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DOL Updates FFCRA Guidance

On December 31, 2020, the Wage and Hour Division of the Department of Labor (DOL) updated its Family First Coronavirus Response Act (FFCRA) guidance. The update follows the Consolidated Appropriation Act, 2021 – (the “Act”) which was signed into law on December 27, 2020. The Act extended the FFCRA tax credit through March 31, 2021 if an employer voluntarily makes existing paid sick (EPSL) and family medical (EFMLA) leave balances (i.e., not previously exhausted) available to its employees after December 31, 2020. See our December 23, 2020 client advisory [here](#).

The DOL update consists of two new questions and answers, paraphrased below.

No. 104. Will an employee be entitled to unused FFCRA leave after December 31, 2020?

Even if an employee did not exhaust his/her EPSL or EFMLA allotments in 2020, the employer is not required to provide such leave through March 31, 2021. The employer, however, may voluntarily permit employees to use any previously existing balances through March 31, 2021.

No. 105. Must an employer pay an employee for FFCRA leave taken in 2020 but not yet paid?

Although the FFCRA expired on December 31, 2020, the employer is required to compensate the employee for FFCRA leave taken in 2020. The DOL will enforce FFCRA complaints (i.e., for the effective period of April 1 through December 31, 2020) made within the applicable statute of limitations: two years from the date of the alleged violation or three years for alleged willful violations. Employees also may file a private lawsuit to enforce their FFCRA rights — within the applicable statute of limitations period.

The DOL characterized this guidance as providing “clarity around some of the novel issues” surrounding the expiration of the FFCRA.

We expect additional clarifications in the upcoming months.

Frost Brown Todd will continue to update you on your FFCRA obligations. Please direct any questions about this article or the FFCRA to [Catherine Burgett](#), [Jeff Shoskin](#), or any attorney in our [Labor and Employment](#) Practice Group.

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