



## Coronavirus (COVID-19) Legislation

### Background

- On March 13, 2020, President Trump declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.
- NFIB is doing all that it can to support NFIB members and the small business community at large. Throughout the country small businesses, workers, and workplaces are facing unprecedented operational challenges.
- NFIB is actively working with Congress to oppose new mandates and costs on the small business community. NFIB is also working to provide federal support for small business owners.
- NFIB opposed H.R. 6201, the *Families First Coronavirus Response Act*, which would expand the Family and Medical Leave Act (FMLA) by mandating all small businesses provide up to 12 weeks of paid family and medical leave. Businesses with 500 or more employees are exempt.
- H.R. 6201 also contains an unprecedented tax credit reimbursement process through IRS and a convoluted mandate waiver process through the Department of Labor.
- NFIB understands the severity and uncertainty surrounding COVID-19. A recent NFIB survey found that COVID-19 has negatively impacted 23 percent of NFIB members, and 43 percent of those not currently impacted expect to be affected at some point in the next three months.<sup>1</sup> However, the unprecedented expansion of FMLA is deeply concerning to small businesses.

### House passed H.R. 6201, below are the details:

- **PAID FAMILY AND MEDICAL LEAVE MANDATE:** H.R. 6201 expands FMLA to require all small employers provide up to 12 weeks of paid family and medical leave at 2/3 wage replacement.
  - Currently, FMLA requires businesses with 50 or more employees to offer 12 weeks of unpaid family and medical leave.
  - This bill exempts businesses with 500 or more employees from the new paid family and medical leave mandate but requires all small businesses to comply.
  - An eligible employee is someone who has worked at the business for 30 days and is unable to work (or telework) due to a need for leave to care for a child under 18 years whose school or place of care has been closed due to COVID-19 precautions.

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<sup>1</sup> Holly Wade, *Coronavirus Impact on Small Business*, NFIB Research Center, March 13, 2020, <https://www.nfib.com/content/press-release/economy/nfib-study-coronavirus-impact-on-small-businesses/>.

- **PAID SICK LEAVE MANDATE:** H.R. 6201, requires small businesses to provide paid sick leave, as well. Small business owners must provide 10 days of paid sick leave to full time employees at full wage replacement.
  - An eligible employee is someone who has worked at the business for 30 days and is unable to work (or telework), they are subject to a federal, state, or local quarantine, they have been advised by a healthcare provider to self-quarantine, they are experiencing symptoms of and seeking a medical diagnosis for COVID-19, or they are caring for an individual with a need for leave to care for a child under 18 years whose school or place of care has been closed due to COVID-19 precautions.
  - While the paid sick leave and family and medical leave requirements sunset at the end of the year, many small business owners simply cannot afford the cost of the new mandates at the same time they experience increasingly slower sales.
- **TAX CREDITS:** Small businesses would be reimbursed by the federal government through refundable tax credits. Regrettably, the administrative burden attached to the credits may be substantial, and the timeliness of the credits may be challenging.
  - Businesses experiencing cash flow difficulties due to disruptions caused by COVID-19, combined with new federally mandated paid sick leave and paid family and medical leave, may not stay afloat until the next payroll tax credit is claimed.
  - In fact, one in five small business owners reported cash flow to be a continual problem before the outbreak of COVID-19.<sup>2</sup>
- **WAIVER:** The bill contains a poorly defined waiver process through the Secretary of Labor for businesses with fewer than 50 employees, but that means struggling small businesses must apply for an exemption.
- **UNEMPLOYMENT INSURANCE:** The bill provides states \$1 billion for emergency grants for processing and paying unemployment insurance (UI) benefits. Half of these grants – \$500 million – would be reserved for emergency grants to states experiencing at least a 10% increase in unemployment. States would be allowed to use this money to assist with costs related to the unemployment spike but would also be required to significantly loosen eligibility standards and potentially increase employer unemployment insurance rates.

## NFIB's Position

- NFIB opposed H.R. 6201, the *Families First Coronavirus Response Act*, and may consider the bill a Key Vote for the 116<sup>th</sup> Congress.
- While we appreciate Congress and the Administration focusing on addressing COVID-19, small business owners are sensitive to negative impact COVID-19 will have on employees, their businesses, and the economy. Small businesses will require flexibility to deal with the uncertainty and disruption that COVID-19 will continue to cause.
- This legislation would limit flexibility in adjusting to a rapidly changing environment and impose potentially unsustainable mandates on small businesses.

<sup>2</sup> Holly Wade, *NFIB National Small Business Poll: Cash Flow*, NFIB Research Center, Volume 13, Issue 2, 2016, [http://www.411sbfacts.com/files/NFIB\\_SBP\\_CashFlow\\_v1.pdf](http://www.411sbfacts.com/files/NFIB_SBP_CashFlow_v1.pdf).

- Paid family and medical leave is a benefit that all employers desire to offer. Unfortunately, some small employers simply do not have the operating budget to afford it. By requiring small businesses to shoulder additional burdens and costs, small businesses who cannot afford to keep up will close.

### What's next?

- **Senate** will consider Coronavirus legislation. Stay tuned for details.

### Other resources

- **SBA disaster assistance loans:** In order for small business to receive an emergency loan, their Governor must have a disaster declaration. The following states have declared disaster assistance for Coronavirus: Arizona, California, Connecticut, Idaho, Maine, Massachusetts, New Hampshire, New York, Oregon, Nevada, Rhode Island, Utah, and Washington.
  - SBA website on Coronavirus: <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
  - Chart on disaster loans: [https://www.sba.gov/sites/default/files/articles/Overview\\_of\\_SBA\\_Disaster\\_Declarations\\_updated\\_0513.pdf](https://www.sba.gov/sites/default/files/articles/Overview_of_SBA_Disaster_Declarations_updated_0513.pdf)
- **DOL waiver:** more details to come soon.
- **NFIB Small Business Resources:** [NFIB.com/Coronavirus](https://www.nfib.com/Coronavirus)
- **NFIB Legislative Update on Coronavirus:** <https://www.nfib.com/content/analysis/no-category/legislative-updates-on-coronavirus/>