imagine HR

FFCRA Update

Last week, President Biden signed into law the $1.9 trillion stimulus bill called the American Rescue Plan (ARP). While the ARP does not require employers to continue to provide emergency sick and family PAID leave under the Families First Coronavirus Response Act (FFCRA), it allows employers to continue to get dollar-for-dollar tax credits if they ***voluntarily*** provide paid leave under the FFCRA.

So, it is now your choice to offer paid Covid-related leave and if you do so (and an employee meets one of the "qualifying reasons" listed on the attached Request for Covid-Related Leave Form), the government has agreed to reimburse you through tax credits. The following explains some key points in the new law:

Tax Credits Extended to September 30, 2021.

As you will recall, the FFCRA's mandatory requirement to provide emergency paid sick leave (EPSL) or emergency family medical leave (EFML) expired on December 31, 2020. Employers were, in return, eligible for payroll tax credits to offset the cost of that leave. In late December, as part of a $900 billion stimulus bill, Congress voted to extend those tax credits until March 31, 2021 for employers that continued to voluntarily offer paid leave under the FFCRA. While the ARP does not reinstate the employer mandate to provide such leave, it does further extend the tax credits to employers through September 30, 2021.

More Qualifying Reasons Added to Emergency Paid Sick Leave (EPSL).

The ARP expands the types of leave available under the FFCRA. Leave can now be taken: (1) when an employee is obtaining a COVID-19 vaccination; (2) when an employee is suffering or recovering from side effects related to the vaccination; and (3) when an employee is seeking or waiting the results of a COVID-19 test if the employee has either been exposed to COVID-19 or the employer has requested the COVID-19 test. Up to 2 weeks (or 10 days/80 hours) can be given for all EPSL qualifying reasons (see Request for Leave Form). However, there are caps placed on the amounts paid out (please reach out and I can explain these in detail).

Changes and Expansion of the Emergency Family/Medical Leave (EFML).

Under the ARP, the EFML now includes all the qualifying reasons listed in the EPSL (if you recall, the only qualifying reason under EFML last year was closure of schools/daycares). This has been expanded and an additional 12 weeks can be provided to employees, whereby the employee can get paid 2/3rds of their wages up to a certain capped amount (reach out for these cap amounts as we are still waiting for more guidance from the Department of Labor). Again, this is all voluntary!

If You Choose to Offer Leave, It Should Be Documented and Offered to All Employees.

While there is no legal mandate to provide this leave, if you decide to offer either EPSL (up to 2 weeks off) and/or EFML (up to 12 weeks off), you will receive tax credit reimbursements. This is why it is important to document and verify an employee's reason for leave (again, see the Request for Leave Form). Also note that if you choose to offer this leave, you must offer it to all employees (including newly hired employees and part-time employees). Employers are free, however, to choose to offer EPSL but not to offer EFML.

Employee Resets EPSL Bank of Time Off on April 1, 2021.

The ARP "resets" the amount of EPSL on April 1, 2021, if an employer continues to offer FFCRA leave. In other words, even if employees used their 2 weeks (or 10 days/80 hours) last year, they will be given a new bank of time and the employer can claim a tax credit to offset up to the 2-week period wages paid as EPSL, even if employees previously exhausted their EPSL entitlement.