

Congress Extends Tax Credits Until March 31, 2021 for Voluntarily Providing Paid Sick Leave Due to COVID-19

On December 21, 2020, the Senate and House passed a final round of coronavirus pandemic relief before adjourning until January 2021, which President Trump signed into law on Sunday, December 27, 2020. The Coronavirus Response and Relief Supplemental Appropriations Act (the "Act") includes direct payments of stimulus checks for certain individuals, extension of critical unemployment insurance benefits, and additional money for small businesses under the Paycheck Protection Program.

Noticeably, the Act did not extend the mandate on emergency paid sick leave or emergency paid family and medical leave, which is required by the Family First Coronavirus Response Act ("FFCRA"). The FFCRA is set to expire on December 31, 2020. However, the Act allows employers that were covered by the FFCRA to voluntarily provide these forms of paid leave and to continue obtaining tax credits through March 31, 2021 (subject to the limitations set forth in the FFCRA).

Unfortunately, the Act does not expand the scope of employers that are eligible for tax credits. Therefore, state and local governments that were not eligible for tax credits under the FFCRA will also not be able to obtain tax credits under the Act.

Importantly, however, Section 7005(a) of the FFCRA exempts these paid sick leave wages from the employer's portion of Social Security tax. While state and local government employers are also able to exclude these payments from their portion of the Social Security tax until December 31, 2020, any paid sick leave made available thereafter will be subject to the employer's Social Security tax obligations.

Even though state and local government employers will no longer be required to provide emergency paid sick leave or emergency paid family and medical leave in accordance with the FFCRA, employers should consider what options are available moving forward to mitigate the effects of COVID-19 on their workplaces. Employers are still encouraged to follow CDC guidelines to control the spread of COVID-19, including asking employees to stay home if they are experiencing symptoms of COVID-19, if they have tested positive for COVID-19, or if they have had close contact (i.e., within 6 feet for a total of 15 minutes or more) with someone who has COVID-19.

To encourage employees to be honest and stay home for COVID-19-related reasons, public employers may choose to voluntarily offer the eighty (80) hours of emergency paid sick made available under the FFCRA for any employees that have not used this benefit. In this scenario, public employers would assume the entire cost of the program, including the employer's portion of the Social Security tax. Alternatively, employers may choose to end the emergency paid sick leave benefits and to require employees to use any accrued sick leave, vacation, or other paid time off (or to otherwise take unpaid leave).

If you have any labor or employment-related questions, please contact Pam Bourne using the NIRMA helpline at 1-866-896-6423 (toll free) or 402-898-7423 or email at pbourne@woodsaitken.com or Ashley Connell at aconnell@woodsaitken.com or 402-437-8539.