

US COVID-19: NEW COVID RELIEF BILL EXTENDS CERTAIN FFCRA TAX CREDITS, BUT DOES NOT MANDATE EXTENSION OF LEAVE BENEFITS

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Late on December 21, 2020, Congress passed a new federal COVID relief bill, which, if signed into law, would amend a number of laws, including the Families First Coronavirus Response Act (“FFCRA”). The FFCRA currently requires covered employers to provide eligible employees with paid sick leave and partially paid emergency family and medical leave benefits through December 31, 2020.

Notably, the new bill does not extend the FFCRA’s mandate that employers provide such leave beyond the end of the year. Instead, the new bill allows covered employers to receive a tax credit for leave that they voluntarily provide to employees from January 1, 2021 through March 31, 2021, if such leave would otherwise be covered by the FFCRA.

In practice, this means that if the new bill becomes law, under federal law:

- Employers will not be required to provide paid sick leave or partially paid emergency family and medical leave under the FFCRA beyond December 31, 2020.
- Employers may voluntarily provide paid sick leave or partially paid emergency family and medical leave under the FFCRA after December 31, 2020.
- If an employer voluntarily provides such leave benefits after December 31, 2020, they may be eligible for a tax credit for leave taken between January 1, 2021 and March 31, 2021.
- Tax credits are only available for leave that would otherwise be covered by the FFCRA (i.e., the employee is eligible for leave, the need for leave is for a covered reason, the employee has leave available, etc.).
- If an employer is not currently covered by the FFCRA (i.e. the employer has more than 500 employees), the employer is still not entitled to a tax credit for paid leave that they voluntarily provide to employees.

- If an employer is covered by the FFCRA, but not currently entitled to a tax credit (i.e. the employer is a public employer), the employer is still not entitled to a tax credit for paid leave that they voluntarily provide.

We will continue to monitor developments regarding the new bill, including if and when it is signed into law. In the meantime, employers considering voluntarily extending FFCRA benefits beyond the end of the year should be sure that they have systems in place to review and amend their policies, as appropriate, and continue to comply with all recordkeeping requirements.

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