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New Coronavirus Relief Legislation Impacts Employers in Two Key Areas

Alert
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By Greta Bauer Reyes, Alisa Nickel Ehrlich, Jenni Ives and Pat Konopka

Late in the day on December 27, 2020, President Trump signed the Consolidated Appropriations Act of 2020, which contains the latest in coronavirus relief measures. The massive 5,593-page legislation covers a wide variety of topics. This alert provides a high-level overview of two of the new law's provisions that will directly impact employers and individual employees: extension of tax credits for FFCRA-type leave, and expanded unemployment benefits.

Families First Coronavirus Response Act Tax Credits Extended, while Mandate Ends

The Families First Coronavirus Response Act (FFCRA) generally requires private employers with fewer than 500 employees to provide 80 hours of Emergency Paid Sick Leave and 10 weeks of paid Emergency Family and Medical Leave, as covered in Stinson's March 19, 2020 alert. The new Appropriations Act does not extend the *obligation* of covered employers to provide leave under the FFCRA. In other words, employers are not required to continue to provide paid leave under the FFCRA after December 31, 2020. Employers may nevertheless be obligated to provide leave under the FMLA, ADA, or other state or local paid leave laws for qualifying reasons to eligible employees.

Although not required, beginning January 1, 2021, employers that choose to provide paid leave for the same reasons and in the same circumstances as FFCRA leave may claim the payroll tax credit for paid leave provided through March 31, 2021. In order to be eligible for the payroll tax credit, the employer must comply with all requirements under the Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Act, including that the employer may not discriminate or retaliate against an employee who takes leave, and may not discharge or discipline an employee for taking the leave. If an employer elects to continue to provide FFCRA leave into 2021, its employees may carry over unused FFCRA leave benefits, but those benefits do not "refresh" if they were exhausted in 2020. The act is silent as to whether an employer could provide and claim the tax credit for one type of leave, but not the other. It is possible that the Department of Labor will provide additional guidance on this topic.

Covered employers should immediately consider the following:

- Does the employer intend to extend FFCRA benefits into 2021, or end such benefits effective December 31, 2020?
- If the employer is extending FFCRA benefits through March 2021, will it provide both Emergency Paid Sick Leave benefits and Emergency Family Medical Leave Act benefits?
- If the employer does not elect to extend FFCRA benefits into 2021, what employer-provided benefits are available to employees who have COVID-19-related need for leave in 2021?
- Are there other requirements to provide leave, such as FMLA, state or local laws?
- How will the employer communicate the extension or end of FFCRA benefits to its workforce?

Extended Unemployment Benefits

Contained within the Appropriations Act is the Continued Assistance for Unemployed Workers Act of 2020. This act extends certain federal benefits for unemployment compensation originally provided under the CARES Act. Covered individuals are now entitled to unemployment assistance for COVID-19-related reasons through March 14, 2021. In addition, the total number of weeks an individual may receive COVID-19-related unemployment benefits is extended from 39 weeks to 50 weeks. Among other amendments to the unemployment assistance provisions of the CARES Act, the new measures also:

- Provide for $300 per week in federal emergency unemployment assistance for weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021 (down from the $600 per week previously in effect)
- Allow individuals to continue to receive unemployment benefits through April 5, 2021 as long as they were already eligible for and receiving unemployment assistance on March 14, 2021 and had not yet exhausted all unemployment benefits
- Allow states to waive the requirement that individuals repay overpayments if the overpayment was not the fault of the individual, and if requiring repayment would be "contrary to equity and good conscience"
- Create additional requirements for individuals to establish eligibility, including more stringent requirements to substantiate employment or self-employment

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- Provide a new requirement that states must affirmatively implement a reporting method for employers to notify the state agency when an individual refuses an offer of employment or refuses to return to work without good cause

CONTACTS

Alisa Nickel Ehrlich

Patricia A. Konopka

Greta Bauer Reyes

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