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COVID-19 Update: FFCRA Tax Credits Extended and Updated Guidance from the CDC

On Monday, December 21, the stimulus bill from Congress was released. The bill contains individual relief, as well as an extension of federal unemployment assistance benefits. The bill did not, however, contain an extension of the mandatory paid leave benefits provided under the Families First Coronavirus Response Act ("FFCRA"). The stimulus does contain an extension through the end of March, 2021 of the tax credits provided for under the FFCRA leave. As a result, the mandate for FFCRA leave will formally sunset on December 31, 2020, but employers who voluntarily provide leave under the original provisions of the law may be able to qualify for tax credits through the end of March, 2021.

In addition, the CDC recently changed some of its guidance, which may impact employer practices following exposure or potential exposure to COVID-19. Even though vaccines have been approved (which we discussed here), the number of cases in most areas around the country remains high. As a result, employers must continue to consider how the virus impacts the workplace, and, in particular, the obligation to provide a safe and healthy workplace for all.

When assessing how to respond to specific cases of COVID-19 in the workplace, employers must consider whether employees have come into "close contact" with a COVID-19 case. Per the CDC, "close contact" includes coming within **6** feet, for **15** minutes over a 24 hour period, starting from **48** hours of the onset of symptoms or testing positive (also known as the 6-15-48 rule). Previously the CDC defined "15 minutes" to mean fifteen continuous minutes. Under an updated definition from the CDC in early December, it now means fifteen **total** minutes of contact within a twenty-four hour period that includes the time beginning two days prior to the onset of symptoms or a positive test. For example, if an individual tests positive on

Wednesday, and interacted with another employee at work on Monday for 5 minutes three separate times, then the other employee has been in "close contact" and should quarantine. The CDC still recommends a 14 day quarantine period for individuals who have a direct exposure, although it has recently recognized that some local authorities may recommend shorter quarantine periods. At the same time, the CDC notes that those shorter periods still may carry some risk of transmission. More information about recommendations about for quarantining and isolating individuals who have been exposed, including the options for shorter quarantine periods, can be found here.

Key Takeaways

- The mandatory paid leave portions of the FFCRA will end on December 31, 2020. Employers who voluntarily continue to provide the leave specified in the FFCRA may still be able to qualify for payroll tax credits through March 31, 2021.
- Employers should continue to conduct contact tracing using the updated definition of "close contact," which includes a total of 15 minute exposure versus a continuous 15 minute exposure, throughout the roll out and administering of the COVID-19 vaccine.
- Although employees and employers alike may be facing "pandemic fatigue" as 2020 comes to a close, as with other aspects of the COVID-19 response, circumstances are continuing to evolve. Therefore, employers should continue to monitor guidance from the CDC, state and local health authorities, and other agencies for information about COVID-19 responses.

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