to provide up to 10 days of fully paid sick leave and 12 weeks of paid family and medical leave for parents experiencing issues related to COVID-19. The bill also provides an additional $1 billion for state unemployment programs and authorizes extended unemployment benefits.

The required expansion of paid sick leave and paid family and medical leave for COVID-19 is in addition to whatever paid leave benefits are already offered by an employer, who will be entitled to a fully refundable tax credit equal to 100% of the qualified leave wages paid to workers. Requirements and tax credits for COVID-19 qualified sick leave wages are capped at $511 per day ($200 per day if the leave is for caring for a family member) and 10 days, while the qualified paid family and medical leave wages are capped at $200 per day and $10,000 overall. These provisions are intended to be temporary and will expire on December 31, 2020.

For COVID-19 related issues, paid sick leave is not available if an employee can perform their job remotely, and paid family and medical leave is restricted to parents taking care of children when school is closed, or if their ordinary care giver is not available.

**Expanded Paid Sick Leave for COVID-19:** All employees are entitled to two-weeks of paid sick leave for issues related to COVID-19. This paid sick leave is in addition to whatever sick leave is already offered by the employer. Employers subject to this requirement are entitled to a fully refundable tax credit equal to 100% of the qualified sick leave wages paid by the employer. Qualified sick leave wages are capped at $511 per day ($200 per day if the leave is for caring for a family member) and 10 days.

**Expanded Paid Family and Medical Leave for COVID-19:** Any employee who has been with the company for at least 30 days is entitled to up to 12 weeks of paid family and medical leave to care for children if schools are closed or their daycare is unavailable because of a public health emergency and they are unable to work or telework. Employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified paid family and medical leave wages paid by the employer. Qualified paid family and medical leave wages are capped at $200 per day and $10,000 overall.

Over the weekend, the rail industry reviewed a House-version of the bill and identified a significant omission that excluded railroads from receiving federal tax credits to cover paid leave benefits related to COVID-19. After working with lawmakers and their staff, we are pleased to report that Congress approved a package of technical corrections to the bill on Monday that now makes railroads eligible for these paid leave tax credits.
This bill represents ‘Phase 2’ of the congressional response to the coronavirus pandemic. On March 6, President Trump signed into law ‘Phase 1’ of the federal government’s response to COVID-19: a $8.3 billion bill focused on coronavirus vaccine research and development. Over the coming weeks, Congress will also be working on ‘Phase 3’: a massive economic stimulus package potentially worth $1 trillion targeted at various industries.

**Phase 1:** $8.3 billion bill focused on coronavirus vaccine research and development.

**Phase 2:** $104 billion bill focused on paid sick leave and unemployment benefits for workers and families.

**Phase 3:** $1 trillion stimulus package that is currently being negotiated.

Concerns have been expressed about the liquidity problems the paid sick leave and paid family and medical leave could create for some small businesses as they pay employees but wait for reimbursement from the federal government. Provisions in the bill include regulatory flexibility to waive penalties for businesses not submitting their payroll taxes if they do so in anticipation of a refund under this bill. Furthermore, Treasury Secretary Steven Mnuchin has extended tax deadlines due to the coronavirus, allowing individuals to defer up to $1 million in payments for 90 days without interest or penalties, while corporations will be able to defer up to $10 million.

**Families First Coronavirus Response Act: Expanded Paid Leave and Unemployment Benefit**

The Families First Coronavirus Response Act mandates an expansion of federal paid sick leave and paid family and medical leave benefits that applies to short line railroads. Below is guidance for COVID-19 related paid leave benefits and unemployment compensation, as prepared by the U.S. Chamber of Commerce.

**1. Paid Sick Leave**

The Families First Coronavirus Response Act package includes the “Emergency Paid Sick Leave Act.” This requires private sector employers with fewer than 500 employees and government employers to provide employees with two-weeks of paid sick leave (80 hours for full-time employees and typical number of hours over two-weeks for part-time employees).

**Eligibility:** The paid sick leave is available to any employee without regard to duration of employment if they are unable to work or telework because they are:

- Subject to a government quarantine or isolation order related to COVID-19
- Have been advised by health provider to self-quarantine due to COVID-19
- Experiencing symptoms of COVID-19 and seeking medical diagnosis
- Caring for an individual subject to quarantine order or self-quarantine
- Caring for children if schools are closed or their caregiver is unavailable because of a public health emergency, or
- Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services
Rate of Pay: Employees are compensated at the higher of their regular rate, the federal minimum wage, or the local minimum wage, but not to exceed $511 per day and $5,110 in the aggregate. However, if the employee is absent to care for a sick family member, a child unable to attend school, or because they meet the criteria for similar conditions they are compensated at 2/3 of the rate they would otherwise receive, but not to exceed $200 per day and $2,000 in the aggregate. (This conforms the pay to the amount of the available tax credit.)

Small Business and Other Exemptions: The Secretary of Labor is authorized to issue regulations to exempt small businesses with fewer than 50 employees from the requirement to offer leave to care for a child when a school is closed when the imposition of paid sick leave would jeopardize the viability of the business as an ongoing concern.

Relationship to Existing Programs: This paid sick leave is in addition to whatever sick leave is already offered by the employer (including subject to state or local requirements).

Effective Dates: The provision takes effect not later than 15 days after enactment of the bill and sunsets on December 31, 2020.

Funding: Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified sick leave wages paid by the employer. Qualified sick leave wages are capped at $511 per day ($200 per day if the leave is for caring for a family member) and 10 days. The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified sick leave exceed the taxes they would owe. Railroads under the Railroad Retirement Act in lieu of the Social Security Act can also take the tax credits. The Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties on failing to deposit payroll taxes in anticipation of the credit.

Additional Credit for Health Plan Expenses: The amount of the tax credit is further increased by the amount of the expenses of the employer’s health care plan allocable to the qualified sick leave. This allows the employer to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave. Tax on Employers: Paid sick leave is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax, for the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax.

Self-Employed: There is a similar tax credit against self-employment taxes for individuals who are self-employed but would otherwise qualify for paid sick leave if they were an employee of an employer.

Examples:

- John owns a manufacturing firm with fewer than 500 employees. One of his full-time employees has a family member who is diagnosed with coronavirus. John must provide up to 80 hours of paid sick leave at 2/3 of her normal rate of pay, but not to exceed $200 a day and will receive a refundable tax credit on his next quarterly tax filing to offset the cost up to $200 per day.

- At the same manufacturing firm, 5 full-time employees need to self-quarantine. John must provide up to 80 hours of paid sick leave for those employees at their normal rate of pay and will receive a refundable tax credit on his next quarterly filing to offset the cost up to $511 per day.
• John owns a manufacturing company with more than 500 employees. The paid sick leave provisions under the bill do not apply.

2. Paid Family and Medical Leave:
The Families First Coronavirus Response Act package includes the “Emergency Family and Medical Leave Expansion Act.” This requires private sector employers with fewer than 500 employees and government employers to provide employees with up to 12 weeks of paid family and medical leave (FMLA).

Eligibility: The paid family and medical leave is available to any employee who has been employed for at least 30 days if they are out in order to:

• Care for children if schools are closed or their daycare is unavailable because of a public health emergency and they are unable to work or telework.

Rate of Pay: After 10 days, during which time the employee can take unpaid or paid leave (if available), employees are compensated at 2/3 of their regular rate. Paid leave under this requirement shall not exceed $200 per day and $10,000 in the aggregate. (This conforms to the amount of the tax credit.)

Small Business and Other Exemptions: The Secretary of Labor is authorized to exempt health care providers and emergency responders and small businesses with fewer than 50 employees if the requirement would jeopardize the business as an ongoing concern. The requirements to restore the employee to their position after the paid leave is taken do not apply to businesses with fewer than 25 employees if the position no longer exists because of the public health emergency (provided the employer takes certain actions to try and assist the employee). Employers with less than 50 employees are exempt from civil actions brought by employees for violations of this section. Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid FMLA.

Effective Dates: The provision takes effect not later than 15 days after enactment of the bill and sunsets on December 31, 2020.

Funding: Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified paid FMLA wages paid by the employer. Qualified paid FMLA wages are capped at $200 per day and $10,000 overall. The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified paid FMLA exceed the taxes they would owe. Railroads under the Railroad Retirement Act in lieu of the Social Security Act can also take the tax credits. The Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties on failing to deposit payroll taxes in anticipation of the credit.

Additional Credit for Health Plan Expenses: The amount of the tax credit is further increased by the amount of the expenses of the employer’s health care plan allocable to the qualified sick leave. This allows the employer to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.
**Tax on Employers:** Paid FMLA is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax, for the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax.

**Self-Employed:** There is a similar tax credit against self-employment taxes for individuals who are self-employed but would otherwise qualify for paid FMLA if they were an employee of an employer, but leave would be capped at 50 days.

**Examples:**
- Jane owns a manufacturing facility with fewer than 500 employees. One of her employees has been exposed to coronavirus and ordered by a public health official to remain away from work and the employee is unable to perform her job. After 10 days of unpaid or paid leave, she is eligible for paid FMLA for the time she must remain quarantined for up to 12 weeks. The manufacture will be reimbursed $200 a day up to a total of a $10,000.
- Same as above, but the employee can perform her job functions remotely. She is not eligible for paid FMLA leave.
- Jane’s manufacturing facility has more than 500 employees. It is not subject to paid FMLA leave under the bill. State or local laws, however, may apply.

**3. Unemployment Compensation:**
The Families First Coronavirus Response Act gives state governments flexibility with respect to waiting periods and in interpreting the “able, available and actively looking” test for Unemployment Compensation (UC) eligibility. That said, it is important to emphasize that UC is not sick leave. The bill also provides an additional $1 billion for state unemployment programs and authorizes extended unemployment benefits (beyond the usual 26 weeks), fully funded by the federal government, for states that experience a spike in unemployment.

**Examples:**
- John owns a restaurant. Business has slowed down dramatically because of the virus. He sends three employees home on furlough. They would be eligible for UC and under the bill would not have to wait one week before collecting benefits. Because the intent is for them to return to John’s restaurant when business picks up, a state can determine that they are actively looking for work. If they are later asked to return to work, but refuse, they will then be considered no longer able, available, and actively looking.
- A worker is forced to stay home under orders of a public health professional or because John’s restaurant is in an area that cannot be reached because of the virus. The worker in the first instance, and all workers in the second, could be eligible for UC because the intention is that they will return to working at the restaurant at some point in the future. (note: the worker on quarantine would also be qualified for paid sick leave under the bill).
- John shuts down his restaurant because of a lack of business caused by the virus. Employees laid off as a result are eligible for UC.