

FFCRA - Choose Your Own Adventure!

By: Lee Geiger on December 29, 2020 on graydon.law

When I was in second grade, my favorite books were “choose your own adventure” books. “If you want John to go into the cave to search for the secret skull, turn to page 16. If you want John to run away like a little chicken, turn to page 128.” I was in complete control of my character’s destiny. No author was going to tell me what to do. I had options! Congress has written its own version of a “choose your own adventure” book. But, in true Congressional style, it’s 5500+ pages! Buried within those pages is the destiny of the FFCRA’s Paid Sick Leave and Emergency FMLA provisions. Here’s what you need to know:

- Employers covered by the FFCRA have the option to stop providing Paid Sick Leave and Emergency FMLA effective December 31, 2020.

HOWEVER

- Employers covered by the FFCRA also have the option to continue providing Paid Sick Leave and Emergency FMLA for COVID purposes through March 31, 2021.
 - Employers that elect to continue can receive a tax credit through March 31, 2021.
 - This is not a new entitlement - employees who have already exhausted all/part of their leave are not entitled to additional leave.
 - It is unclear at the moment, but it might be possible for employers to set a different end-date (e.g., January 31 or February 28) as a compromise.

Factors for employers to consider in deciding whether to continue to provide the leave:

- How has leave usage impacted staffing and customer service?
- Have employees been using the leave properly or abusing the leave?
- Is it a hardship on the company or other employees to continue providing leave?
- What is the impact on employees who legitimately need the leave?
- How will the decision impact employee morale?
- How many employees are currently on leave?
- Is the employer a public or private entity?

Regardless of the decision, communication is key. It is critical for employers to communicate the decision to end or extend benefits so that employees are aware of their

options. The decision should be company-wide so there is no favoritism of one employee vs. another.

Like everything COVID-related, this is a developing situation. The bill was just signed into law by President Trump on Sunday night. It is likely that we will know more in the next week or so, but we wanted to get this information out as quickly as possible so that affected employers could begin the process of choosing their own adventure. As always, feel free to reach out with any questions. We are happy to help however needed.