

The End of Mandatory COVID-19 Related Leave (For Now)

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In a further attempt to alleviate the adverse economic impact caused by the COVID-19 pandemic, on December 21, 2020, Congress passed a \$900 billion stimulus bill, which the President signed into law on December 27, 2020. While the stimulus bill declines to extend the Families First Coronavirus Act's ("FFCRA") *requirement* that certain employers provide paid leave under specific COVID-19 related circumstances, the bill does extend the FFCRA's tax credit until March 31, 2021 to employers that *voluntarily* provide its employees who have not exhausted their 2020 FFCRA allotment with FFCRA leave.

As we have previously written, the FFCRA required private employers with fewer than 500 employees to provide its employees with emergency paid sick leave (EPSL) and paid expanded family and medical leave (EFMLA) for specified reasons (EPSL and EFMLA are collectively referred to as "FFCRA" leave). To ease the financial burden of providing FFCRA leave, the FFCRA offers employers refundable tax credits reimbursing them, dollar-for-dollar, for the cost of paying the mandatory partial or full wages to their employees while on FFCRA leave. The FFCRA's mandate that employers provide FFCRA leave expired on December 31, 2020.

Thus, employers are no longer required to provide any employees with FFCRA leave and employees are no longer entitled to take FFCRA leave. However, employers may continue to offer FFCRA leave and take the tax credit until March 31, 2021 if an employee has not exhausted the FFCRA leave entitlement in 2020. The stimulus bill does not provide any new time off and the leave is subject to the same limitations and requirements of FFCRA leave given in 2020.

Whether or not an employer should offer FFCRA leave in the first quarter of 2021 depends on the circumstances under which the employee seeks to take the leave. Employers have a strong incentive to continue offering FFCRA leave to employees who are otherwise eligible for the leave, such as when the leave results from a quarantine mandate or the employee's positive test result, the leave is covered by the Rhode Island or Massachusetts Sick Time laws, or the leave qualifies under the employer's own sick time policy. However, in instances where the leave might be avoidable, such as in the case of COVID-19 related school closures or other caregiving circumstances, it may be preferable to provide the leave unpaid, deny the leave or require the employee use vacation time to discourage the leave rather than voluntarily offer FFCRA leave. In addition, FFCRA leave should not be offered where the employer believes the leave is abusive or fraudulent so that the employer can require documentation substantiating the need for leave (which is something the FFCRA would otherwise prevent).

Finally, employers should expect that new legislation may eventually pass mandating additional time off for COVID-related purposes in the near future.

The [Employment & Labor Practice Group](#) at Partridge Snow & Hahn is available to answer your questions about the FFCRA.

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