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FFCRA leave mandate ends as tax credits continue

The Families First Coronavirus Response Act required covered employers to provide COVID-related sick and family leave benefits through December 31, 2020 and provided a refundable employer tax credit to offset their cost. While the leave mandate was not extended into 2021, the recently enacted Consolidated Appropriations Act of 2021 did extend employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until the end of March.

Background

Last March, President Trump signed the Families First Coronavirus Response Act (H.R. 6201 or FFCRA) into law. Key employment-related provisions in the FFCRA mandated paid leave benefits, enhanced unemployment insurance benefits, and instituted free coronavirus testing. Among other things, the law required covered employers (generally businesses with fewer than 500 employees and certain public employers) to provide employees with paid leave for reasons related to the coronavirus outbreak and offered refundable tax credits to private employers to help offset their costs. Both the leave mandate and tax credits extended from last April through December 31, 2020. (See our March 18, 2020 *FYI*.)

New COVID relief bill

The Consolidated Appropriations Act of 2021 (H.R. 133 or CAA), a $2.3 trillion coronavirus relief and government funding bill that included $900 billion in pandemic aid, was signed into law on December 27, 2020. Despite speculation to the contrary, the CAA did not extend employee entitlements to FFCRA emergency paid sick leave and/or expanded family and medical leave beyond December 31, 2020. It did, however, offer certain tax incentives for employers to do so.

The CAA extended the FFCRA's payroll tax credits for private employers that voluntarily provide qualifying leave through March 31, 2021. Notably, it did not enlarge the amount of the FFCRA employee leave entitlement (a one-time allotment of up to 80 hours of paid sick leave and 12 weeks of expanded family medical leave). Nor did it change the FFCRA-qualifying reasons for which leave is available, applicable pay caps based on the reason for leave, or employer documentation requirements. Thus, a tax credit would be available to covered employers that allow employees who did not exhaust their full FFCRA allotment in 2020 to take any remaining leave in the first quarter of 2021.

> **Buck comment.** While FFCRA leave is no longer required, employers should be mindful of any continuing obligations to provide COVID-related leave under state and local laws, such as New York state's quarantine leave law. Similarly, they will want to satisfy any requirement to provide leave under the federal Family and Medical Leave Act (FMLA) that may apply to COVID-related absences.

DOL weighs in

On December 31, 2020, the DOL issued two new Q&As clarifying employee leave entitlements under the FFCRA. Q&A 104 makes clear that the employer obligation to provide FFCRA leave ended on December 31, 2020 but also that employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees were extended through March 31, 2021. Q&A 105 reminds employers that employees must be paid for any FFCRA-qualifying leave taken between April 1, 2020 and December 31, 2020 — even though the FFCRA has expired. Employees are advised that they generally have two years to file a complaint with the DOL for nonpayment and that they may also have a private right of action.

In closing

While FFCRA leave is no longer required, the latest COVID-19 relief package extended the FFCRA tax credits for employers that opt to provide qualifying leave until March 31, 2021. Whether the new Congress or the incoming Biden administration will reinstate or otherwise modify the FFCRA's leave mandate remains to be seen.

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