

Congress Extends the FFCRA's Payroll-Tax Credit for Employers (but not the Paid-Leave Obligation!)

by Aaron Goldstein, Jillian Kornblatt, and Ryan E. Mick

With the December 31, 2020 expiration of the Families First Coronavirus Response Act ("FFCRA") fast approaching, on December 28 President Trump signed into law the Consolidated Appropriations Act of 2021 (the "CAA"). Although the ramifications of the CAA are wide-ranging (and more alerts are forthcoming from Dorsey), employers with fewer than 500 employees should be aware of a narrow aspect of the bill: extension of the payroll-tax credit under the FFCRA.

The CAA does not extend the December 31, 2020 expiration date for mandated paid-leave obligations under the FFCRA. That means that as of January 1, 2021, employers are no longer *required* to provide paid sick leave or expanded FMLA paid leave to their employees related to the COVID-19 pandemic, and employees are no longer entitled to paid leave under the FFCRA.

However, for employers who voluntarily extend the FFCRA paid leave benefits, the CAA extends through March 31, 2021 the period in which employers can claim a payroll-tax credit for such leave. The tax credit is only available to paid leave that would otherwise qualify under the FFCRA. The practical effect of this change is that employers may willingly choose to continue providing paid leave under the FFCRA (including emergency paid sick leave and/or expanded FMLA paid leave) through March 31 and continue taking a payroll-tax credit up to the daily and aggregate limits under the FFCRA. As noted, employers are not *required* to provide additional paid leave after December 31.

Importantly, the CAA does not extend the amount of leave to which an individual employee is entitled. For example, if an employee has already been given two weeks of emergency paid sick leave in 2020, she is not entitled to additional emergency paid sick leave in 2021 under the CAA. Moreover, the company would not be entitled to a corresponding tax credit should it provide her with additional leave beyond the FFCRA's limits. The CAA also does not change an employer's obligation to pay any paid-leave benefits owed to employees that were incurred on or before December 31, 2020.

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- Aaron Goldstein
- Jillian Kornblatt
- Ryan E. Mick

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For more information regarding the FFCRA and its paid-leave obligations for employers with fewer than 500 employees, please review Dorsey's [earlier publications on that topic](#).

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