Congress Extends FFCRA Tax Credit into 2021, Declines to Extend FFCRA Leave

Law and the Workplace Blog on **December 28, 2020**

The federal Families First Coronavirus Response Act (“FFCRA”), which requires that employers with fewer than 500 employees provide sick and family leave benefits for certain COVID-19 related reasons, is due to sunset on December 31, 2020. Many believed that the FFCRA’s sick and family leave provisions would be extended into 2021 as part of the pandemic relief package that was signed by the President on December 27. However, these provisions were ultimately not extended, meaning that employers will not be ***required*** to provide paid leave under the FFCRA after December 31, 2020.

Despite that the FFCRA’s leave provisions were not extended into 2021, the relief package extends the FFCRA tax credit, which reimburses employers for the cost of providing FFCRA leave, through March 31, 2021. As a result, beginning on January 1, 2021, employers are no longer ***required*** to provide FFCRA leave; however, covered employers who ***voluntarily*** offer such leave may utilize payroll tax credits to cover the cost of benefits paid to employees through the end of March. The relief package does not change the qualifying reasons for which employees may take leave, the caps on the amount of pay employees are entitled to receive, or the FFCRA’s documentation requirements.

The law also does not change the amount of leave that employees are entitled to take under the FFCRA. Under the FFCRA, full time employees are entitled to a one-time allotment of 80 hours of paid sick leave and 12 weeks of expanded family medical leave. Therefore, an employer is not entitled to a second tax credit for an employee taking leave in 2021, when that employee already took leave in 2020. However, if an employer allows an employee to take a second period of expanded FMLA leave because the employer's calendar year has reset – for example, because the employer uses the "calendar year" under its FMLA policy – the employer ***may*** be able to claim a tax credit for the second round of expanded FMLA benefits paid to the employee in 2021. We are closely monitoring guidance on the FFCRA and will continue to provide updates if additional guidance on this point is made available.

Despite that employers are no longer required to provide FFCRA leave after the first of the year, employers should be mindful that some states and localities have enacted COVID-19 leave laws, which may or may not expire at the end of the year. For example:

- **New York State's** quarantine leave law, which requires that New York employers provide job-protected sick leave to employees who are subject to a mandatory or precautionary order of quarantine or isolation, does not expire at the end of the year.
- On the other hand, **Colorado's** COVID-19 leave law sunsets on December 31, 2020, although the State's paid sick leave program begins phasing in on January 1, 2021.
- **California's** COVID-19 leave law expires on December 31, 2020 or upon the expiration of the paid sick leave provisions of the FFCRA. Although the federal relief bill allows employers to claim a tax credit for paid sick leave provided into 2021, it does not appear to change the expiration date of the paid sick leave provisions of the FFCRA. Therefore, unless the state amends the law or issues guidance to the contrary, California's leave law will likely expire at the end of the year. However, unlike the federal FFCRA, the California law allows an employee who is on leave on the date that the law expires to complete their leave, even if this extends the leave period past the law's expiration date.

Our other posts on the FFCRA are available on our Law and the Workplace blog.

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