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Additional Tax Credits to Employers Who Extend FFCRA Benefits Through September 2021

The American Rescue Plan Act of 2021 (ARPA), signed into law by President Biden on March 11, 2021, included a voluntary extension of the Families First Coronavirus Response Act (FFCRA). The extension allows eligible employers to continue to receive tax credits for voluntarily offering FFCRA benefits to employees through September 30, 2021.

Previous FFCRA Benefits

As discussed in our previous alert, the FFCRA expired on December 31, 2020. The FFCRA required most employers with fewer than 500 employees to provide emergency paid sick leave (EPSL) for absences relating to COVID-19 illness suffered by employees or their covered family members, and emergency paid family leave for absences related to school and childcare closures related to the pandemic (EFMLA). The federal government previously announced that covered employers that chose to continue offering FFCRA benefits through March 2021 could still claim payroll tax credits for benefits conferred under the law.

The Voluntary FFCRA Extension

ARPA extends this employer tax credit for voluntary FFCRA leave permitted to employees through September 2021, while also expanding FFCRA coverage in several key ways. Under ARPA's FFCRA extension:

- EPSL banks are replenished for all eligible employees, who now get a new 10 days of EPSL for covered reasons in 2021 (even if an employee previously used up some or all of their EPSL in 2020).

The Bottom Line

Employers should coordinate with counsel as they decide whether to offer FFCRA leave through September 30, 2021 given the expanded employee coverage available under the law.

Employers should also ensure that they have updated their policies to reflect expanded FFCRA (if being voluntarily implemented) and all requisite paid sick leave and paid vaccine leave entitlements available to employees.

- EPSL is newly available for employees to: take time off to get vaccinated; recover from vaccination side effects and await the results of a COVID-19 test (in addition to previously covered reasons).
- EFMLA coverage is now expanded to cover all EPSL-qualifying reasons for leave (not just time off to care for children due to school or daycare closures as under the original FFCRA). This means that employees could potentially be on leave for up to 12 weeks if, for example, they were to suffer significant complications from receiving a COVID-19 vaccination.
- EFMLA is now payable for 12 weeks (instead of 10 weeks under the previous law, which required the first two weeks of EFMLA to be unpaid), so that employees can collect wages up to a cap of $12,000 rather than $10,000 during leave.

Finally, ARPA clarifies that in choosing whether to offer FFCRA leave to employees under the revised, expanded law, employers cannot discriminate in favor of highly compensated employees, full-time employees, or employees with longer tenure. Doing so would disqualify the employer from entitlement to tax credits for leave granted under the extended FFCRA.

ARPA leaves open several questions regarding expanded FFCRA, such as whether EFMLA banks are also replenished for employees who already took EFMLA leave under the original FFCRA, and whether employers are permitted to implement a portion of expanded FFCRA (*e.g.*, permitting EPSL, while denying EFMLA under the new voluntary law).

Regardless of the decision whether to implement expanded FFCRA, employers will need to remain compliant with state and local laws mandating paid COVID-19 sick leave and paid vaccine leave for employees, such as those in New York and California.

For More Information

Please contact the attorney listed below or the Davis+Gilbert attorney with whom you have regular contact.

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