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## **Families First Coronavirus Response Act Impacts for ICI Members**

Earlier this week, the Families First Coronavirus Response Act was passed by Congress and signed into law by the President. The measure contains leave provisions applicable to private employers with fewer than 500 employees. The final version of the legislation provides the following leave benefits to employees of covered employers.

1. Up to 80 hours (pro-rated for part-time employees) of paid sick leave, available for immediate use regardless of length of employment, if the employee cannot work (or telework) because he/she:
  - Is experiencing symptoms of COVID-19 and seeking a medical diagnosis, which is paid at 100% and capped at \$511 per day and \$5,110 in the aggregate.
  - Is subject to a government quarantine or has been told by a health care provider that he or she should self-quarantine due to COVID-19, which is paid at 100% and capped at \$511 per day and \$5,110 in the aggregate (or assisting an individual who must quarantine/self-quarantine for those reasons, which is paid at 2/3 the employee's rate and capped at \$200 per day and \$2,000 in the aggregate).
  - Is caring for a son or daughter if his/her school/child care provider is unavailable due to COVID-19, which is paid at 2/3 the employee's rate and capped at \$200 per day and \$2,000 in the aggregate.
  - Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, which is paid at 2/3 the employee's rate and capped at \$200 per day and \$2,000 in the aggregate.
2. Up to 12 weeks of expanded FMLA leave, unpaid during the first 10 days (which are practically covered by 1. above), and then paid at 2/3 the employee's rate (but capped at \$200 per day and \$10,000 in the aggregate) and available to anyone after 30 days of employment for time to care for the employee's son or daughter if the child's school/child care provider is unavailable due to COVID-19 and the employee is unable to work (or telework).

### **Other key points from the act are as follows:**

- An employer cannot force employees to use other forms of leave concurrently with the new and additional leave provided by the act.
- Covered employers must post a notice to employees about their rights under this act (at least as to 1.) once the Department of Labor prepares it.
- The legislation would expire on December 31, 2020, and unused time would not carry over from one year to the next.

- The act would become effective within 15 days of enactment (likely April 2), and the Secretary of Labor is charged with issuing implementation guidelines within that period of time.
- Employers may not change paid leave policies once the legislation is enacted to avoid being subject to the act's paid sick time provisions.
- An employer may elect to exclude health care providers and emergency responders from the leave benefits.
- The Secretary of Labor is empowered to exempt small businesses (fewer than 50 employees) from the leave benefits if the requirements would jeopardize the viability of the business as a going concern.
- Funding of Paid Sick Leave - 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. 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.

It is important to know that the situation is extremely fluid and things are changing on a daily basis. Congress is anticipated to pass a Phase 3 of a coronavirus relief package in the coming days, which will be aimed at helping out businesses and individuals who are affected during this time. We will continue to give members updates that pertain to the industry and their business as they become available.

**For those employees working under a collective bargaining agreement, the Act does NOT include fringe benefit contributions and only requires payment of wages. In addition, if there is a government shut down on construction projects, these benefits do not apply, and the employee would be expected to take advantage of the unemployment system for relief.**

## **Teamsters Agreement**

The following came from the Highway, Heavy, Railroad and Underground Utility Contracting Agreement between Indiana Constructors, Inc. – Labor Relations Division (ICI-LRD) and Teamsters Joint Council No. 69 April 1, 2017 to March 31, 2022, Article 22 Health and Welfare, Indiana Teamsters Health Benefit Fund.

**Section 9.** If an employee is absent because of illness or off-the-job injury, and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four weeks. If the contributing Employer is on an hourly basis then the Employer shall continue to make the required contribution for fifty (50) times the hourly contribution rate each week for a period of up to four (4) weeks. If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work or has been released for work. However, such contributions shall not be paid for a period of more than six (6) months.

In addition, Section 11 requires separation papers when Teamsters are laid off, or else H&W contributions must be paid until such notice is sent. See next page.

**Section 11.** Contributions to the Health and Welfare Fund must be computed weekly and paid each four (4) or five (5) week period as designated in report and remittance forms for the Health and Welfare Fund, on each regular, part-time or extra employee, even though such regular, part-time or extra employee may work only part-time including weeks where no work is performed unless such regular, part-time or extra employee is laid off and given separation papers. There shall be a ten percent (10%) penalty for Health and Welfare contributions not paid by the twelfth (12th) of the month following the close of a reporting period; provided, however, that the individual Employer has the option of depositing contributions in advance on an estimated basis, for which he will be given credit and his account credited and from which he may ask for a refund in case there is an overpayment. Notwithstanding anything herein contained, it is agreed that in the event any Employer becomes delinquent in the payment of his contributions to the Health and Welfare Fund provided for in this Agreement, in accordance with the rules and regulations of the Trustees of such Fund, the employees or their representatives, after the President of the Local Union shall have given seventy-two (72) hours written notice to the Employer of such delinquency in Health and Welfare payments shall have the right to take such action as they deem necessary, including, but not limited to, the following:

- (1) Refraining from work, strike and picketing until such delinquent payments are made, and or
- (2) Commencing a lawsuit to collect the delinquencies. In the event that strike and picketing activity takes place, the Employer shall be responsible to the employee for losses resulting therefrom including wages for lost time, Health and Welfare and Pension contributions, etc. In the event a lawsuit is commenced to collect the delinquencies, the Employer shall be responsible for all attorney fees and all other costs of collection, such as court costs.

Any Local Union or the Health and Welfare Fund itself has the right to conduct an audit of the

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payroll records of any contributing Employer for the purpose of verifying the accuracy of contributions to the Health and Welfare Fund. In the event any Employer refuses to permit a Local Union or the Health and Welfare Fund to conduct an audit within seventy-two (72) hours from receipt of such a request, by certified mail, the Local Union may commence a strike and picketing of the Employer and may continue such activity until permission is given for an immediate audit. The Employer shall be responsible to the employees for losses resulting from such strikes and picketing activity, including wages for lost time, Health and Welfare and Pension contributions, etc.

If the Employer has obtained written permission from a Local Union to use a combination man (member of two crafts), the employee will designate which Health and Welfare program he wants, and the Employer shall furnish forms to the employee for such designation of funds. In order for such form to become effective, a copy of it must be filed with the Local Union from whom the Employer has obtained written permission to use that particular employee as combination man. If the employee signs such a form and it is properly filed with the Local Union, then the employee shall only be covered by the designated Health and Welfare program, and the Employer shall not have to pay into the program that has not been selected. If the Employer fails to get the forms signed and properly filed, the Employer shall be required to contribute into the Health and Welfare Fund set forth herein.

And in this same CBA, Article 23, Pension also clearly requires that when an employee is laid off, separation papers must be sent to the employee, otherwise the employer must continue paying the pension contribution.

**Section 10.** Contributions to the appropriate Pension Fund must be computed weekly and paid each four (4) or five (5) week period, as designated in the report and remittance forms for the appropriate Pension Fund. Contributions must be made on each regular, part-time or extra employee, even though such regular, part-time, or extra employee may work only part-time under the provisions of this Agreement, including weeks in which no work is performed, unless such regular, part-time or extra employee is laid off and given separation papers. An employee working temporarily or in cases of emergency under the terms of this Agreement shall not be covered by the provisions of this Section.

There is also Leave of Absence language in that CBA.

**ARTICLE 24  
LEAVE OF ABSENCE**

**Section 1.** Any employee desiring a leave of absence from his employment shall secure written permission from both the Local Union and the Employer. The maximum leave of absence shall be for ninety (90) days and may be extended for like periods. Permission for extensions must be secured from both the Local Union and Employer. During the period of leave of absence, the employee shall not engage in gainful employment in the same industry in classification covered by this Agreement. Failure to comply with this provision shall result in the complete loss of seniority right for the employee involved.

**Section 2.** There shall be a leave of absence given on request to any employee not receiving twenty-three (23) hours of work Monday through Friday of any week, provided that such request is made in writing by the employee within forty eight (48) hours after the employee received the paycheck representing less than twenty-three (23) hours of work. This leave of absence shall be granted and has to be signed by the Employer and the Union.

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We are carefully reviewing other Indiana CBA's negotiated by ICI-LRD for any similar language and will update members if, and when, we find such language.

*Special thanks go to the Michigan Infrastructure & Transportation Association for compiling the H.R. 6201 information.*