

Ohio Employer's Law Blog

CORONAVIRUS LAW BLOG

Solving Businesses' Workforce Problems
By Jon Hyman — of Meyers, Roman, Friedberg & Lewis

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Meyers, Roman, Friedberg & Lewis has a **Coronavirus Response Team**.
Contact [Jon Hyman](#) to help with how your business should continue to respond to this national emergency.

TUESDAY, DECEMBER 22, 2020

Coronavirus Update 12-22-2020: Congress approves an FFCRA extension (sort of)

Late yesterday, Congress approved the Consolidated Appropriations Act, 2021, better known as its \$900 billion COVID-19 rescue stimulus. President Trump is expected to sign it into law.

Buried within the bill's 5593 pages (on pages 2033 - 2037) is an extension of tax credits for paid sick and family leave under the Families First Coronavirus Response Act, which otherwise would have expired on December 31.



Under this extension:

- Mandatory FFCRA Leave still expires on December 31, 2020.
- As of January 1, 2021, a covered employer may voluntarily continue to provide emergency paid sick leave or emergency paid FMLA Leave under FFCRA (for the same reasons as available under the original statute) and claim the payroll tax credit associated with this leave.
- The tax credit may only be claimed for leave taken by employees through March 31, 2021. After March 31, 2021 (without further extensions), any COVID-19-related leave provided by employers will be solely at the employer's expense.

This extension does not appear to create a new bucket of FFCRA leave for employees on January 1, 2021, but instead merely extends the payroll tax credit for an employee's use of the original allotment of FFCRA leave through March 31, 2021, if an employer voluntarily extends the leave.

If an employer opts to voluntarily continue to provide FFCRA leave through March 31, 2021, employees still only have available the original 80 hours of paid sick leave allotted as of April 1, 2020. Thus, as it related to FFCRA paid sick leave, from January 1 - March 31, 2021, employers are only entitled to claim the payroll tax credit for leaves taken from that original allotment of paid sick leave.

Paid FMLA, however, will work differently. Because the FFCRA's paid FMLA provisions (which only apply to COVID-19 childcare-related absences) operate as an amendment to the FMLA itself, it is possible, depending on [how an employer calculates its FMLA leave year](#) (e.g., rolling vs. calendar year basis), that employees will qualify for a new bucket of FMLA leave on January 1, 2021. If this is the case, then employees could have available an additional 12 weeks of FMLA under the FFCRA, with the final 10 weeks paid, beginning on

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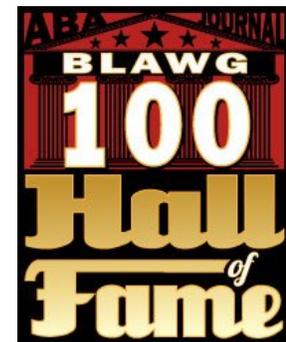
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LABELS

January 1, 2021, to use through March 31, 2021.

What does this mean for your business (assuming President Trump signs this bill into law, as promised)? It means that you have some choices to make beginning January 1 as to how you will account for employees' time off for COVID-19-related absences. You can —

1. Extend the FFCRA for your employee through March 31, 2021, and claim the payroll tax credit for any additional leave taken, understanding that this extension may (depending on how you calculate your FMLA leave year for your employees) result in employees receiving a brand-new allotment of 12 weeks of COVID-19 childcare leave to use during the first three months of the year).
2. Grant your own paid sick and/or family leave in lieu of the federal benefit, ignoring the payroll tax reimbursement through March 31.
3. Rely on your existing PTO / vacation / sick leave benefits.
4. Grant unpaid leaves of absence but not offer any additional paid leave to employees.
5. Do nothing and force these employees out of your business.

A good place to start would be to review how much paid time has been used by your employees as of the end of the year. Then, if you are worried about employees earning a new allotment of FMLA on January 1 (and potentially taking close-to-all of January – March off as protected FMLA leave), offering options 2, 3, or 4 might be more attractive to you. Otherwise, give serious consideration to option 1, extending your payroll tax reimbursement for FFCRA leave through March 31. Please, please, please, avoid option 5 —the next three months will be the worst of this pandemic; you should not be encouraging employees to come to work out of fear of losing their jobs when they should be isolating or quarantining. * Image by Diliff, CC BY-SA 3.0, via Wikimedia Commons

Written by Jon Hyman, a partner in the Labor & Employment group of Meyers Roman Friedberg & Lewis. For more information, contact Jon at (216) 831-0042, ext. 140 or jhyman@meyersroman.com.

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