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LEGAL UPDATE

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To: Superintendents/Presidents/Chancellors, Member Community College Districts
From: Kaitlyn Schwendeman, Schools Legal Counsel *KAS*
Carl D. Corbin, General Counsel *CDC*
Subject: Federal Government Passes Families First Act
Memo No. 12-2020(CC)

On March 18, 2020, the Senate passed H.R. 6201, which was signed by the President later that evening.¹ This bill, known as the Families First Act, provides emergency relief for the COVID-19 pandemic. Below, we have highlighted portions of the bill relevant to colleges:

Family and Medical Leave

The bill expands the Family and Medical Leave Act (29 U.S.C. § 2612(a)(1)) by adding new qualifying events, expanding the eligibility requirements for these events, and adding a paid leave provision.

Specifically, for eligible employees, up to 12 weeks of FMLA leave is now available 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 of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”

An eligible employee is one who works at an employer with less than 500 employees, and has been employed there for at least 30 calendar days. If eligible, after the first 10 days, which are unpaid, the employee must be provided 2/3 of their regular salary for the remainder of the protected leave.² Employees may elect to use their accrued leave time to receive pay during the first 10 days.

¹ The full text of the Act may be found at: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

² For employees that work variable hours week to week, the employer must calculate the average number of hours the employee was scheduled per day over the previous 6-month period, including any leave time. If the employee did not work over that period, the employer must calculate “the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.”



Please note that normally, FMLA leave runs concurrently with other leave rights, unless bargained to run consecutively. This Act has not been bargained. The most generous approach an employer can take would be to apply these new rights first and then move on to any rights available pursuant to the Education Code. California Family Rights Act and/or Government Code leave rights, if applicable, may run concurrently with this expanded leave.

Paid Sick Leave

The bill provides for “emergency paid sick leave” which provides for all full-time employees receiving 80 hours (total, prorated for part-time employees based on the total number of hours worked in a two week period) of leave which may be used if:

- A. “The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19,”
- B. “The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19,”
- C. “The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis,”
- D. “The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2),”³
- E. “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,” or
- F. “The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.”

This leave is primary, and must be used prior to any other accrued leave for any of the above purposes. The U.S. Department of Labor will prepare a notification poster no later than March 25, 2020, which employers must post in a conspicuous place where notices to employees are customarily posted.

These provisions go into effect immediately. Colleges should immediately revise their practices to account for the additional leaves provided.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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³ Time spent caring for family members may be compensated at 2/3 the employee’s normal rate of pay. All other emergency paid sick leave must be paid at the employee’s usual compensation.