



Federal COVID Relief Act Expands Availability for FFCRA Payroll Tax Credit

In March 2020, Congress passed the Families First Coronavirus Response Act (“FFCRA”), which provided eligible employees of covered employers with Emergency Paid Sick Leave (“EPSL”) and Expanded Family and Medical Leave (“EFML”) for certain reasons related to the COVID-19 pandemic.

Under the FFCRA, covered private sector employers were eligible for a payroll tax credit equal to 100% of the statutory amount allowed for qualified EPSL and/or EFML paid to eligible employees. As originally written, both the leave and tax credit entitlements should have expired on December 31, 2020.

On December 21, 2020, Congress passed, and the President thereafter signed into law, a new stimulus package which, among many other provisions, extends the tax credit eligibility for covered private sector employers *who voluntarily choose to extend FFCRA leave to eligible employees through March 31, 2021*.

The following is a summary of what employers should know about the extension:

- ***The extension does not create new leave entitlements.*** Employers who choose to allow employees to utilize FFCRA leave between January 1 and March 31, 2021 cannot grant employees an additional allotment of EPSL and EFML and receive the tax credits. Employers will not receive tax credits for EPSL and EFML extended to employees who exhausted their entitlements in 2020.
- ***Employers are not mandated to extend leave entitlements beyond December 31, 2020.*** The extension of the tax credit eligibility merely serves as an incentive to encourage employers to allow employees to utilize any remaining FFCRA balances between January 1 and March 31, 2021.
- ***Employers choosing to allow employees to utilize FFCRA leave in 2021 must continue to abide by all of the law’s requirements, including, without limitation, the anti-retaliation provisions.*** Employers should be aware that if they extend FFCRA benefits to employees to seek the tax credits, employees will receive all the rights and protections of the FFCRA, including the right to be free from any adverse employment action as a result of taking the leave.

There is some suggestion that the United States Department of Labor (“DOL”) may issue directives on, among other issues, an employer’s obligation to provide notice to employees about whether FFCRA leave will continue to be provided through March 31, 2021. Stay tuned for further updates on any such directives from the DOL.

As always, if you have questions about the ever-evolving policies regarding leaves, return to work, or anything else to help you help your employees, please reach out to your team at HR Affiliates.

