

Mandatory Paid Sick Leave Ended, but Tax Credits Continue: What Employers Need to Know

In March 2020, Congress passed the [Families First Coronavirus Response Act of 2020](#) (FFCRA), which mandated that employers with fewer than 500 employees provide paid sick and FMLA leave to eligible employees for specified COVID-related reasons. According to its terms, *the FFCRA expired on December 31, 2020*. What does that mean? Quite simply, there is no longer a requirement under federal law to provide employees with any paid leave for COVID-related conditions, whether that be a positive diagnosis, close contact requiring quarantine, or to care for a child whose school is closed (nor is there a requirement under Tennessee law, but other states may differ).

The recently passed stimulus bill did nothing to extend the leave requirement. But the law does allow employers to **voluntarily** provide paid leave through March 31, 2021, and to continue receiving payroll tax credits for doing so.

What does that mean for employers?

An employer may voluntarily continue to operate as though the FFCRA's paid leave requirements apply through March 31, 2021, and therefore provide paid leave to employees without really incurring any out-of-pocket expenses.

What about employees who exhausted their paid leave in 2020?

Although not plainly evident in the recently passed legislation, the specific caps on paid leave as set forth in FFCRA (80 hours of paid sick leave; an additional 10 weeks of paid FMLA for COVID-related childcare purposes) appear to remain in effect. This suggests that paid leave voluntarily provided to an employee who exhausted their paid leave in 2020 would not be eligible for 2021 tax credits. In other words, the stimulus bill does not allow employers to receive a tax credit if they voluntarily "replenish" already exhausted paid leave.

What rules apply to voluntarily provided leave?

Employers who continue to voluntarily provide leave under the FFCRA should comply with the same rules, regulations, and guidance that applied under the mandatory leave entitlements. And employers assuredly must continue to maintain documentation of this paid leave (and related tax credits) in the event that DOL or the IRS later questions whether the employer actually was entitled to the tax credit taken.

As the COVID-19 pandemic drags on, employers will continue to confront the same questions they did at the outset of the outbreak and must balance production needs with COVID-related absences. Voluntarily providing paid leave certainly discourages employees from reporting to work when ill, but it also can have a negative impact on productivity. Not to mention, there is an administrative burden of continuing to process leave requests and ensuring that appropriate documentation is furnished and maintained.

With the pending change in administration, new legislation could be passed to reinstate or expand the leave that was once required under FFCRA; more likely, comprehensive leave policies will be explored by Congress. The IRS and DOL are also likely to continue to issue guidance regarding leave related to COVID-19. Employers therefore must remain vigilant to ensure compliance when handling COVID-19 employee requested leave.

Our Chambliss team continues to monitor legal developments in connection with the COVID-19 pandemic. If you have questions regarding employer leave, please contact [Justin Furrow](#) or a member of the [Labor and Employment](#) team.

Visit our COVID-19 Insight Center for our latest legislative and legal updates, articles, and resources.

[Visit Insight Center](#)

The material in this publication was created as of the date set forth above and is based on laws, court decisions, administrative rulings, and congressional materials that existed at that time, and should not be construed as legal advice or legal opinions on specific facts. In some cases, the underlying legal information is changing quickly in light of the COVID-19 pandemic. The information in this publication is not intended to create, and the transmission and receipt of it does not constitute, a lawyer-client relationship. Please contact your legal counsel for advice regarding specific situations.