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Client Alert: Voluntary FFCRA Leave Expanded and Extended Through September 2021

BY JACOB A. TOSTI • MARCH 18, 2021

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA) into law. Among other things, the ARPA extends tax credits available to employers with fewer than 500 employees who voluntarily choose to grant employees paid leave under the Families First Coronavirus Response Act (FFCRA) through September 30, 2021, and also updates certain FFCRA leave provisions. Here are some key points about the paid leave provisions in the ARPA, which will take effect on April 1, 2021:

FFCRA TAX CREDITS EXTENDED THROUGH SEPTEMBER 30, 2021

As has been the case since January 1, 2021, employers can voluntarily choose to grant FFCRA paid leave to employees for qualifying reasons and take tax credits for the leave. Under the new law, these tax credits are available to employers with fewer than 500 employees who voluntarily provide FFCRA leave to qualifying employees through September 30, 2021.

NEW NON-DISCRIMINATION RULES

Employers who choose to voluntarily provide FFCRA leave must be aware of new non-discrimination rules contained in the ARPA. Under these new provisions, FFCRA tax credits are not available to employers who discriminate in favor of highly compensated employees, full-time employees, or employees on the basis of tenure in providing FFCRA benefits.

NEW QUALIFYING REASONS FOR PAID LEAVE

The ARPA expands the list of qualifying reasons for taking FFCRA paid leave to include:

- When an employee is seeking or awaiting results of a test for or a diagnosis of COVID-19
- When an employee is obtaining COVID-19 immunization;
- When an employee is recovering from any injury, disability, illness or condition related to COVID-19 immunization

NEW EPSL LEAVE BANK AS OF APRIL 1, 2021

The new law refreshes the 10-day bank for FFCRA paid sick leave, effective April 1, 2021. Accordingly, employees who exhausted their FFCRA sick leave prior to April 1 will still be eligible for up to 10 days of FFCRA paid sick leave, and employers will be able to take tax credits for such leave if they choose to provide it.

NEW EFMLA EXPANSION

Previously, expanded family and medical leave (EFMLA) under the FFCRA could only be taken by employees caring for children whose schools or place of care was closed, or whose care provider was unavailable for reasons related to COVID-19.

However, beginning April 1, 2021, EFMLA can be taken for all of the reasons that an employee can take FFCRA paid sick leave, including all of the new qualifying reasons listed