

116TH CONGRESS
2D SESSION

H. R. 7538

To amend the Families First Coronavirus Response Act to provide paid sick leave for health care providers and emergency responders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 9, 2020

Mr. KELLY of Pennsylvania introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on House Administration, Oversight and Reform, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Families First Coronavirus Response Act to provide paid sick leave for health care providers and emergency responders, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Essential Workforce
5 Parity Act”.

1 **SEC. 2. AMENDMENTS.**

2 (a) IN GENERAL.—Section 5102 of the Families
3 First Coronavirus Response Act (29 U.S.C. 2601 note)
4 is amended—

5 (1) in subsection (a), in the matter following
6 paragraph (6)—

7 (A) by inserting “of paragraphs (1), (3),
8 (4), (5), and (6)” after “employee from the ap-
9 plication”; and

10 (B) by adding “Paragraph (2) shall apply
11 with respect to an employee who is a health
12 care provider by substituting ‘because such pro-
13 vider determines that the employee has tested
14 positive for COVID–19 or attests that the em-
15 ployee is at greater risk for COVID–19 because
16 the employee is living with someone who has
17 tested positive for COVID–19.’ for ‘due to con-
18 cerns related to COVID-19.’”; and

19 (2) by adding at the end the following:

20 “(g) CERTIFICATION FOR HEALTH CARE PRO-
21 VIDERS.—

22 “(1) IN GENERAL.—If an employer requires
23 that a request for leave by a health care provider
24 under subsection (a)(2) be certified, the employer
25 may require documentation for certification not ear-

1 lier than 5 weeks after the date on which the em-
2 ployee takes such leave.

3 “(2) SUFFICIENT DOCUMENTATION.—Docu-
4 mentation of a positive COVID–19 test or an attes-
5 tation from a health care provider of an employee
6 that the employee meets the requirements under
7 subsection (a)(2) shall be sufficient for certifi-
8 cation.”.

9 (b) REGULATORY AUTHORITY.—Section 5111 of the
10 Families First Coronavirus Response Act (29 U.S.C. 2601
11 note) is amended by striking paragraph (1) and redesi-
12 gnating paragraphs (2) and (3) as paragraphs (1) and (2),
13 respectively.

14 **SEC. 3. LIMITATION ON LIABILITY FOR HEALTH CARE PRO-**
15 **FESSIONALS AND RELATED HEALTH CARE**
16 **ENTITIES RELATED TO COVID–19 EMER-**
17 **GENCY RESPONSE.**

18 (a) LIMITATION ON LIABILITY.—Except as provided
19 in subsection (c), a health care professional, the profes-
20 sional’s related health care entity, and any other staff of
21 the related health care entity, shall not be liable for dam-
22 ages under any law of the United States or of any State
23 (or political subdivision thereof) for any harm caused by
24 any act or omission of such health care professional, re-

1 lated health care entity, or other staff, in the course of
2 arranging for or providing health care services if—

3 (1) the act or omission occurs during the
4 COVID–19 emergency period and the 60-day period
5 following such emergency period;

6 (2) the act or omission occurs in the course of
7 providing health care services that—

8 (A) are within the scope of the license, reg-
9 istration, or certification of the health care pro-
10 fessional, as defined by the health care profes-
11 sional’s State of licensure, registration, or cer-
12 tification; and

13 (B) do not exceed the scope of license, reg-
14 istration, or certification of a substantially simi-
15 lar health professional in the State in which
16 such act or omission occurs; and

17 (3) the health care services in question were
18 provided in good faith or were withheld for reasons
19 related to the COVID–19 emergency period.

20 (b) ADDITIONAL COVERED ACTS.—Except as pro-
21 vided under subsection (c), the limitation on liability under
22 subsection (a) shall apply to any act or omission that may
23 be outside the health care professional’s normal area of
24 practice and are within the licensure and accreditation of
25 the related health care entity that is—

1 (1) based on any direction, guidance, rec-
2 ommendation, or other statement made by a Fed-
3 eral, State, or local official to address or in response
4 to the COVID–19 emergency period;

5 (2) based on any guidance published by any
6 Federal, State, or local department or any division
7 or agency of such department in response to the
8 COVID–19 emergency period; or

9 (3) undertaken or omitted due to a lack of re-
10 sources, including manpower, attributable to the
11 COVID–19 emergency period.

12 (c) EXCEPTIONS.—Subsections (a) and (b) do not
13 apply if—

14 (1) the harm was caused by an act or omission
15 constituting willful or criminal misconduct, gross
16 negligence, reckless misconduct, or a conscious fla-
17 grant indifference to the rights or safety of the indi-
18 vidual harmed by the health care professional or re-
19 lated health care entity; or

20 (2) the health care professional rendered the
21 health care services under the influence (as deter-
22 mined pursuant to applicable State law) of alcohol
23 or an intoxicating drug (other than where the health
24 care professional is properly taking a prescription
25 drug ordered by a physician).

1 (d) PREEMPTION.—

2 (1) IN GENERAL.—This section preempts the
3 laws of a State or any political subdivision of a State
4 to the extent that such laws are inconsistent with
5 this section, unless such laws provide greater protec-
6 tion from liability.

7 (2) VOLUNTEER PROTECTION ACT.—Protec-
8 tions afforded by this section are in addition to those
9 provided by the Volunteer Protection Act of 1997
10 (Public Law 105–19).

11 (e) DEFINITIONS.—In this section—

12 (1) the term “harm” includes physical, non-
13 physical, economic, and noneconomic injury or
14 losses;

15 (2) the term “health care professional” means
16 an individual who is licensed, registered, or certified
17 under Federal or State law to provide health care
18 services;

19 (3) the term “related health care entity” means
20 an entity with which a health care professional has
21 a professional affiliation under which the health care
22 professional performs health care services, including
23 any such skilled nursing facility, hospital, academic
24 medical center, ambulatory surgical center, group
25 medical practice, or medical clinic;

1 (4) the term “professional affiliation” means
2 staff privileges, medical staff membership, employ-
3 ment or contractual relationship, partnership or
4 ownership interest, academic appointment, or other
5 affiliation under which a health care professional
6 provides health care services on behalf of, or in asso-
7 ciation with, the related health care entity;

8 (5) the term “health care services” means any
9 services rendered or items provided by a health care
10 professional or the professional’s related health care
11 entity, or by any individual working under the super-
12 vision of a health care professional, that relate to—

13 (A) the treatment, diagnosis, prevention,
14 or mitigation of COVID–19;

15 (B) treatment, diagnosis, or care with re-
16 spect to an individual with a confirmed or sus-
17 pected case of COVID–19; or

18 (C) treatment, diagnosis, or care with re-
19 spect to an individual who presents to a health
20 care professional or the professional’s related
21 health care entity during the COVID–19 emer-
22 gency period; and

23 (6) the term “COVID–19 emergency period”
24 has the meaning given the term “emergency period”

1 in section 1135(g)(1)(B) of the Social Security Act
2 (42 U.S.C. 1320b-5(g)(1)(B)).

3 (f) EFFECTIVE DATE.—This section shall apply with
4 respect to any act or omission described in this section
5 that occurred on or after the date on which the COVID-
6 19 emergency period began.

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