**FMLA Amendments.** The Act would add provisions to the FMLA to provide employees (including union employees) who have been employed for at least 30 days by employers with fewer than 500 employees or government employers, with the right to take up to 12 weeks of job-protected leave through December 31, 2020, if the employee is unable to work or telework due to having to care for a child under age 18 if the child’s school or place of child care has been closed (or the child care provider is unavailable), due to the COVID-19 public health emergency. Employers may elect to exclude health care workers and first responders from taking this public health emergency FMLA.

The first 10 days of FMLA under these new provisions may be unpaid. Employees can use other paid time off such as vacation, sick days, sabbatical, or emergency paid sick leave to cover that gap, but employers cannot require employees to use their accrued paid time off before using these 12 weeks of extended FMLA leave. Employers would pay employees two-thirds of their regular rate of pay for this emergency FMLA leave, capped at $200 per day ($10,000 in the aggregate per employee). Adjustments would be made to the amount of paid time off for employees with varying schedules.

The Act gives the U.S. Department of Labor authority to issue regulations that would exclude certain health care providers and emergency responders from being able to take emergency family and medical leave. The Department of Labor also has the authority to issue regulations to exempt small businesses with fewer than 50 employees from the emergency family and medical leave requirements if the imposition of such requirements would jeopardize the viability of the business as a going concern. The Act would also exempt employers with fewer than 50 employees in a 75-mile radius from civil damages in an FMLA lawsuit.

Under the Act, covered employers (those with less than 500 employees) are required to hold an employee’s job open for them until the end of the leave period. However, an exception applies to employers with fewer than 25 employees if the employee’s position no longer exists due to economic conditions or other changes in the employer’s operations that affect employment and are caused by the COVID-19 crisis, and the employer made reasonable efforts to restore the employee’s job. And, if those efforts failed, the employer agrees to reinstate the employee if an equivalent position becomes available within a year.

The Act creates new, refundable payroll tax credits for employers to help cover the costs of this new paid sick and family leave.