

# RETAIL RELIEF 2020 UPDATE FROM VRF

## Retail Relief 2020

Retail Merchants, Virginia Retail Federation and Retail Alliance are banding together for regional action and advocacy to support retail through this crisis. We will work to have the retail voice heard in legislative initiatives, any government assistance or relief packages. We understand the deep and profound challenges you all are facing and are dedicated to supporting the retail industry in any way that we can.

### **Federally:**

HB6201 - Families First Coronavirus Response Act: This bill responds to the coronavirus outbreak by providing paid sick leave and free coronavirus testing, expanding food assistance and unemployment benefits, and requiring employers to provide additional protections for health care workers. **This has passed and been signed by the President.**

Economic Stimulus Package - The Treasury Department will be asking Congress for \$500 billion in direct payouts for taxpayers as part of a \$1 trillion stimulus package. The two rounds of direct payments to taxpayers, each a total of \$250 billion, would be sent on April 6 and then the second round would be sent on May 18, according to the proposal. They would be tiered payments, with the amounts based on income level and family size, the proposal says. Both payments would be for the same amount. The Treasury is also asking for \$50 billion for the airline industry, a small business interruption loan program of \$300 billion, and \$150 billion for other distressed sectors, the proposal said. **We expect the Senate and House to have their own proposals as well, so the final package is still unclear. See below for a more in depth summary of this bill.**

### **State:**

Unemployment Relief: Gov. Ralph Northam said Tuesday that he has directed the commissioner of the Virginia Employment Commission to waive the one-week waiting period for people to receive unemployment benefits as well as the normal requirement that those receiving unemployment benefits must conduct two job searches a week.

In addition, the governor's office said Virginians may be eligible to receive unemployment benefits if:

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- their employer needs to “temporarily slow or cease operations due to the coronavirus outbreak”;
- they have been issued a notice to self-quarantine by a medical or public health official and are not receiving paid sick or medical leave from their employer; or
- they must stay home to care for an ill family member and are not receiving paid family medical leave from their employer.

#### Governor Mandates/Bans:

- A ban on gatherings of 10 people or more, given signs of community spread. Gov. Ralph Northam’s administration issued an emergency order allowing law enforcement agencies to enforce the ban inside restaurants, gyms and theaters. Full order can be found [here](#).

#### Localities:

Henrico – Hospitality Tax Relief - **hotel and meals tax relief process approved by the Henrico County Board of Supervisors.**

Hotels and restaurants are able to push back the payment of the hotel tax and meals tax without penalty or interest to June 22, 2020. This relief effort will be re-evaluated and could possibly be re-enacted to extend the tax payment to a further date. But right now the date is June 22, 2020.

City of Richmond – Meals Tax Amnesty - the city has unrolled an amnesty program for restaurants “for all penalties and interest on most local taxes due between March 13 and June 30,” including payment on the city’s meals tax normally due to the city on the 20th of every month. The restaurants would still owe the city their March meals tax payment, but removing late fees would allow restaurants to pay the amount down the road without penalties so they can use their existing capital to pay staff and bills in the immediate future.

Other local jurisdictions are working on similar relief efforts.

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#### Families First Coronavirus Response Act

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• **Families First Coronavirus Response Act (HB 6201)** - *Passed and signed by the President*

The Families First Coronavirus Response Act (HB 6201) responds to the coronavirus outbreak by providing paid sick leave and free coronavirus testing, expanding food assistance and unemployment benefits, and requiring employers to provide additional protections for health care workers. See a full summary below:

**H.R. 6201, *Families First Coronavirus Response Act***

*Paid Leave Provisions, Including Technical Corrections\**

**Division C: *Emergency Family and Medical Leave Expansion Act***

Amends the *Family and Medical Leave Act* (FMLA) to require employers with fewer than 500 employees to provide all employees paid leave because of a qualifying need related to a public health emergency. Division C includes new definitions of covered employee and covered employer applicable only to the new entitlement to leave. Division C is effective not later than 15 days after the bill's enactment. These requirements expire on December 31, 2020.

*Paid Leave Mandate.* The first 10 days for which an employee takes the “emergency” FMLA leave may consist of unpaid leave. However, an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave provided by the employer in lieu of this unpaid leave, including utilizing the two weeks of mandated emergency paid sick leave under Division E of H.R. 6201. The remainder of emergency FMLA leave taken by an employee must be **paid leave** provided by the employer. Therefore, a covered employer must provide at least 10 weeks of qualifying paid emergency FMLA leave to a covered employee.

*Employer Pay Calculation.* Paid leave must be at least two-thirds of an employee's regular rate of pay and reflect the number of hours an employee would otherwise be normally scheduled to work. The paid leave shall not exceed \$200 per day and \$10,000 in the aggregate.

*Covered Employee.* An employee who has been employed for at least 30 days by the employer is eligible for the new leave entitlement. Under current law, the FMLA requires

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that an employee be employed for at least 12 months and for at least 1,250 hours with the covered employer during the previous 12-month period to be eligible for leave.

*Employer Threshold.* Employers with fewer than 500 employees. Under current law, the FMLA applies to employers with 50 or more employees.

*Special Rules for Certain Employers.* An employer with fewer than 50 employees is not subject to a private right of action brought by an employee under the FMLA's civil enforcement provisions, including for damages and attorney's fees. Under the FMLA, absent this special rule, an employee may bring a private civil action against an employer for violations of the terms of the FMLA.

Employers of a health care provider or an emergency responder may elect to exclude such employees from Division C's requirements.

*Regulatory Relief for Certain Employers.* The Secretary of Labor is given the authority to issue regulations for good cause to: (1) exclude certain health care providers and emergency responders from the definition of eligible employee; and, (2) exempt employers with fewer than 50 employees from the requirements of Division C if such requirements would jeopardize the viability of the business as a going concern.

*Qualifying Need Related to Public Health Emergency.* An employee may only take the "emergency" FMLA leave if the employee is unable to work (or telework) due to a need to care for the employee's child if the child's school or place of care has been closed due to a public health emergency.

Employers with fewer than 25 employees are not required to restore the employee to their position upon completion of emergency FMLA leave if: (1) the position does not exist due to economic conditions caused by the public health emergency; (2) the employer makes reasonable efforts to restore the employee to an equivalent position; and, (3) an equivalent position does not become available in the following year. Under the FMLA, an employee taking FMLA leave is entitled to be restored to their position or an equivalent position with equivalent pay and benefits.

*Definition of Public Health Emergency.* "Public health emergency" is defined as an emergency with respect to COVID-19 declared by a federal, state, or local authority.

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## **Division E: *Emergency Paid Sick Leave Act***

Requires employers with fewer than 500 employees to provide two weeks of paid emergency leave immediately to all employees because of a qualifying need related to a coronavirus public health emergency. Division E is effective not later than 15 days after the bill's enactment. These provisions expire on December 31, 2020.

*Paid Sick Leave Requirement.* The employer shall immediately provide each employee two weeks of paid sick leave to the extent that the employee is unable to work (or telework) because of the following reasons related to COVID-19:

1. The employee is subject to a federal, state, or local quarantine or isolation order;
2. The employee has been advised by a health care provider to self-quarantine;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual to which points 1 or 2 apply;
5. The employee is caring for a child if the child's school or place of care has been closed due to COVID-19 precautions; or,
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Labor and the Treasury.

*Compensation for Care of Family Members.* With respect to any paid sick time used by an employee for the care of a family member described in points 4-6 above, required compensation is two-thirds of the employee's regular rate of pay.

*Pay Calculations.* An employee is entitled to the equivalent of two weeks of paid sick leave. For part-time and hourly employees, this equals the number of hours such employee works on average over a two-week period. For full-time employees, this equals 80 hours. Paid leave under Division E shall not exceed \$511 per day and \$5,110 in the aggregate for uses described in points 1-3, and \$200 per day and \$2,000 in the aggregate for uses described in points 4-6.

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*Employer.* The requirement applies to all employers with fewer than 500 employees.

*Employer Exemptions.* The Secretary of Labor is given the authority to: (1) issue regulations for good cause to exempt businesses with fewer than 50 employees from the requirements of the above point 5 when the imposition of such requirements would jeopardize the viability of the businesses as a going concern; (2) exclude certain health care providers and emergency responders from these requirements, including by allowing such employers to opt out; and, (3) carry out the purposes of the Division E, including to ensure consistency between Divisions C, E, and G.

*Carryover.* Paid sick leave shall not carry over from one year to the next.

*Leave Sequencing.* An employer may not require an employee to use existing paid leave provided by the employer before the employee uses paid leave provided under Division E.

*Enforcement.* An employer who does not provide paid leave as required by Division E is considered to have failed to pay minimum wage in violation of the *Fair Labor Standards Act* (FLSA) and is subject to FLSA penalties and remedies.

*Compliance Guidelines.* The Secretary of Labor is directed to issue guidelines to assist employers in calculating the amount of paid sick leave within 15 days.

*Rule of Construction.* Nothing in Division E shall be construed to require an employer to reimburse an employee for unused sick leave following an employee's termination, resignation, retirement, or other separation from employment.

### ***Division G: Tax Credits for Paid Sick and Paid Family and Medical Leave***

Provides specific levels of reimbursement to covered employers and certain individuals in the form of payroll credits and tax credits for the leave payments required by Divisions C and E.

*\*Prepared by Committee on Education and Labor Republicans*

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