

Questions and Answers About the FFCRA Extension

Article By:

Luis E. Avila

Ashleigh E. Draft

On December 27, 2020, President Trump signed the much-anticipated COVID-19 stimulus bill into law. Among other provisions, the final bill modifies the paid leave provided by the Family First Coronavirus Response Act ("FFCRA").

Under the FFCRA, certain employers were required to provide Emergency Paid Sick Leave and Expanded Family Medical Leave through December 31, 2020. The new stimulus bill eliminates this obligation and makes the changes described below:

Are employers required to extend FFCRA paid leave beyond December 31, 2020?

No. Under the FFCRA, the requirement to provide paid leave expired on December 31, 2020. The newly enacted stimulus bill does not extend the requirement that employers provide paid leave beyond that date.

Rather, employers subject to the FFCRA may voluntarily extend the paid leave option until March 31, 2021. If a FFCRA-eligible employer chooses to extend the leave period, the time period during which its employees may take FFCRA leave is extended, as is the period during which the employer may claim the FFCRA tax credit.

Does the extension increase either the amount of leave available to employees or the maximum tax credits available to employers?

No. The voluntary extension of the FFCRA does not increase the amount of leave available to employees nor does it increase the maximum payroll tax credit available to the employer. The new stimulus bill simply extends the date for leave from December 31, 2020 to March 31, 2021. Employees that were eligible for leave in 2020, but did not use leave in 2020, may only take the leave in 2021 if their employer has elected to apply the FFCRA extension.

Are employers required to pay employees for any unpaid FFCRA-eligible leave taken between April 1, 2020 and December 31, 2020?

Yes. Employers that have not yet paid employees who took FFCRA leave from April 1, 2020 to December 31, 2020 will be required to do so. Even if the employer does not elect to extend the FFCRA leave past December 31, 2020, they must compensate the employee for eligible FFCRA leave taken in 2020.

May employers extend the FFCRA leave for a duration shorter than the deadline of March 31, 2021?

Although the Department of Labor has not specifically addressed this, as drafted, the bill does not limit an employer's ability to incrementally extend the FFCRA leave period. Further, the decision to extend Emergency Paid Sick Leave and Expanded Family Medical Leave is voluntary and employers may decide to extend one without the other through the new deadline.

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