COVID-19 Relief Bill – What Employers Need to Know Heading Into 2021

National Law Review | By Zachary J. Flood and Robert J. Simandl of von Briesen & Roper, s.c. | 12-28-21

On Sunday, December 27, 2020, President Trump signed the legislation providing government funding and a long-anticipated coronavirus relief package (the "Bill"). The wide-sweeping Bill contains a number of key provisions that will impact both public and private sector employment in 2021. Of particular significance to employers is that:

1. The Bill does not extend the mandates of the Emergency Family and Medical Leave Expansion Act ("EFMLEA") or the Emergency Paid Sick Leave Act ("EPSLA") enacted under the Families First Coronavirus Response Act ("FFCRA").
2. The Bill allows tax credits to employers for "FFCRA like" paid leave benefits paid to employees through March 31, 202
3. The Bill provides no economic incentive for public employers to continue FFCRA's paid leave benefits.
4. The Bill expands upon the previously enacted CARES Act and provides for continued federal assistance to unemployed workers with supplemental weekly benefit payments of $300 and an extension of the maximum benefit period.

FFCRA Leave Becomes Optional After December 31, 2020

The FFCRA provided up to 80 hours of paid sick and family leave under the EPSLA along with up to 10 weeks of partially paid family and medical leave under the EFMLEA to eligible employees who were unable to work because of certain COVID-19-related reasons. For private employers, the requirement to provide these paid FFCRA leaves was offset by dollar-for-dollar tax credits for wages paid to employees taking paid leave. These FFCRA provisions are scheduled to expire on December 31, 2020 and the Bill does not contain an extension of these provisions.

However, the Bill does allow private employers' the opportunity to claim dollar-for-dollar tax credits on wages paid to employees taking leave consistent with the existing FFCRA framework between January 1 and March 31, 2021 under the employer's paid leave policy. In effect, the paid leave provisions of the FFCRA will be optional after December 31, 2020. The tax credits are available through March 31, 2021 provided the employer paid leave is available as "would be so required to be paid if [the FFCRA] were applied."

Whether to continue offering paid leave consistent with the FFCRA in 2021 is something employers need to evaluate, and plan for, before the year's end. Each employer has its own unique concerns and a multitude of factors to weigh in making this decision. For example, private employers that have staffing problems or are financially struggling may consider entitlement to future tax credits to be of little value for continuing to provide paid leave under the FFCRA framework. Most public sector employers will likely reach a similar conclusion as to the economics, as they are ineligible to claim tax credits under the FFCRA. On the other hand, private employers that decide to continue to offer paid leave benefits now in reliance on receiving tax credits for the eligible amounts paid may determine that the positive effect on morale and employee retention justifies the decision to continue offering paid sick and family leave.

Employers subject to the FFCRA will need to evaluate their options for 2021 and decide on an approach that best suits their individual circumstances. Regardless of the decision reached, employers will need to revise, update, or eliminate existing FFCRA paid leave policies in light of the mandatory components of the FFCRA expiring on December 31, 2020. It will also be important for employers to notify employees in advance of any changes to paid leave policies, including any impact such changes will have on their rights and the leave opportunities under those policies.

Enhanced Unemployment Benefits

In the face of historic unemployment levels and with the federal emergency unemployment programs established under the CARES Act expired as of December 26, 2020, another significant component of the Bill is its expansion of unemployment assistance. The Bill extends the amount of time that unemployed workers can collect unemployment insurance benefits by an extra 11 weeks. The CARES Act had extended the unemployment benefit period by 13 weeks for individuals receiving unemployment benefits through their state programs, as well as those eligible to receive benefits through the Pandemic Unemployment Assistance Program. The additional 11 weeks of benefits extends to 24 weeks the extended unemployment eligibility period.

The Bill also reinstates the supplemental federal unemployment benefit provided under the CARES Act, albeit at a lower weekly rate than before. Previously, the federal government supplemented state unemployment insurance benefits in the amount of $600 per week to eligible individuals. The supplemental federal benefits expired in July. The Bill provides for additional federal unemployment benefits in the amount of $300 per week to unemployed workers who are eligible for benefits under their state's unemployment programs and/or the Pandemic Unemployment Assistance Program. Absent an extension by Congress, the supplemental federal unemployment benefits will expire on March 14, 2021.