McQuaide Blasko

Emergency Paid Leave – What Now?

January 2, 2021
By Philip Miles, Esq.

The Families First Coronavirus Response Act (FFCRA) was one of the first legislative responses to COVID-19. From April 1, 2020 through the end of the year, employers with fewer than 500 employees provided two weeks of mandatory emergency paid sick leave for a variety of COVID-related absences:

1. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Employee is experiencing COVID-19 symptoms and seeking medical diagnosis;
4. Employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
5. Employee is caring for their child because the child's school or place of care has been closed or is unavailable due to COVID-19 precaution.[1]

Employees who qualified under #5 were also entitled to an additional 10 weeks of emergency paid Family and Medical Leave Act (FMLA) leave. Although employers had to pay for the leave, they could recoup the costs through refundable tax credits. The FFCRA was set to expire on December 31st. The *mandate* did expire, but the *tax credits* will continue.

Congress recently passed the Consolidated Appropriations Act of 2021, a nearly 6,000 page piece of legislation with the much-talked-about stimulus checks. It also included a few provisions addressing emergency paid leave under the FFCRA. **Bottom line: After December 31, 2020, employers are no longer required to provide emergency paid sick leave or emergency paid FMLA leave to employees - BUT - employers may voluntarily provide such leave and still receive the tax credit through**

[1] Plus, a reservation for special conditions specified by the Secretary of Health and Human Services.

March 31, 2021. The extension does not appear to "reset" employees' balances. In other words, if an employee already used some or all of their paid leave last year, they don't get more for this year.

As an employer, what will you do? Every business is unique, but some common considerations exist:

- CONS
  - Administrative overhead. Someone will have to continue to track employee balances, document the requests, and obtain the tax credits.
  - Compliance costs. I'm still fielding calls and emails asking whether assorted absences are covered.
  - Cash flow. The payroll tax credits will likely not result in full reimbursement until after the employer has already paid for the leave.
- PROS
  - Workplace and public health. The whole point of the emergency paid leave is to incentivize employees to stay home if they are experiencing symptoms or quarantined to prevent the spread of COVID-19.
  - Employee morale. Employees will likely appreciate employers shouldering the burdens described above to provide them with this extended benefit for the next three months.

There is no "one size fits all" solution here. Employers need to weigh the costs and benefits and do what is right for them. McQuaide Blasko is up to date on the latest developments, and ready to participate in those conversations if needed.

Philip Miles
View Profile

Phil Miles is a shareholder attorney in McQuaide Blasko's State College office. He is a member of the firm's Labor and Employment Law and Civil Litigation practice groups. He also teaches employment law for Penn State's School of Labor and Employment relations and writes an employment law blog, Lawffice Space.

pkmiles@mqblaw.com 814.235.2253