

FFCRA Update: COVID-19 Related Leave Remains Optional, but Employer Tax Credit Still Applies

by Erin McAdams Franzblau

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Nearly one year ago, the Families First Coronavirus Response Act (“FFCRA”) was enacted to provide paid leave, up to certain daily and monetary caps, for eligible employees for COVID-19 qualifying reasons. Notably, the paid leave requirement provides a corresponding 100% tax credit to employers. However, the law only applies to employers with fewer than 500 employees. The mandatory requirement of the law expired on December 31, 2020. Given the recent stimulus legislation, employers may be wondering if the FFCRA still applies, and to what extent. Read on for answers to some frequently asked questions about FFCRA leave.



Does the FFCRA still apply?

Eligible employers may, but are not required to, provide FFCRA leave, through September 30, 2021 to receive the corresponding tax credit. This optional component was first extended until March 31, 2021 under the Consolidated Appropriations Act of 2021, and then extended again through September 30, 2021 under the American Rescue Plan of 2021. If employers choose to provide FFCRA leave, they must generally comply with all requirements of the original law.

Are there any new circumstances in which employees may take FFCRA leave?

Yes. Eligible employees may take paid sick leave because they are:

- (1) Taking time off work to obtain the COVID-19 vaccine;
- (2) Taking time off work to from any injury, disability, illness, or condition related to taking the COVID-19 vaccine; or
- (3) Seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 when the employee has been exposed to COVID-19 or the employer has requested such test or diagnosis.

If an eligible employee took all her entitled FFCRA paid sick leave in the prior year, can she take further FFCRA paid sick leave?

April 1, 2021 begins a new year for purposes of employee-entitlement to paid sick leave for qualifying reasons under the FFCRA, and employees are entitled to a new bank of ten days of paid sick leave for which employers may receive a corresponding tax credit.

What about the paid family leave component of the FFCRA?

This component of the law still applies, with some new developments. The first ten days of paid family leave are no longer unpaid. Further, the tax credit for paid family leave taken under the FFCRA has been expanded from \$10,000 to \$12,000. Even more, all qualifying reasons for paid sick leave (including the new reasons noted above) now qualify for paid family leave.

Are there any caps on the amount of paid leave employers can provide?

With regard to the tax credit employers may receive, paid sick leave is capped at \$200 or \$511 per day, depending on the reason for taking paid sick leave. Paid family leave continues to be capped at 2/3 of the employee’s daily regular rate of pay up to a daily maximum of \$200.

Can my company choose to offer FFCRA leave to some employees over others?

The American Rescue Plan provides that employers may not claim a corresponding tax credit if they provide FFCRA leave only to highly compensated employees, full-time employees, or certain employees on the basis of employment tenure.

What should I do now?

Remember, the FFCRA remains *optional*; however, employers will of course receive tax credits for qualifying leave that is provided. Employers should consider whether they will offer FFCRA leave going forward, taking into account such issues as the new non-discrimination prohibition, staffing, employee morale, and any burdens of administration. If employers have FFCRA leave forms, they should also consider updating them to account for these new developments.

As with all COVID-19 issues, this is a developing area of the law, and we can expect the Department of Labor to update its “Families First Coronavirus Response Act: Questions and Answers” guidance, or even propose interpretive regulations. Employers should consult with counsel to discuss the ramifications of this new law on their business.

If you have any questions, please contact Erin McAdams Franzblau (efranzblau@freeborn.com; (312) 360-6205), another member of Freeborn’s [Labor and Employment Practice Group](#), or visit Freeborn’s [COVID-19 webpage](#).

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Erin helps companies navigate employment laws, and defends employers in a wide range of class, collective, and single-plaintiff disputes before federal and state courts. She regularly counsels and litigates matters brought under state and federal antidiscrimination laws, the Fair Labor Standards Act, and the Employee Retirement Income Security Act. She is experienced in all stages of litigation, from inception through trial and post-trial appeals.



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