
Expanded Family and Medical Leave Extended through March 2021 on Voluntary Basis

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The Families First Coronavirus Response Act (FFRCA), passed in March 2020, required employers of eligible employees to provide two different types of paid leave related to COVID-19: sick leave and leave under Family and Medical Leave Act ("FMLA"), as previously discussed. Under the FFRCA, employers with fewer than 500 employees were allowed to claim a payroll tax credit in an amount equal to the amount of the paid leave. The mandatory requirements under the FFRCA expired on December 31, 2020. As a result, employers are no longer required to provide paid leave under the FFRCA. However, employers who choose to voluntarily continue to provide the paid leave provided by FFRCA through the end of March 2021 remain eligible for payroll tax credits.

The Consolidated Appropriations Act of 2021 (the "Stimulus Bill") extended the availability of payroll tax credits under FFRCA through the end of March 2021 without extending the requirement that employers offer such paid leave. As a result, if an employer *chooses* to voluntarily offer paid sick leave or paid FMLA leave pursuant to the conditions created by FFRCA, that employer may utilize payroll tax credits to cover the cost of such leave benefits paid to employees through the end of March. The qualifying reasons for such paid leave and the applicable documentation requirements necessary to obtain this tax credit have not changed.

Emergency Paid Sick Leave

The FFRCA allowed employees to take up to ten days (or eighty hours) of emergency paid sick leave. Pursuant to the Stimulus Bill, if an employer chooses to allow it, an employee may carry over any unused portion of these ten days of emergency paid sick leave into the first quarter of 2021. The Stimulus Bill does not create any new emergency paid sick leave – it simply allows any unused portion of the emergency paid sick leave to be used before March 31, 2021. If employers choose to allow the carryover of emergency paid sick leave, payroll tax credits are available to cover the cost of this paid leave.

This emergency paid sick leave is available for employees who are unable to work or telework due to any of the following reasons:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- The employee is caring for an individual who has been instructed to isolate or self-quarantine related to COVID-19;
- The employee is caring for their child whose school or place of care has closed, or because the child's childcare provider is unavailable, due to COVID-19 precautions; or
- The employee is experiencing any other substantially similar condition specified by the Department of Health and Human Services ("HHS") in consultation with the Department of Treasury and the Department of Labor ("DOL").

Additional restrictions exist regarding the rate of pay and total dollar amounts of daily paid sick leave, which amounts can vary based on

the reason for the paid sick leave.

Emergency Paid FMLA Leave

The FFRCA authorized paid FMLA leave for employees who are forced to take time off from work to care for their children because of school or child care provider closures. The Stimulus Bill authorizes employers to voluntarily offer paid emergency FMLA leave through the first quarter of 2021, and has authorized a payroll tax credit to offset the costs of this benefit. An employee who qualifies for emergency FMLA leave may take up to twelve weeks of leave, and the FFRCA and the Stimulus Bill allow for the employee to receive 2/3 pay for ten of those twelve weeks. The first two weeks of emergency FMLA leave are unpaid (in contrast, all twelve weeks of traditional FMLA leave are unpaid). As with the paid sick leave originally offered under the FFCRA, the Stimulus Bill only allows for the voluntary carryover of any unused paid FMLA leave and does not create an additional amounts of such paid leave.

The Stimulus Bill's extension of certain provisions of FFRCA allows employers additional flexibility in dealing with the effects of COVID-19. If you have questions about the paid leave provisions of FFRCA or the Stimulus Bill, contact Nathan Duggins at nduggins@tuggleduggins.com or (336) 271-5246, Denis Jacobson at djacobson@tuggleduggins.com or (336) 271-5242, Ross Hamilton at rhamilton@tuggleduggins.com or (336) 271-5279, or Daniel Stratton at atdstratton@tuggleduggins.com or (336) 271-5240.

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400 Bellemeade Street, Suite 800
Greensboro, NC 27401

P.O. Box 2888
Greensboro, NC 27402

Phone: 336.378.1431
Fax: 336.274.6590