DOL FAQs Address Expiration of FFCRA Leave

Michele Burke | (908) 910-1017 | mburke@alliancebenefitsolutions.com

Issued date: 01/12/21

On the last day of 2020, the Wage and Hour Division of the Department of Labor ("DOL") issued two additional FAQs (#104 and #105) related to the Families First Coronavirus Response Act ("FFCRA"), addressing the three-month voluntary extension of FFCRA leave into 2021, and clarifying payment of leave taken during 2020.

The FFCRA required most employers with less than 500 employees to provide paid sick leave and paid family leave to employees who are unable to work or telework due to COVID-19 specific reasons. In addition, the FCRA provided refundable tax credits that reimburse employers, dollar for dollar (up to a prescribed limit), for the cost of providing sick and family leave wages to their eligible employees for leave related to COVID-19.

The paid leave provisions of the FFCRA expired on December 31, 2020. The Consolidated Appropriations Act, 2021 ("the Act"), signed into law on December 27, 2020, provides that eligible employers may voluntarily extend FFCRA paid leaves through March 31, 2021, and receive associated tax credits. Notably, the Act does not require the extension of paid FFCRA leave beyond December 31, 2020.

FAQ #104 makes clear that applicable employers are not required to extend FFCRA leave to employees after December 31, 2020. However, it reiterates that employers may decide to provide such paid leave on a voluntary basis and are eligible for the tax credits associated therefrom through March 31, 2021.

FAQ #105 clarifies that all qualified FFCRA leave taken on or before December 31, 2020 must be paid to the employee, even if such payments are made in 2021. The DOL also reiterated that the statute of limitations for bringing a claim of a violation of FFCRA is two years (or three years in the case of a willful violation) and that employees may potentially bring a private right of action for alleged violations.