Long-Awaited Stimulus Relief Bill Has Passed: Key Highlights for Employers

The long-awaited stimulus relief bill has officially been enacted. On Dec. 21, 2020, Congress passed the Consolidated Appropriations Act, 2021 (Bill), several months after aid had lapsed for many individuals and businesses from the first stimulus bill passed early-on in the COVID-19 pandemic. Congress came together to push through a 5,593 page, $900 billion stimulus package intended to help those individuals and businesses who continue to struggle economically as a result of the ongoing pandemic. After expressing bipartisan criticism of its contents, President Trump finally signed the Bill on Dec. 27, 2020.

So, what exactly out of the nearly 6,000 pages is important for employers to know? Here are some of the key items:

(1) Expiration of FFCRA Leave Benefits & Extension of Tax Credit

FFCRA leave benefits and provisions are scheduled to expire on Dec. 31, 2020 and are not extended by this legislation. As a quick refresher, the Families First Coronavirus Response Act (FFCRA) passed in March included a mandate for covered employers to provide paid sick leave and expanded family and medical leave for employees who had to miss work due to enumerated COVID-19 related reasons, including being under quarantine or if an employee's school aged child's school was closed. The FFCRA leave benefits mandate generally only applied to private employers with fewer than 500 employees. As employers may recall, the FFCRA allowed employers to take advantage of a dollar-for-dollar reimbursement for qualifying wages paid pursuant to the FFCRA through tax credits.

As stated, the new stimulus package does **not** extend FFCRA leave benefits. However, the Bill does extend the availability of tax credits for employers who choose to continue to provide the leave benefits provided under the FFCRA framework. The Bill only extends the availability of the tax credits provided by the FFCRA to covered employers through March 31, 2021.

What this means: Covered employers do not have to continue to provide FFCRA leave benefits after Dec. 31, 2020, but covered employers *may* choose to continue providing employees with leave under the FFCRA framework and can continue to take advantage of the tax credit available for doing so.

It is important to note that the Bill also does not extend or renew employees' allotment for FFCRA leave benefits. In other words, employers may not claim a second tax credit for employees who previously took and exhausted their FFCRA leave benefits entitlement even if the employer wishes to provide them with more leave.

In practice, the Bill only provides covered employers with a voluntary option to continue to offer FFCRA leave benefits which would only benefit employees who have not already exhausted their allotment under the FFCRA. However, as previously stated, employers are not required to do so at all.

These provisions in the Bill do not provide any incentive for public employers. Public employers are still unable to claim the tax credits, as they were never able to in the first place.

Despite the news that the FFCRA leave benefits will not be extended, employers should not be quick to put 'COVID-19 related leave' in the rear-view mirror, at least not yet. Employers in New York are reminded that NY Paid Sick Leave officially goes into effect Jan. 1, 2021 (although tracking and accruals may have begun for some employers on Sept.

31, 2020, employees will be able to use accrued paid sick leave starting Jan. 1). Employees may be entitled to take accrued and available paid sick leave for qualifying purposes that may very well be COVID-19 related, such as if an employee becomes ill themself. In addition, the New York "Quarantine Paid Sick Leave" law is still in effect. The New York "Quarantine Paid Sick Leave" law requires certain employers in New York to provide job protected sick leave for employees who need to take leave from work because they are under a mandatory or precautionary order of quarantine or isolation due to COVID-19. The amount of leave required depends on the size of the employer and the employer's net annual income. Other states may also have additional leave entitlements for employees who need to take leave for COVID-19 related reasons.

All this to say that while the federal leave benefits may be gone (for now), it is possible that employees may nevertheless be entitled to other legally protected leave benefits for COVID-19 related reasons. When navigating whether an employee is entitled to certain leave benefits for COVID-19 related reasons, employers are encouraged to contact their legal counsel for advice.

(2) Extension of Federal Unemployment Insurance Benefits

The federal unemployment programs established under the CARES Act which was passed back in March expired on Dec. 26, 2020. The Bill extends the amount of time that eligible individuals may collect unemployment benefits through March 14, 2021 (11 additional weeks). The Bill also provides for $300 per week in federal unemployment insurance benefits. This is in addition to state unemployment benefits. This is half of the amount previously provided under the CARES Act back in March. Qualified individuals who are receiving benefits as of March 14, 2021 may continue receiving benefits through April 5, 2021 if they have not already reached the maximum benefit amount. However, on April 5, 2021, the federal benefit will end.

(3) Extension of Qualified Disaster Employee Retention Credit

The Bill also extends the availability of the qualified disaster employee retention credit through June 30, 2021, further incentivizing employers to keep employees employed through the pandemic. The Bill also increases the refundable payroll tax credit from 50% of up to $10,000 of qualified wages to 70% of up to $10,000 of qualified wages per quarter (applies *after* Dec. 31, 2020). Therefore, the maximum credit available is up to $14,000 ($7,000 for each of the first two quarters of 2021). Previously, the maximum credit available was $5,000.

The Bill makes several other changes with regards to the employee retention credit, including changes to the credit eligibility requirements. The Bill is also jam-packed with several other tax provisions that may also affect or benefit employers, including extension of an existing credit available for qualifying employers who provide paid family and medical leave (Internal Revenue Code Section 45S), employer-paid student loan repayment assistance, and more.

Employers are encouraged to consult with their tax professional to fully understand eligibility, intricacies, implications, and other details of the tax credits potentially available under the Bill.

If you have any questions about this Information Memo, please contact Stephanie H. Fedorka, any attorney in Bond's Labor and Employment practice, or the attorney in the firm with whom you are regularly in contact.

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