

Employers May, but Are Not Required to, Continue Providing Paid Leave Under the FFCRA After December 31, 2020

On December 27, 2020, President Donald Trump signed the much-anticipated Coronavirus relief bill, formally titled the Consolidated Appropriations Act, 2021 (the Act), into law. In addition to COVID-19 relief measures, the Act includes significant amendments to the Families First Coronavirus Response Act (FFCRA).

Beginning April 1, 2020, the FFCRA required employers with fewer than 500 employees to provide two types of paid leave to qualified employees: Emergency Paid Sick Leave (EPSL) and Expanded Family and Medical Leave (EFMLA). Employers could claim a tax credit against the employer portion of Social Security taxes for up to 100% of EPSL and EFMLA paid by the employer to employees taking leave under the FFCRA.

The Act makes the following revisions to the FFCRA:

- Mandatory leave under the FFCRA ends on December 31, 2020.
- Beginning January 1, 2021 until March 31, 2021, employers may provide voluntary EPSL or EMFLA and take the tax credit for that leave.

Employees who have already exhausted their EPSL would not have access to additional leave provided by their employer after December 31, 2020. Likewise, employers cannot claim tax credits for leave taken by employees who have already exhausted their EPSL.

In contrast, the EFMLA leave period resets in accordance with an employer's FMLA policy. Thus, if an employer is operating on a calendar year period for federal FMLA leave, qualifying employees may be eligible for up to 12 additional weeks of EFMLA beginning January 1, 2021.

Employers should make a decision as soon as possible on whether they will continue to provide FFCRA leave to employees after December 31, 2020. Regardless of whether or not they will continue to provide FFCRA leave, employers should make a clear announcement to their employees of their decision and revise any related policies as necessary.

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If you have questions about the changes the Act makes to FFCRA leave, or would like assistance drafting a voluntary FFCRA leave policy, please contact [Shannon Toole](#) or an attorney in Reinhart's Labor and Employment Practice.

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