
Coates' Canons Blog: FFCRA Not Extended; Expires December 31, 2020

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The Families First Coronavirus Response Act (FFCRA), passed in March as the federal government's first response to the COVID-19 crisis, is a law with many parts. The Emergency Sick Leave Act and the Emergency Family and Medical Leave Expansion Act are the two most familiar to public employers. The stimulus bill that passed late last night (December 21, just before midnight) extended portions of the FFCRA. **It did not extend the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act. Those laws and the benefits they provided to employees expire at midnight, December 31, 2020.**

Background

On March 18, 2020, the federal Families First Coronavirus Response Act (FFCRA) was enacted. The FFCRA is actually a compilation of a number of different acts with different purposes, all sharing the goal of providing relief to those who are adversely affected economically by the COVID-19 pandemic. The Emergency Family and Medical Leave Expansion Act provides an expansion of the job-protection benefits under the Family and Medical Leave Act (FMLA) and mandates paid leave under the FMLA. The Emergency Paid Sick Leave Act requires employers to provide paid sick leave to employees who have been advised to self-isolate or self-quarantine, are seeking a diagnosis of COVID-19 symptoms, or are caring for an individual under isolation or quarantine or for children whose normal caregivers are unavailable due to the COVID-19 precautions. A third provision of the FFCRA, Division G, provides payroll tax relief for sick leave pay required under the Act.

Under the original FFCRA, the Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Expansion Act both are set to expire on December 31, 2020.

The December 21, 2020 Economic Stimulus Bill Fails to Extend the Leave Provisions of the FFCRA

Late in the evening of December 21, 2020, Congress passed a massive economic stimulus bill, which is now headed to President Trump for signature. For employers nationwide, one of the big questions was whether this bill would extend the Emergency Paid Sick Leave Act (EPSL Act) and the Emergency Family and Medical Leave Expansion Act (EFMLA Act) into 2021.

It does not.

Unless Congress passes additional legislation before the end of the year (which seems unlikely), both the EPSL Act and the EFMLA Act will expire on December 31, 2020. Any emergency paid sick leave or emergency FMLA leave that an employee is on as January 1, 2021 begins will immediately conclude.

Employers are free to adopt their own individual policies granting employees paid sick leave or paid time off for COVID-related circumstances. Those policies may look exactly like those provided under the EPSL Act or the EFMLA Act, may be more generous or may be less generous. Whatever policies employers may choose to adopt, they will not be federally required EPSL or EFMLA. To avoid confusion about what rights employees have to COVID-related leave, employers adopting COVID-related leave policies should give them a separate name.

Employers do not have to grant employees additional paid time off for COVID reasons at all.

Employer Social Security Tax Exemption Also Sunsets

The exemption from paying the employer portion of the SSDI tax on payments made to employees under the EPSL Act and the EFMLA Act also expires as there are no payments to be made under either Act as of January 1, 2020.

Government employers should not be confused by the fact that the stimulus bill extends the period during which private employers may claim tax credits on their SSDI payments through March 31, 2021. Public employers were never entitled to this tax credit. The extension of time in which private employers may take a tax credit does not have the effect of extending the effective dates of either the EPSL Act or the EFMLA Act.

Conclusion

It is crunch time (unfortunately, since it is days before the December holidays) — time for employers to update their policies and to let employees know as soon as possible that they are no longer entitled to emergency paid sick leave and emergency FMLA leave. Many employees have been using EMFLA on either a continuous or intermittent basis because their children's child care or schools are closed. These employees will need to make alternate plans if there is no alternate form of leave available to them.

Links

- www.congress.gov/bill/116th-congress/house-bill/6201/text
- www.washingtonpost.com/us-policy/interactive/2020/covid-relief-bill-full-text?itid=lk_interstitial_manual_6