HUSCH BLACKWELL

THOUGHT LEADERSHIP

LEGAL UPDATES UPDATED: DECEMBER 28, 2020 PUBLISHED: DECEMBER 23, 2020

President Trump Signs Legislation with FFCRA Variations Effective January 1, 2021

Services

Employment Class & Collective Actions

Labor & Employment

Professionals

TIMOTHY A. HILTON

KANSAS CITY:

816.983.8294

TIM.HILTON@
HUSCHBLACKWELL.COM

COURTNEY STEELMAN

KANSAS CITY:

816.983.8000

COURTNEY.STEELMAN@
HUSCHBLACKWELL.COM

UPDATE: President Trump signed the original relief bill into law on December 27, 2020. Employers can now continue to receive the federal tax credit for allowing employees to take unused FFCRA paid sick and family leave through March 31, 2021.

As we discussed in previous posts, the Families First Coronavirus Response Act (FFCRA) requires private employers with less than 500 employees and certain public employers to provide employees with 80 hours of paid sick leave for specified reasons related to COVID-19 and up to 10 weeks of paid, job-protected leave for employees who have worked for their employer for at least 30 days and who are unable to work due to the need to care for a son or daughter whose school is closed or the unavailability of a child care provider due to COVID-19. Since the FFCRA's effective date of April 1, 2020, the Department of Labor (DOL) has provided multiple questions and answers and regulations, all with the understanding the bill expires 11:59 PM on December 31, 2020.

Until now, employers have been left to guess if the FFCRA would extend into the new year or if Congress would pass a new piece of legislation redefining COVID relief in the workplace. On Monday, December 21, 2020, lawmakers decided they would **not** extend the FFCRA but instead will allow employers to decide if their company will continue to provide paid leave and, therefore, be eligible for the payroll tax credit. As currently drafted, this option is available until March 31, 2021.

Changes to paid sick leave and paid family leave

Payroll credit for paid sick leave. The amounts paid by an employer for sick leave between January 1 and March 31, 2021, are eligible for the tax credit if the leave would be required had the FFCRA been extended through March 31, 2021. Employers also must not discharge, discipline or in any way discriminate against an employee who seeks to take leave as provided for in the FFCRA in order to be eligible for the credit. Employees may also now carry over any unused paid sick time to next year if their employer plans to take advantage of the tax credit extension. This does not mean that employees are entitled to additional leave on January 1, 2021, in excess of the FFCRA's statutory limits. Similarly, employers will not receive tax credits for any amount of leave provided in excess of the FFCRA's statutory limits or for employees who would not qualify.

Payroll credit for paid family leave. Like paid sick leave, employers can recoup via tax credit their paid family leave to employees taken between January 1 and March 31, 2021, if it would have been required to be paid under an extension of the FFCRA. To be eligible, employers may not interfere with, restrain or deny the exercise of family leave rights. A difference from the mandated 80 hours of paid sick leave, an employee's eligibility for the 10 weeks of paid family leave provided by the FFCRA depended on how much leave the employee had already taken during their employer's 12-month period used for Family and Medical Leave Act (FMLA) leave entitlement, provided it was an FMLA covered employer. For now, the employer's eligibility for a tax credit for providing and paying employees paid family leave continues through March 31, 2021.

What should employers consider immediately?

Will your company continue to provide both paid sick leave and paid family leave to employees until March 31, 2021?

(While it is unclear if it would be lawful to provide one type of leave and not the other, we anticipate the DOL may provide additional guidance, and we believe the best practice would be to provide both paid sick leave and paid family leave or neither.)

Is your company able to provide these leaves equally to all eligible employees?

How will your company provide notice regarding leave to employees?

(While the legislation does not currently provide a notice requirement, we can anticipate the DOL will provide guidance or additional posters reflecting an employer's decision related to this legislation.)

Are there currently any state or local jurisdictional orders or laws that provide more generous leave for employees?

Employers should still consider the DOL's past guidance on the FFCRA while determining how to comply with the new legislation until additional information is released. Additionally, it is critical that employers update their existing FFCRA leave forms to take into consideration the changes. Since employees are not eligible to receive more leave than was provided through the FFCRA, employers must ensure they keep accurate records to reflect leave provided for all employees.

Contact us

If you have questions about your obligations regarding the new COVID-relief legislation or require assistance to determine eligibility for benefits, contact Tim Hilton, Courtney Steelman, Jillian Molz or your Husch Blackwell attorney.

Comprehensive CARES Act and COVID-19 guidance

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.