

## Publications

## CTRA Would Extend Employer Tax Credits for Paid Leave Under FFCRA Framework

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On December 20, 2020, Congress passed the Emergency Coronavirus Relief Agreement, which, if approved by the president, will be signed into law as the COVID-related Tax Relief Act of 2021 (CTRA). The CTRA offers approximately \$900 billion in relief and stimulus provisions (discussed in more detail here). However, not included in the CTRA is an extension of the mandatory leave provisions of the Families First Coronavirus Response Act (FFCRA), which are set to expire on December 31, 2020. Instead, the CTRA extends the tax credits available to covered employers that continue to offer paid leave under the FFCRA framework through March 31, 2021.

As discussed in detail here, the FFCRA requires private employers with fewer than 500 employees and certain public employers to provide up to twelve weeks of expanded paid leave for limited COVID-related reasons under the emergency FMLA provisions, and up to 80 hours of emergency paid sick leave for specific COVID-19 related reasons, until December 31, 2020. To fund these emergency benefits for employees, the FFCRA also provided a refundable tax credit to employers for paid leave provided under the FFCRA.

Beginning January 1, 2021, covered employees will no longer be *required* by federal law to provide this paid leave in accordance with the FFCRA framework (though employers should note that several cities and states enacted leave laws in response to the COVID-19 pandemic, which could continue after the FFCRA expires). However, in the CTRA, Congress extended the tax credit available to covered employers under the FFCRA. Thus, the CTRA provides financial support and incentives for employers that continue to offer FFCRA-like paid leave through March 31, 2021. Two important points should be noted here. First, it appears that only leave that would have been required under the FFCRA will qualify for the reimbursable tax credit under the CTRA. Therefore, the same limitations on reimbursement likely apply. Second, because the CTRA does not extend the leave provisions of the FFCRA, it is unclear whether paid leave provided to employees *beyond* the amount of emergency paid sick leave and emergency family and medical leave afforded under the FFCRA will qualify for the credit.

As many as 87 million workers currently benefit from the FFCRA, which allows them to stay home to quarantine after COVID-19 exposure or care for a child whose school or daycare is closed because of COVID-19. With the number of COVID-19 cases rising on a daily basis, though no longer federally mandated after December 31, 2020, employers should consider updating their leave policies to extend the benefits available to employees under the FFCRA at least through March 31, 2021. Employers extending their COVID-19 leave benefits should continue to carefully review employees' leave requests to ensure employees have a qualifying reason under the FFCRA in order to receive the tax credit.

If you have any questions regarding this new law or any other aspect of COVID-19, please contact your Vorys lawyer.