



Mandatory FFCRA Paid Leave Expires December 31, 2020; Payroll Tax Credits for Voluntary FFCRA Leave Extended to March 31, 2021

The Families First Coronavirus Response Act (the “FFCRA”), enacted in March of this year, requires employers with fewer than 500 employees to provide up to 80 hours of paid sick leave to all employees who are unable to work because of certain COVID-19 related issues, and up to 10 weeks of paid family and medical leave to certain employees who are unable to work because they must care for a son or daughter whose school or place of care has closed or whose childcare provider is unavailable as a result of COVID-19. As enacted, the FFCRA was set to expire on December 31, 2020.

In the Consolidated Appropriations Act, 2021 (the “Act”), passed by Congress last week and signed by President Trump on December 27, 2020, Congress declined to extend the FFCRA mandate to provide paid sick and family and medical leave to employees for COVID-19 related reasons. However, the Act does extend the payroll tax credit for employers who choose to continue providing their employees with paid sick leave or paid family and medical leave through March 31, 2021. In other words, although employers are no longer required to provide their employees with paid leave under the FFCRA after December 31, 2020, if they choose to continue providing such leave from January 1, 2021 through March 31, 2021, they can claim the associated tax credit. Importantly, the Act does not provide employees with any right to additional leave if they have already exhausted their FFCRA leave, and if employers choose to provide more leave for an employee than the FFCRA authorizes, they will not be eligible to claim the tax credit for the additional leave.

As a result, FFCRA-covered employers must determine in the coming days whether they will continue to offer paid sick leave and paid family and medical leave to employees beyond December 31, 2020, and the terms on which they will do so. This may mean extending or modify existing policies, particularly where an employer has adopted an FFCRA policy. Employers may choose to extend FFCRA benefits to those who have not yet exhausted their leave and claim the associated tax credit. Or, they may decide to offer some other form of paid leave to employees for COVID-19 related absences and forgo the tax credits. Still others may revert to their normal PTO and paid sick leave policies to handle absences related to COVID-19 or offer

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unpaid leaves of absence in these situations. No matter what option an employer selects, it will be important to clearly communicate the change in circumstances to employees.

In addition, employers should keep in mind that although the mandatory FFCRA leave will expire at the end of this week, a number of other employment laws and/or policies may apply to an employee's request to take time off for COVID-19 related reasons. Any requests for leave related to COVID-19 should be evaluated under Arizona's paid sick leave law, the Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA) and employer PTO or vacation policies.

As you sort through these issues, your Osborn Maledon [Education Law Team](#) is here to help.

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