Five Steps for Handling FFCRA Expiration

The Families First Coronavirus Response Act (FFCRA) expires as of December 31, 2020. The new coronavirus relief bill signed by President Trump on December 27, 2020, does **not** extend FFCRA. Rather, it provides for "FFCRA-like" tax credits for covered private employers who continue to offer paid leave benefits through March 31, 2021.

In a nutshell, covered private employers (less than 500 employees) can voluntarily elect to offer paid sick and family leave benefits under their policy for employees impacted by COVID-19, and model it on the time/eligibility framework that was previously provided by the FFCRA. If covered private employers choose to do that, they will be able to apply for tax credits for those payments through March 31, 2021 (*Note: public employers are not included in the bill).

How should private employers, who were previously covered by FFCRA, handle COVID-19 related absences in 2021? Follow these 5 steps to ensure a smooth transition:

Step 1: Determine if your employer will voluntarily provide COVID-19 paid leave benefits from January 1 to March 31, 2021, based on the prior FFCRA eligibility. Most eligible employers will likely elect to participate in the voluntary benefit offering, since these benefits are eligible for tax credits and provide paid leave for employees who haven't already exhausted FFCRA.

Step 2: Determine which additional paid benefits and resources are available to employees who are impacted by COVID-19 in 2021. This may include PTO, vacation, paid sick leave, short-term disability insurance or other state mandated benefits. The new COVID relief bill allows the continuation of "FFCRA-like" benefits through March 2021, but it does not reset the amount of time available for employees who already exhausted FFCRA benefits in 2020. Therefore, even if an employer opts to voluntarily provide "FFCRA-like" paid benefits through their policy heading into 2021, many employees may not be eligible because they used up their FFCRA benefits in 2020.

Step 3: Communicate to employees. The need for COVID-19 leave will continue long into 2021. Employees will need to understand what benefits related to time away from work will be available to them in 2021. Clearly communicate your employer's decision about participating in the voluntary COVID-19 paid and family leave benefit and what leave options and benefits are available to those employees who previously exhausted benefits under FFCRA in 2020.

Step 4: Assess absences on an individual basis. As employees request leave between January 1, 2021 and March 31, 2021, assess each leave request on an individual basis. This may require an audit of FFCRA hours used in 2020 to determine eligibility for voluntary benefits through March 31, 2021. Remember that each employee is only eligible for the 80 hours of emergency paid sick leave and 10 weeks of emergency paid FMLA once…even if they change employers! If an employee has exhausted FFCRA benefits in 2020, determine which alternative benefits are available to the employee during their absence.

Step 5: Don't forget about unemployment benefits. For those employees who are unable to work for COVID-19 related reasons and are ineligible for all other paid leave benefits provided through employment, encourage the individual to explore their eligibility for unemployment compensation. Under the CARES Act extension, these employees may be eligible for unemployment compensation benefits.

Having a plan for navigating employee absences and clearly communicating with employees will serve both employers and employees well in the transition to the new year.