

LEGAL UPDATES

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Service

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The New FFCRA Under the American Rescue Plan Act

UPDATE: President Biden signed the American Rescue Plan Act into law on March 11, 2021.

Earlier today, a divided Congress approved the American Rescue Plan Act. The Act was the result of President Biden's sweeping \$1.9 trillion COVID-19 stimulus plan. President Biden is expected to sign the Act into law as early as later this week. The Act is a narrower version of President Biden's original vision, which we previously discussed. The Act contains wide-ranging support to American families and businesses, delivers critical resources to public health and provides provisions aimed at economic recovery. Notably, and the subject of this Alert, the Act renews the optional federal emergency paid sick and family leave along with tax credits.

As we've previously discussed, the Families First Coronavirus Response Act (FFCRA) expired on December 31, 2020, eliminating employers' mandatory obligation to provide emergency paid sick and family leave. In response, then-President Trump signed the 2021 Consolidated Appropriations Act (CAA), permitting employers to decide whether their companies would provide paid leave and, therefore, be eligible for the payroll tax credit. Until now, this option was available until March 31, 2021.

What's new in the current act?

Eligibility date: The current Act extends the tax credits for sick and family leave, which were originally enacted by the FFCRA, to September 30, 2021.

Additional qualifying reasons: The Act adds additional reasons employees can qualify for paid sick leave and family leave: (1) vaccine appointments and (2) complications due to receiving the vaccine.

Additional hours: The previous 80-hour per employee limit for paid sick leave will reset after March 31, 2021.

Additional limit on credit for paid family leave: The Act increases the limit on the credit for paid family leave to \$12,000.

Self-employed individuals: The number of days a self-employed individual can take into account while calculating the qualified family leave increases from 50 to 60 days.

Mandatory leave for federal workers: Federal workers are now eligible for up to 15 weeks of paid leave for COVID-19-related absences for themselves and their families under the Act.

Non-discrimination rules related to tax credit: The tax credit is only available to employers who uniformly provide leave to all employees, without discriminating against certain categories of workers.

What should you do to prepare?

Decide. Employers should decide if they will start or continue to provide both paid sick leave and paid family leave to employees until September 30, 2021, under the Act's provisions. Employers should keep in mind the additional allotment of hours that become available to employees on March 31, 2021. Similar to the CAA, a best practice would be to provide both types of leave if your company decides to opt-in.

Review and monitor. As with all new legislation, we anticipate the Department of Labor will provide additional guidance. Husch Blackwell will continue to monitor and share updates.

Update. Employers should update their forms, policies and records applicable to paid sick and family leave. Forms should be updated to take into consideration the extension of FFCRA leave and the additional qualifying reasons. Because of the additional allotment of hours provided to employees, employers should also make sure their record keeping provides for accurate tracking of each employee.

Contact us

If you have any questions about your obligations regarding the COVID-19 relief legislation or require assistance in updating your forms or policies, contact Julianne Story, Courtney Steelman, Michaeli Hennessy or your Husch Blackwell attorney.

CARES Act, COVID-19 & Return-to-Work Guidance

Husch Blackwell provides guidance regarding COVID-19 updates, the CARES Act, and rapidly changing state-by-state orders, including those that impact stay-at-home and return-to-work protocols. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.