COVID Leave Update: Voluntary Extension & Expansion of FFCRA Leave

By: Christina Rogers on March 15, 2021 on graydon.law

As with any new presidential administration there is always a period of out with the old and in with the new. Many of you may have noticed the flurry of news reports regarding changes or new hires made by the new administration. If you're anything like me, at this point you are probably a bit annoyed with the constant buzzing of your phone or "Breaking News" email with some new change or update. It may even be making your head spin with the amount of things that have changed or have been withdrawn. However, there is nothing (maybe other than news about the coronavirus vaccine) that lawyers, employees, and employers have been following more closely than the American Rescue Plan Act ("ARPA"). Though employees are primarily concerned with when the next stimulus check will arrive in their accounts, the major question on many employer's minds is "Has the FFCRA been extended?" The short answer is no. Before you get too excited, here is the punchline: although the FFCRA has not been extended, the 2021 Consolidated Appropriations Act ("CAA") has … with a few adjustments.

If you recall, the CAA allowed employers to decide whether their company would continue to provide paid leave under the FFCRA after its expiration in December of 2020. In exchange, employers were provided a payroll tax credit if they chose to continue providing the leave. I'm sure I don't have to remind you that the payroll tax credit under the CAA is set to expire on March 31, 2021. On March 11, 2021, President Biden signed into law the ARPA. The most notable thing about the ARPA (other than the stimulus checks) is that is extends the tax credit under the CAA until September 30, 2021.

So other than the extension of the tax credit, what's new with the ARPA?

- **Additional Qualifying Reasons for Leave.** Under the ARPA, employees can now take paid sick and family leave for (1) vaccine appointments and (2) complications due to receiving the vaccine in addition to the qualifying reasons under the FFCRA.
- **Additional Hours.** After March 31, 2021, the 80-hour per employee limit will reset and employees will be entitled to a fresh set of 80 hours of leave.
- **Increase on Credit Limit.** The limit for the tax credit was increased to $12,000.
- **Federal Employees.** Federal employees are now eligible for up to 15 weeks of COVID related paid leave for themselves or their family members.

- **Self-Employed Individuals.** The ARPA increased the number of days that a self-employed individual can take from 50 to 60 days.
- **Non-discrimination rule.** The ARPA provides that the tax credit is only available to employers who provide leave uniformly, without discriminating against certain categories of workers.

Now that you know what's new, you have a decision to make: Will you continue the paid sick and family leave? If you do, here are a few things to consider:

1. Employers should update their forms, policies and records regarding the paid sick and family leave. Many employers created addenda or separate policies for the FFCRA leaves or other state leaves which tracked the FFCRA. These policies likely contained end dates that should be updated. From a payroll perspective, employers should be mindful of the additional 80 hour allotment available on March 31, 2021 and should ensure that employees amount of available leave is accurate and properly recorded.
2. **Check your local state laws.** Many states enacted leave laws based on the FFCRA. You should check whether you state has extended their paid sick and family leave (or if it is set to expire as well) based on this new extension of the CAA and the decision to not extend the FFCRA.
3. **Wait and See.** As with all of the new legislation during this pandemic, the Department of Labor will likely issue additional guidance regarding the ARPA.

Keep in mind that these rules only apply to companies with fewer than 500 employees (but don't forget that many states expanded leave obligations to large companies, too).

We will continue to monitor any guidance from the Department of Labor and all of the new changes this administration will inevitably bring. The times are a changin'. Let's hope the amount of good changes outweigh the not so good. Stay tuned!