

LEGAL UPDATE

DOL Issues New Q&As About FFCRA Leave Requirements

The U.S. Dept. of Labor (DOL) has issued two additional [Q&As](#) regarding employee leave under the Families First Coronavirus Response Act (FFCRA).

Q&As 104 and 105 were issued on Dec. 31, 2020. They address employees' entitlement to FFCRA leave after Dec. 31, 2020, and their right to payment for FFCRA leave taken before Dec. 31, 2020.

Employee Leave Taken After Dec. 31, 2020

Q&A 104 explains that employers are not required to provide employees with FFCRA leave after Dec. 31, 2020, even if an employee did not use all available leave in 2020. However, employers may voluntarily decide to provide this leave. Employers that voluntarily provide leave can receive tax credits for leave provided until March 31, 2021.

The obligation to provide FFCRA leave applied from April 1, 2020, through Dec. 31, 2020. Any extension of the FFCRA leave requirement would require an amendment to the statute by Congress. While the Consolidated Appropriations Act, 2021 (CAA) extended employer tax credits until March 31, 2021, it did not extend an eligible employee's entitlement to FFCRA leave beyond Dec. 31, 2020.

Compensation for FFCRA Leave Taken Before Dec. 31, 2020

Q&A 105 states that employees must be compensated for FFCRA leave taken before Dec. 31, 2020. Employees whose employers failed to pay them as required by the FFCRA for leave that occurred before Dec. 31, 2020, may contact the DOL's Wage and Hour Division about filing a complaint, as long as they do so within two years of the last action they believe to be in violation of the FFCRA. According to the Q&A, employees in this position may also have a private right of action for alleged violations.

Important Dates

Dec. 31, 2020

The employee leave mandate under the FFCRA expired.

The DOL issued two new Q&As regarding leave entitlements before and after the expiration of the mandate.

March 31, 2021

Employers may receive tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021.

While the CAA extended employer tax credits, it did not extend employee entitlement to leave beyond Dec. 31, 2020.

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