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VOLUNTARY EXTENSION OF FFCRA LEAVE UNDER CAA 2021

CONSOLIDATED APPROPRIATIONS ACT OF 2021 – WHAT YOU NEED TO KNOW

As you may recall, the Families First Coronavirus Response Act (“FFCRA”) required employers with fewer than 500 employees to provide sick leave benefits—Emergency Paid Sick Leave (“EPSL”) and Emergency Family and Medical Leave (“EFMLA”)—for certain COVID-19 relate reasons between April 1, 2020 and December 31,2020. The Consolidated Appropriations Act (“CAA”), which became law on December 27, 2020, no longer requires employers to offer these emergency benefits in the new year. Instead, the CAA allows private businesses and non-profits with fewer than 500 employees to voluntarily extend these benefits through March 31, 2021.

Any employer choosing to extend these befits will receive a tax credit for all FFCRA leave granted between January 1, 2021 and March 31, 2021. This credit serves as a reimbursement for the cost of providing FFCRA leave. Employers must meet EPSL and EFMLA requirements to receive the tax credit. Here’s a snapshot of how the CAA affects these two types of sick leave.

EMERGENCY PAID SICK LEAVE ("EPSL")

Originally, under the FFCRA employees were entitled to 10 days of EPSL for COVID-19 qualifying reasons. But unused time could not be rolled over into 2021. Now, thanks to the CAA, employers can choose to extend eligibility for unused EPSL time to March 31, 2021. Likewise, the tax credit for eligible EPSL leave is also extended.

The CAA does not create new ESPL hours, it merely gives employers the option to extend any unused hours into the first quarter of 2021. Thus, employees that exhausted their 10 hours of leave in 2020 are ineligible for the rollover benefit the CAA provides.

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EMERGENCY FAMILY AND MEDICAL LEAVE ACT ("EFMLA")

The EFMLA extended traditional FMLA leave to those needing to provide childcare due to COVID-19 related interruptions such as school or daycare closure. While the EFMLA does have certain eligibility requirements (for more information about EFMLA leave, please visit https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf), it is far less onerous than the FMLA, while still allowing many of the same or better protections provided by the FMLA. For instance, the EFMLA permits up to 12 weeks of leave just like the FMLA, but provides 2/3 pay for up to 10 of those 12 weeks. Traditional FMLA leave is unpaid.

Just like the EPSL, the CAA allows employers to voluntarily extend EFMLA eligibility into the first quarter of 2021. Employers are given a tax credit for EFMLA leave taken during the extension period.

It is important to note that the EPSL and the EFMLA are not codependent—an employer can elect to offer one, both or neither of these options. There are several wrinkles with each option, so employers should carefully consider their options and talk to one of our seasoned employment attorneys to determine which choice fits best.

IF YOU HAVE QUESTIONS PLEASE REACH OUT TO
CAITLIN KAUFMAN AT CAITLIN@MEDINAMCKELVEY.COM
OR CALL US AT 916.960.2211