The FFCRA: It's goodbye for now, but maybe not forever

Miriam L. Rosen | Monday, December 28, 2020

With 2020 coming to an end, speculation swirled among employers about whether the Families First Coronavirus Response Act's December 31 expiration date would be extended. Well, employers have their answer in the stimulus bill signed by President Trump on December 27. It's goodbye for now to the FFCRA, but it may not be goodbye forever.

No extension of FFCRA

The new stimulus bill **does not** extend the Families First Coronavirus Response Act leave requirements. That means the FFCRA expires on Dec. 31, 2020. Employers are no longer required to provide employees paid time off work for COVID-19 related reasons with the emergency paid sick leave or the emergency paid FMLA created under the FFCRA.

But, the door is not completely shut on the FFCRA. The stimulus bill provides that as of Jan. 1, 2021, covered employers may ***voluntarily provide*** the emergency paid sick leave or emergency paid FMLA leave ***and*** claim the tax credit made available for such leaves under the FFCRA. The tax credit is available through March 31, 2021.

This approach is an interesting end-run around the FFCRA's expiration and Congressional gridlock over offering more paid leave. Although the FFCRA is expired, an employer can allow an employee who did not exhaust the allotment of FFCRA leave time available from April 1, 2020 through Dec. 31, 2020, to use that time and receive pay for it under the FFCRA terms between Jan. 1, 2021 through March 31, 2021.

What's next for the FFCRA?

In fact, we may not have seen the last of the FFCRA. Paid leave is considered to be a high priority for the new Biden Administration. A likely first step could be legislation that reinstates or builds on the paid leave requirements of the FFCRA. The leave provisions are generally viewed as having worked well and, given high levels of COVID-19 across the country, many workers are still in need of the paid leave time.

Practical Advice for Employers

The phantom-like extension of the FFCRA leaves employers with a decision to make. Employers must determine whether they will voluntarily extend the paid leave benefits and take the available tax credit. With the continuing need to provide employees with COVID-19 related time off, the tax credit extension may be the best option available to many employers. Employers who do choose this option should ensure that they are administering it in a consistent manner and in compliance with IRS guidance.

Although the FFCRA no longer mandates paid time off, employers must still consider time off requirements under the (regular) FMLA, the ADA and state law leaves. In considering state laws, employers should also take note of state and local paid leave laws implemented during the pandemic. Some, like the FFCRA, expire on Dec. 31, 2021. However, watch for state legislators to act more quickly than Congress to extend paid leave requirements to protect their constituents.

As this crisis continues to impact the workforce and a new administration takes over, expect to see further developments specifically aimed at addressing the impact of COVID-19 on employees. The McDonald Hopkins Labor and Employment Response Team will continue to monitor developments and provide updates on the FFCRA and other employment issues impacted by the COVID-19 crisis.

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