

Families First Coronavirus Response Act (FFCRA) Leave Requirement Will Expire December 31

Congress extends tax credit for employers who provide FFCRA leave through March 31, 2021, but does not extend the mandate beyond December 31, 2020.

December 22, 2020

Last night, Congress passed a wide-reaching COVID-19 relief bill that will extend the tax credit available to private employers who provide FFCRA leave to their employees through March 31, 2021, but will not require employers to provide FFCRA leave after December 31, 2020.

On January 1, 2021, covered employers will have the option to continue to provide their employees with FFCRA leave. Private employers that choose to do so will be entitled to payroll tax credits, similar to what they received in 2020 under the FFCRA, up until March 31, 2021. The bill does not appear on its face to provide employees with any additional leave, and so if an employee has already exhausted his or her two weeks of emergency paid sick leave or ten weeks of paid expanded family and medical leave, the employer is not entitled to a tax credit for any additional paid leave that is provided. However, for employers who provide their employees with 12 weeks of FMLA leave at the beginning of each calendar year, those employees may be entitled to additional expanded family and medical leave (if the employer chooses to provide it). Further regulatory guidance may clarify this issue.

As with the initial passage of the FFCRA, governmental employers are not eligible for these tax credits; therefore, there is little, if any, incentive for those employers to continue to provide FFCRA leave.

As the FFCRA is phased out, employers should also be mindful of their obligations under the FMLA and ADA, which could trigger an employee's entitlement to job-protected leave. Moreover, employers need to continue to adhere to their ordinary leave policies and ensure that their employees are treated equally and consistently.

The 5,593-page bill also provides supplemental and extended unemployment benefits, \$600/person stimulus payments, and additional Paycheck Protection Program (PPP) loan opportunities, as well as tax changes and clarifications for existing and future PPP loans. The bill also expands and extends the employee retention tax credit program through July 1, 2021. However, it does not provide any COVID-19 related liability protections for employers.

Hand Arendall Harrison Sale continues to monitor the progress of this legislation and other COVID-19 related legislation and guidance. Please reach out to one of our lawyers for further information and guidance, so we can assist you with your individual business needs.

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This alert was prepared by Hand Arendall Harrison Sale's Employment Team. For further information or assistance, please contact the authors or the attorney with whom you normally work.

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