

THOUGHT LEADERSHIP

News

The FFCRA Expired -- Didn't It?

Newsbrief

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Last March, the FFCRA was enacted, providing paid sick leave and emergency family leave for employees of private employers with less than 500 employees and some public employers. It was scheduled to end on December 31, 2020. Shortly before Christmas, Congress approved additional COVID-19 relief, including some amendments to the FFCRA.

Importantly, the leave requirement was not extended, thus a covered employer's obligation to provide FFCRA leave expired on December 31. However, payroll tax credits available to employers who provide leave were extended to March 31, 2021. Thus, covered employers now have the option to provide paid leave through March 31, 2021 and claim the credit. (They can continue to do so after March 31, but will not be able to claim the credit.)

For those employers who are considering offering paid sick and family leave in 2021, FFCRA sick leave is available in 2021 only to those employees who qualify for FFCRA sick leave and did not exhaust their FFCRA sick leave in 2020. It is possible that employees will be entitled to additional FFCRA emergency family leave (only available for absences related to COVID-19 childcare issues) *if* the employer counts the FMLA year on a calendar-year basis, even if the employee exhausted emergency FMLA leave in 2020. The U.S. Department of Labor recently issued a FAQ on this issue and seemed to imply that the extended period – January 1, 2021 through March 31, 2021 – only applied to untaken leave, however. Stay tuned for further developments on this issue.

Employers now have several options if an employee wants to take leave for COVID-19 reasons. First, if they are covered by the FFCRA and the employee has not exhausted their FFCRA leave, they can extend FFCRA leave to qualifying employees and claim a credit for any such leave taken through March 31, 2021.

Second, the employer – whether or not covered by the FFCRA – has the option to continue to provide this leave without seeking reimbursement through payroll tax credits. Third, the employer has the option to provide such leave in accordance with its sick pay/PTO/vacation policy. Fourth, such leave is probably covered under the FMLA (assuming FMLA eligibility) and thus employees could take unpaid FMLA leave for these absences.

This does not address whether the employee would be entitled to leave under a state or municipal statute or ordinance. In Texas, no such statute or ordinance is currently in effect, although several municipalities have attempted in recent years to enact paid sick leave entitlements.

Be safe and stay the course. And of course, let us know if we can help.

Thanks, Jack, Elizabeth and Jim