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FFCRA — What's changed for 2021?

By Shelagh Michaud, Irene Scholl-Tatevosyan, and Kimberly Harding

The latest COVID-19 stimulus bill — the Consolidated Appropriations Act, 2021; signed into law on December 27, 2020 and retroactive to April 1, 2020, when FFCRA became effective[1] — extends the dollar-for-dollar tax credits for employers that choose to allow employees to continue to take existing FFCRA sick leave and extended FMLA leave through March 31, 2021. The FFCRA, which requires certain employers to provide employees with up to 80 hours of paid sick leave or 12 weeks of expanded FMLA leave for specified reasons related to COVID-19, and its mandates expire on December 31, 2020. Section 286 of the new stimulus bill **does not extend the FFRCA's mandate** to provide paid sick leave or expanded FMLA leave, but provides an incentive for employers to continue to allow employees to take FFCRA leave for COVID-19–related reasons through March 31, 2021. Under the new extension, employers that continue to allow employees to take FFCRA's original 80 hours of paid sick leave and 12 weeks of expanded FMLA leave are eligible for tax credits under the same terms as FFCRA provided in 2020.

What does this mean for employers?

- After December 31, 2020, employers are *not* required to continue to provide paid sick leave to employees for COVID-19–related reasons.
- After December 31, 2020, employers are *not* required to continue to provide expanded FMLA leave to employees for COVID-19–related reasons.
- Employers may choose to continue to provide 80 hours of paid sick leave for COVID-19–related reasons to eligible employees through March 31, 2021, and will be able to claim FFCRA tax credits as provided for under the FFCRA for that leave.
- Employers may choose to continue to provide 12 weeks of expanded FMLA leave for COVID-19–related reasons to eligible employees through March 31, 2021, and will be able to claim FFCRA tax credits as provided for under the FFCRA for that leave.

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[1]See our prior alerts discussing the FFCRA: "Families First Coronavirus Response Act: What employers need to know about the COVID-19 paid leave law" (March 26, 2020); "Ten most pressing questions from employers about implementing FFCRA leave" (April 07, 2020); and "Significant changes to FFCRA: DOL redefines 'health care provider' exception & clarifies intermittent leave for childcare purposes" (September 15, 2020).

- Employees are only entitled to up to a maximum of 80 hours total paid COVID-19–related sick leave and 12 weeks total expanded FMLA leave. (The bill does not grant additional time; it only allows employees who have not exhausted their existing FFCRA paid sick leave and/or extended FMLA leave to use it until March 31, 2021, if their employers choose to continue to make the leave available.)
- The bill does not provide any incentive (or requirement) for employers that cannot claim the tax credits, such as public entities, to continue to provide any FFCRA leave.

Considerations for employers

As with the previous requirement, this new incentive focuses on providing leave for employees who must remain out of work due to COVID-19, but also permits businesses to plan and provide for their day-to-day operations and policies. Businesses should consider the benefits of providing sick leave, including that made available through the FFCRA, during the pandemic to promote and maintain a healthy and safe work environment. Unlike passage of the FFCRA in 2020, which provided no notice or time for planning, this new bill gives businesses time to consider their options, consult with legal and tax advisors, and determine the best path forward for the business and its employees.

This summary is just part of the overlapping web of issues and legislation facing businesses as a result of the COVID-19 pandemic. In addition to extending tax credits for paid leave provided under the FFCRA, the Consolidated Appropriations Act, 2021 contained many provisions affecting employers in multiple industries. Nixon Peabody is keeping abreast of these changes and has provided the following alerts that address other provisions of the law:

- "When there is no business in show business: Government support steps in to help struggling venue operators" (December 29, 2020).
- "Can 2020 bond-financed projects take advantage of the fixed 4% rate in the pending COVID-19 legislation?" (December 29, 2020).
- "COVID-19 Stimulus Package/Omnibus FY 2021 Federal Budget: What's in it for Housing?" (December 22, 2020).
- "New COVID-19 relief legislation provides new funding, expands eligible entities, but narrows some criteria for business support" (December 22, 2020).

Our Nixon Peabody team will continue to analyze the new law, monitor new developments and regulations as they are made available, and provide updates on other issues facing employers and solutions to assist them in navigating through these turbulent times.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Shelagh Michaud, 401-454-1133, smichaud@nixonpeabody.com
- Irene Scholl-Tatevosyan, 213-629-6012, itatevosyan@nixonpeabody.com
- Kimberly Harding, 585-993-3296, kharding@nixonpeabody.com