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## American Rescue Act's March 31 Paid Sick Leave Reset Deadline is Fast Approaching

The Families First Coronavirus Response Act ("FFCRA") expired on December 31, 2020, and, as a result, federal law no longer requires employers to provide paid leave for COVID-19 qualifying reasons. Through the 2021 Consolidated Appropriations Act ("CAA"), which was signed into law near the end of President Trump's term, employers were given the option of voluntarily continuing to provide FFCRA leave through March 31, 2021. Under the CAA, eligible employers who chose to continue offering such leave voluntarily could seek reimbursement through the previously approved payroll tax credit.

On March 11, 2021 President Biden signed into law the American Rescue Plan Act (the "Rescue Act"). As our [Employee Benefits and Executive Compensation Group](#) previously [reported](#), like the CAA, the Rescue Act extended the option for qualifying employers to continue providing paid emergency sick leave and expanded family and medical leave under the FFCRA on a voluntary basis. Also similar to the CAA, employers who choose to do so, and who are eligible, can continue to apply for reimbursement through tax credits through September 30, 2021. There, however, are some major differences between the CAA and the Rescue Act.

First, under the Rescue Act, eligible employers can receive reimbursement through the available tax credits only if they offer leave to all employees on a uniform and non-discriminatory basis. In other words, to take advantage of the tax credits, employers cannot offer leave to only certain groups or categories of employees. Tax credits are also only available for those employers who fully comply with the requirements of the FFCRA, as amended by the Rescue Act.

Second, for those employers who voluntarily choose to continue offering paid sick leave, the original allotment of paid emergency sick leave provided by the FFCRA will reset after March 31, 2021. This means that employers who want to receive the corresponding tax credits must provide an additional 10 days (80 hours) of paid sick leave starting this Thursday, April 1, 2021. This is a critical difference from the CAA, which did not reset or grant additional sick leave under the FFCRA.

Third, the Rescue Act adds three new ways in which employees can qualify for paid sick leave. Those reasons, which are added to the original qualifying reasons outlined in the FFCRA, include absences relating to (1) obtaining a COVID-19 vaccine, (2) recovering from a vaccine-related condition, and (3) seeking or waiting for the results of a COVID-19 diagnosis or test if an employee has been exposed to COVID-19 or an employer requests such a test or diagnosis.

The Rescue Act also changes the FFCRA's expanded family and medical leave provisions. Employers choosing to offer continued expanded family and medical leave under the FFCRA must now offer it immediately rather than require the requesting employee to take the first two weeks unpaid. The Rescue Act also increases the amount of tax credits eligible employers can take for paid family leave from \$10,000 to \$12,000. As with paid sick leave, to qualify for the available tax credits, eligible employers must fully comply with the provisions of the FFCRA and provide the benefits on a uniform and non-discriminatory basis.

Finally, the Rescue Act adds to the qualifying reasons for which an employee may take expanded family and medical leave by now allowing employees to take expanded family and medical leave for all the same reasons available for emergency paid sick leave, including the three additional reasons granted by the Rescue Act. Previously, under the FFCRA and the CAA, expanded family and medical leave was available only for absences caused by a child's school or daycare provider being closed or unavailable due to COVID-19.

As the Rescue Act's March 31 reset deadline is fast approaching, qualifying employers should promptly determine whether they want to voluntarily renew or continue providing paid emergency sick leave and expanded family and medical leave through September 30, 2021. Such leave, if made available, should be provided on a uniform and non-discriminatory basis to ensure those employers who are eligible for the available tax credits can take advantage of them. Employers who opt to continue or renew FFCRA leave should update their FFCRA policies and forms, ensuring the additional leave allotted to employees after March 31, 2021 is made available, and that the new qualifying reasons for taking leave are properly identified.

If you have questions about the Rescue Act's paid leave provisions or its March 31 reset deadline, please contact your Kutak Rock attorney or any of the attorneys in the firm's [Employment Law Group](#).

