

Electronic Alert

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This Is Just In! - FFCRA Leave To Be Voluntary in 2021

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Congress has just approved a \$900 billion stimulus package as part of a 5,593-page bill which is awaiting the President's signature. With that many pages, there are sure to be a few surprises in store for us, but here is what we know about FFCRA so far.

The new bill supports paid sick leave for certain COVID-related reasons, but not in the same way it did in 2020. Mandated FFCRA leave still ends on December 31, 2020. After December 31, 2020, employers are not required to provide paid FFCRA leave to employees. However, employers who do provide employees with paid sick leave for COVID-related reasons may still claim the FFCRA tax credit through March 31, 2021.

Even if you voluntarily continue to offer FFCRA leave, employees may have already exhausted that leave. If an employee used the 80 hours of [Emergency Paid Sick Leave](#) ("EPSL") earlier this year, there will not be a new EPSL allocation come January 1, 2021. Employers will not be allowed the EPSL tax credit if an employee has already taken the maximum EPSL leave allowable under FFCRA. More complicated is Expanded FMLA ("EFMLA") leave. If under your policy, the 12-month FMLA period resets on January 1, it appears that an employee could be eligible for paid EFMLA again. While we expect more guidance on this issue from the Department of Labor and/or the Internal Revenue Service, for now it appears that the employer could potentially qualify for tax credits for additional paid EFMLA leave to an employee who exhausted EMFLA in 2020 if the leave year restarted. To refresh yourself on the FFCRA tax credit, read our [E-Alert](#) from April.

The Takeaway:

- 1) FFCRA is still in full effect until December 31, 2020.
- 2) The new stimulus bill allows employers to claim tax credits for paid leave until March 31, 2021.
 - a) While details are still a bit fuzzy, for now we assume the leave may be taken for the same qualifying reasons as leave under FFCRA and that the same caps apply.
 - b) It is unclear whether the leave bank resets for EFMLA if employees are in a new FMLA leave year.

Remember also that FFCRA was not the only source of monetary relief for employees missing work for COVID-19-related reasons. States have their own paid sick leave laws and federal contractors must offer paid sick leave under Executive Order 13706. Oregon also offers additional help for employees who do not have other employer-provided paid time off through its [COVID-19 Temporary Paid Leave](#). Depending on the circumstances, employees off work for COVID-19-related reasons may also be eligible for unemployment or workers' compensation benefits. Finally, although not a paid benefit, employees eligible for OFLA may have leave available to them if they are suffering from their own

serious health condition, are caring for a family member with a serious health condition, or if the employee is caring for their child whose school or place of care is closed due to the statewide health emergency.

For questions about FFCRA, tax credits for paid leave related to COVID-19, or applying other leave laws to a COVID-19-related absence, contact Amy Angel or Julie Preciado at 503-228-0500 or at aangel@barran.com or jpreciado@barran.com.