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KD ALERT: WHAT EMPLOYERS NEED TO KNOW ABOUT THE NEW PANDEMIC RELIEF PACKAGE

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On December 27, 2020, President Donald J. Trump signed a bill providing $900 billion in pandemic aid, and government funding through September 2021. The long-awaited new bill contains several important provisions that will impact employers of all shapes and sizes in the new year. Most notably, the bill extends the Families First Coronavirus Response Act ("FFCRA") tax credit, which was set to expire on December 31, 2020, into 2021. As a result, employers can now continue to receive the federal tax credit for allowing employees to take unused FFCRA paid sick and family leave through March 31, 2021.

The FFCRA

The FFCRA requires, among other things, that private employers with less than 500 employees and certain public employers provide employees with 80 hours of paid sick leave for specified reasons related to COVID-19 and up to 10 weeks of paid, job-protected family leave for employees who have worked for their employer for at least 30 days and who are unable to work due to the need to care for a child whose school is closed or the unavailability of a child care provider in connection with the COVID-19 pandemic. For private employers, the requirement to provide these paid FFCRA leaves was offset by dollar-for-dollar tax credits for wages paid to employees exercising their rights to paid leave. Federal lawmakers decided they would not extend the FFCRA, but instead will allow employers to decide if they will continue to provide paid leave and, consequently, be eligible for the payroll tax credits through the end of March 2021. Simply put, FFCRA leave becomes optional after December 31, 2020.

Tax Credit Extension

The new bill allows tax credits to employers for "FFCRA like" paid leave benefits to employees through March 31, 2021. Employers will receive a payroll credit for paid sick leave and paid family leave akin to what they would have received had the FFCRA been extended through March 31, 2021. In order to be eligible for the paid sick leave payroll credit, employers must not discharge, discipline, discriminate or retaliate against employees who seek to take leave as provided for in the FFCRA. Additionally, employees may now carry over any unused paid sick time to next year if their employer plans to take advantage of the tax credit extension. This does not mean that employees are entitled to additional leave as of January 1, 2021. Similarly, employers will not receive tax credits for any amount of leave provided in excess of the FFCRA's statutory limits or for employees who would not have qualified for leave under the FFCRA. Like paid sick leave, employers may receive a tax credit for their paid family leave to employees taken between January 1 and the end of March 2021. To maintain eligibility for the paid family leave tax credit, employers must not restrict, deny or interfere with employees' rights to family leave.

What Should Employers Do?

The new bill relaxes the taxing requirements of the FFCRA and restores employers with a degree of autonomy that has been lacking since the pandemic first started. Employers are now free to decide whether they will continue provide both paid sick leave and paid family leave to their employees in 2021. Time is of the essence and employers should decide if they will continue to offer paid leave consistent with the FFCRA before the end of the year and plan accordingly. Whether or not to continue offering such benefits varies from employer to employer. Businesses struggling to stay afloat during the pandemic may consider entitlement to future tax credits of little value for continuing to provide paid leave benefits under the FFCRA. On the other hand, businesses that have weathered the proverbial storm may wish to continue offering paid leave because of the future tax benefit, the positive effect on morale, and/or employee retention.

Regardless of the decision reached, employers should revise, update, or eliminate existing FFCRA paid leave policies to reflect the mandatory components of the FFCRA expiring on December 31, 2020, and update their policies, leave records and forms accordingly. It is equally important for employers to notify employees in advance of any changes to paid leave policies. In doing so, employers should take into consideration the Department of Labor's past guidance on the FFCRA until updated information is released.

KD IS HERE TO HELP

If you have any questions about the new bill or what it means for your business, please contact an experienced member of KD's Labor and Employment Law Practice Group.