

## > Client Alert

### What Employers Need to Know About FFCRA Leave and Unemployment Benefits Heading Into 2021

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If you require any additional information regarding paid sick leave laws, whether COVID-19-related or not, or unemployment benefits, or any other employment related issue, please contact any of the attorneys listed below.

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On Sunday, December 27, 2020, President Trump signed the latest round of COVID-19 legislation touching employment issues—the approximately 5,500-page “[Consolidated Appropriations Act, 2021](#)” (the “Act”). The Act contains two key provisions that will impact employers in 2021: (1) the expiration of the requirement that employers must provide leave to its employees under the Families First Coronavirus Response Act (FFCRA)<sup>1</sup>; and (2) the expansion (for the second time) of unemployment benefits. This Client Alert briefly discusses both provisions.

#### FFCRA Leave Now Optional After December 31, 2020, with Tax Credits Available for Those Employers Who Offer It Through March 31, 2021

The Act does not extend the mandate that employers provide emergency paid sick leave and family and medical leave enacted under the FFCRA. As we previously reported, the FFCRA provided up to 80 hours of paid sick leave along with up to 10 weeks of partially paid family and medical leave to eligible employees who were unable to work because of certain COVID-19-related reasons (for a total of 12 weeks of leave). For private employers, the requirement to provide the paid FFCRA leave was offset by dollar-for-dollar tax credits for wages paid to employees taking paid leave. The Act does not extend the mandate of the FFCRA provisions, which are now set to expire on December 31, 2020, meaning employers are no longer obligated to provide FFCRA leave in 2021.

Section 286 of the Act, however, does allow private employers the opportunity to claim dollar-for-dollar tax credits on wages paid to employees taking leave that is consistent with the existing FFCRA framework for the period between January 1, 2021 and March 31, 2021. In other words, the paid leave provisions of the FFCRA are optional for those employers who decide to provide it to their employees after December 31, 2020 for the first three months of 2021. The tax credits are available through March 31, 2021, provided the employer's paid leave is available on the same basis as “would be so required to be paid if [the FFCRA] were applied”, *i.e.*, providing leave for the same qualifying reasons, paying employees as required, and obtaining the required leave documentation.

<sup>1</sup> We have previously addressed (i) the enactment of the FFCRA [here](#), (ii) the DOL's issuance of temporary regulations regarding the eligibility and terms of paid leave under the FFCRA [here](#), (iii) how a New York federal court struck down certain provisions of the DOL's Final Rule, including the “employer consent” requirement for intermittent leave and the temporal documentation requirement prior to taking FFCRA leave [here](#), and (iv) how the DOL released new guidance for circumstances in which a working parent may or may not be entitled to FFCRA “childcare” paid leave entitlements [here](#).

It also appears that the FFCRA leave does not refresh in 2021, meaning if leave was exhausted by an employer in 2020, the same employee is not entitled to additional hours of FFCRA leave in 2021. Nevertheless, employers that decide to provide the voluntary FFCRA leave in 2021 must ensure that they do not discriminate or retaliate against an employee who takes such leave, by discharge, discipline, or other adverse action against an employee for taking such leave.

### Extended Unemployment Benefits

The Act also 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, where individuals can obtain \$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 (reduced from the \$600 per week that was previously in effect).

In addition, the total number of weeks an individual may receive COVID-19-related unemployment benefits is extended from 39 weeks to 50 weeks. This will allow covered 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 of their unemployment benefits.

While the Act contemplates additional assistance for COVID-19-related reasons, there is no real mechanism in place to distinguish COVID-19-related unemployment from unemployment incurred for unrelated reasons.

### Takeaway for Employers

Although the mandate to provide employees with FFCRA leave will soon end, employers must ascertain if continuing FFCRA leave through March 31, 2021 in exchange for the FFCRA tax credit makes sense for their businesses. Employee Handbooks and other policies will likely need to be updated as well to reflect the employer's decision as to the application of the FFCRA leave on its business. As a reminder, the application of FFCRA leave must be applied uniformly and consistently to avoid claims of discrimination or retaliation.

Employers should also keep in mind that, although the mandated FFCRA leave is expiring on December 31, 2020, other localities, such as New York State, have enacted mandated COVID-19-related leave laws, which are not set to expire and will remain in effect in 2021.

Employers that are uncertain about the application of these new developments to their businesses should consult with Morrison Cohen's Labor & Employment Law Department regarding the application of COVID-19-related and other paid sick leave laws, or have any questions regarding extended unemployment benefits or any other employment law matter.