

CLIENT ALERT: FFCRA Update – March 19, 2021

Background

The Families First Coronavirus Response Act (FFCRA), which became effective in April of 2020, mandated that employers with less than 500 employees provide both Emergency Paid Sick Leave (EPSL) and Expanded Family Medical Leave (EFML) for COVID-related reasons through December 31, 2020. The FFCRA also created tax credits to reimburse employers for the paid leave. In December of 2020, Congress extended the tax credits through March 31, 2021 for employers who voluntarily continued to provide FFCRA leave to employees beyond the December expiration date. The American Rescue Plan Act (ARPA), which was signed into law by President Biden on March 11, 2021, extends the tax credits to employers who **voluntarily** provide paid leave to their employees through September 30, 2021. The APRA also makes the following changes to FFCRA that will take effect April 1, 2021:

New Reasons for FFCRA Leave

There are three additional qualifying reasons for FFCRA leave taken from April 1, 2021 to September 30, 2021: (i) the employee is seeking or awaiting a diagnostic test for, or the medical diagnosis of, COVID-19 and the employee has been exposed to COVID-19 or the employer has requested the test or medical diagnosis; (ii) the employee is obtaining a COVID-19 vaccination; or (iii) the employee is recovering from any injury, disability, illness or condition related to the COVID-19 vaccination.

Leave Year Reset for EPSL

The APRA provides employees with 10 days of EPSL to use beginning on April 1, 2021, and employers who voluntarily allow employees to use EPSL will be eligible for a tax credit to recover the cost of the paid leave. This allocation of 10 days is available to employees even if they already used EPSL prior to March 31, 2021.

Expansion of EFML

As of April 1, 2021, the maximum tax credit per employee has been raised from \$10,000 to \$12,000 for qualifying FFCRA paid family leave absences, and the potential number of days for EFML has been increased from 50 to 60. Further, in addition to the original qualifying reasons for employees to take EFML, (e.g., to care for a child after a pandemic-related school or childcare closure), employees will qualify for EFML for any of the reasons for which an employee can take EPSL, which includes the three new circumstances listed above.

Non-Discrimination Measures

The APRA adds a new provision which bars tax credits for employers who voluntarily provide FFCRA leave but who discriminate with respect to leave on the basis of tenure, or in favor of full-time or highly compensated employees.