

COVID-19 Paid Leave – What Employers Need to Know about the New Federal Relief Bill



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On December 27, 2020, President Donald Trump signed into law the “Consolidated Appropriations Act of 2021 a small portion of which, the COVID-Related Tax Relief Act of 2020, (Relief Act) extends and modifies certain relief to small- and mid-sized employers under the Families First Coronavirus Response Act (FFCRA) enacted in March, 2020.

The FFCRA required employers with fewer than 500 employees (qualifying employers) to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. Employers with more than 500 employees or fewer than 50 employees were not required to provide such paid leave benefits. All employees of qualifying employers were eligible for:

(i) up to 80 hours of paid sick leave at the employee’s regular rate of pay if the employee was unable to work because the employee was quarantined (pursuant to a Federal, State or local government order or advice of a health care provider) and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or

(ii) up to 80 hours of paid sick leave at two-thirds the employee’s regular rate of pay because the employee was unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to a Federal, State or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider was closed or unavailable for reasons related to COVID-19 and/or the employee was experiencing a substantially similar condition as specified by the Secretary of Health and Human Services.

Under FFCRA, qualifying employers received payroll tax credits to reimburse them, dollar-for-dollar, for the cost of providing employees the mandatory paid sick and family leave wages. The mandatory paid sick and family leave and the tax credits expired on December 31, 2020.

However, under the Relief Act, providing paid leave is no longer mandatory, but employers can continue to receive payroll tax credits until March 31, 2021 for paid leave provided on a voluntary basis. For qualifying employers this means that the employer can take the appropriate payroll tax credits in the first quarter of 2021 under the following circumstances: (i) if an employee took mandatory leave in 2020 and (ii) if a qualifying employer voluntarily elects to provide paid leave to an employee for a qualifying reason in the first quarter of 2021.

With the uncertainty surrounding the end of the pandemic, the extended tax credits under the Relief Act may provide some comfort to employers and employees at least until the end of the first quarter of 2021. But there may be additional relief on the horizon with President Biden’s proposal for COVID-19 related

paid leave relief. Biden's plan would reinstate the mandatory paid leave through September 30, 2021 and would extend it to employers with more than 500 employees or less than 50 employees and for federal employees. Qualifying employers and state and local governments would be fully reimbursed for the cost of providing the paid leave but employers with more than 500 employees would not. Biden's plan would provide all employees, both part-time and full-time, who are sick with COVID-19 symptoms, quarantining because of COVID-19 exposure, needing time off to get the vaccine or caring for family members who are sick with COVID-19 symptoms with a \$1,400 weekly benefit available for 14 weeks. Only time will tell what will happen to the COVID-19 related paid leave benefits.