

## FFCRA in 2021: Extended Mandates – NO; Extended Tax Credits – YES

### Labor & Employment Law Alert

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The Families First Coronavirus Response Act (FFCRA) established two limited federal mandates to protect employees of employers with fewer than 500 employees who needed to be absent from work for reasons related to the COVID-19 pandemic. The Emergency Paid Sick Leave Act mandated two weeks of paid sick leave under various circumstances, and the Emergency Family and Medical Leave Expansion Act mandated an additional 10 weeks of partially paid leave to care for children whose school or daycare arrangements were disrupted due to the pandemic. The federal government fully subsidized the payments required under these programs through tax credits or tax refunds. Both laws were set to expire December 31, 2020.

And expire they did. Congress did not renew the mandated emergency paid sick leave or expanded Family and Medical Leave Act (FMLA) leave, so employers are no longer *required* to provide such leave under the FFCRA. However, Congress did provide in the 2021 Consolidated Appropriations Act that employers that *voluntarily* provide paid leave as though the FFCRA had been extended will continue to receive full reimbursement from the federal government through tax credits and/or refunds through March 31, 2021.

Employers that wish to take advantage of this extension of the tax credit for FFCRA-like paid leave should keep the following issues in mind:

- This does not change state or local paid sick leave laws, which continue to apply.
- While leave taken in 2020 under the Emergency Family and Medical Leave Expansion Act counted against the overall federal FMLA entitlement, time taken in 2021 under a voluntary FFCRA-like leave will *not* count against the employee's federal FMLA entitlement.
- Each individual is only entitled to a total of 80 hours of paid sick leave and 10 weeks of expanded FMLA leave from April 1, 2020, through March 31, 2021. Therefore, if an employee has already used up his or her time, then the employer will not be reimbursed for additional voluntary paid leave granted in the first quarter of 2021.
- Because the documentation requirements for reimbursement remain the same, employers that voluntarily provide FFCRA-like leave should continue to get the same information from employees seeking leave.

For an outline of the FFCRA and its accompanying regulations, see our prior alerts: [COVID-19 Legislation Assists Employers and Employees in Response to Pandemic](#)  
[DOL Regulations Clarify Paid Leave Requirements Under the Families First Coronavirus Response Act](#)

Of course, there could be further changes to federally mandated paid leave in the near term since a new Congress was sworn in on January 3, 2021, and a new presidential administration will take office on January 20, 2021.