GBS COVID-19 Update

COVID Legislation Status - What Happens Now?

The evolution of the COVID-19 epidemic is constantly evolving. The information in this document is based on what known at this time. As things change, we will continue to update you as it affects employee benefits compliance rules.

December 21, 2020

Over the weekend, Congress reached a deal on a $900 billion COVID relief bill. This round of legislation only addresses the financial burden of Americans, with other needs such as leave protections set to expire on December 31, 2020, left for another day to debate. What it did cover is financial pains of employers, transportation and small businesses, as well as the necessary provisions on COVID testing.

A lot rode on Congress's ability to agree. Democrats fought hard against employer liability protections and won. Republicans fought hard against funding for state and local governments. And they won. With the holiday break around the corner, there was incentive to get the deal done. And that they did!

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Status of the Latest COVID Legislation

As Congress heads off for their holiday break, a deal is reached. The bill heads off to be put into effect with supplementary guidance, processes and procedures. While the hold-up was around funding for state and local governments and employer protections*, a deal was, nevertheless, imminent. Therefore, those provisions were scrapped in an effort to reach a deal.

* Some states already provide for employer protection against liability for employees contracting COVID-19, arguably, at work. It is ultimately the employer's responsibility to provide a safe working environment under federal law.

The bill consists of two separate proposals or rounds of legislation;

1st Round

- Worth an estimated $748 billion
- Unemployment benefits

2nd Round

- Small business relief
- Vaccine distribution

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Unlike previous COVID-19 legislation, which included the Families First Coronavirus Relief Act or FFCRA or the Coronavirus Aid, Relief and Economic Security or CARES Act, there are no provisions addressing leaves, to-date. (Meaning the extended FMLA and paid leave rights to FFCRA-provided leaves may go away on December 31, 2020. Details as to what happens next are yet to be released. Leavitt Group will be sure to let you know in an analysis to be released soon!) It appears this round of legislation is intended to address financial hardships of the unemployed and businesses.

Summary

The Emergency COVID Relief Act of 2020. (from December 17, 2020 - new version not yet released) provides for:

- Extension of unemployment assistance for 11 weeks with supplemental $300 per week
- Extension of unemployment period from 26 to 39 weeks (reauthorized)
- Second round of PPP for small business and loan forgiveness
- Rental assistance and eviction moratorium through January 31
- Student loan forbearance through April 1, 2021
- Extends telehealth flexibility through December 31, 2021
- $45B in emergency funding for transportation sector
    - Assistance for airlines, airports, buses, Amtrak, and public transit
    - $4 billion funding for Airports, including set asides for airport concessionaires, Essential Air Service (EAS), and Small Community Air Service Development Program (SCASDP) through March 31, 2021.

In a separate "round" of legislation, the Small Business Protection Act of 2020 provides for another funding for small business relief. Whether or not it includes pandemic-related liability protections and employee leave protections is yet to be determined.

Employer Protections

One day it was in the bill, and the next, it is not. Wednesday's version of this article included employer liability protections that the Democratic vigorously contended against. This liability shield was intended to lessen the burdens on business through elimination of the risk of COVID-19 related litigation. If enacted, this rule would have retroactively applied and run through September 30, 2024. But alas, it is no more.

State & Local Government Funding

Another provision that held up reaching a deal until the 11th hour was funding for state, local and tribal governments. Originally an agreement in principle, the bill would have provided $160 billion to governments and municipalities. This provision remained in the draft bill until it evaporated overnight during the December 16th negotiations.

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Other Resources

This legislation did not provide any details on how to approach the impending end of the FFCRA leave protections for employees who lost their job or who could not work due to school closures due to the pandemic. The Department of Labor (DOL) provided rules in September clarifying when employers must offer paid leave under FFCRA. See the GBS COVID-19 Resources Center for more details, including multiple articles on COVID-19 FFCRA and CARES Act.

Each state enacts their own emergency orders which can be tracked here. The Kaiser Family Foundation is a nonprofit that provides an ongoing summaries of state legislatures and actions. See the Workers' Compensations state law summary and the summary of state actions related to COVID-19.

Additional FFCRA Leave Resources

- DOL Quick Tip Paid Leave Flowchart
- Employee Rights Poster
- FFCRA Webinar Slides

Additional Utah Resources

While Utah Law provides no additional leaves or employee protections in addition to FFCRA, CARES and federal law, the state does have a resources page with available content: Coronavirus Utah Government Workplace Resources

Employer Action Plan

Employers should consult with an employment and tax professional to assist them in understanding how to take advantage of the small business opportunities and additional funding for state and local municipalities and certain transportation industries.

Wondering what to do about FFCRA leaves? Employees have available a FFCRA leave application tool. Employers may find this helpful in determining application to a specific employee.

Employer should consult their state laws for additional leave requirements. For example, California AB 1867 extends paid sick leave to all California private employers, including healthcare workers and emergency workers.

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