

Will a Biden Administration Push to Expand Paid-Leave Benefits?

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Federal coronavirus-related paid-leave benefits are set to expire at the end of the year, and if those benefits aren't extended, some workers may be left without coverage as the pandemic persists through the winter months.

The Families First Coronavirus Response Act (FFCRA), which took effect in April, is a temporary measure that provides COVID-19-related paid-sick-leave and paid-family-leave benefits to certain eligible workers.

Will FFCRA's emergency benefits be renewed as the coronavirus crisis continues? Will President-elect Joe Biden make expanding paid leave a priority? Here's what employment attorneys had to say.

FFCRA Leave

Coronavirus cases in the U.S. recently hit record highs with more than 150,000 new cases reported each day (https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases) since Nov. 16, according to the U.S. Centers for Disease Control and Prevention. FFCRA benefits will end on Dec. 31 unless Congress renews them. During the Society for Human Resource Management's (SHRM's) Volunteer Leaders' Business Meeting, more than 500 SHRM members discussed (<https://advocacy.shrm.org/wp-content/uploads/2020/11/VLBM-2020-Learn-Behind-11-12-2020.pdf>) the FFCRA leave provisions with congressional offices.

For now, many employers are required to provide up to 80 hours of paid-sick-leave benefits if employees need leave to care for their own or someone else's coronavirus-related issues (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/Many-Employers-Must-Offer-Paid-Leave-Under-Coronavirus-Relief-Bill.aspx). The legislation also updated the Family and Medical Leave Act (FMLA) to provide workers with job-protected, paid leave when they can't work—either onsite or remotely—because their son's or daughter's school or child care service is closed due to the public health emergency.

FFCRA's emergency paid-leave provisions apply to certain public employers and businesses with fewer than 500 employees, and there are exceptions available for small businesses and companies that employ health care workers (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/coronavirus-ffcra-regulations-employer-policies.aspx).

*[Are you a small business with big legal questions? Check out the new SHRM LegalNetwork (www.shrm.org/ResourcesAndTools/business-solutions/Pages/LegalNetwork.aspx)
[utm_source=shrm_article&utm_medium=shrm.org&utm_campaign=growth~legalnetwork~pressrelease](https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/coronavirus-ffcra-regulations-employer-policies.aspx).]*

Will FFCRA leave be extended? With the upcoming change in the presidential administration, employment attorneys are divided in their predictions.

"It will be renewed," predicted Philip Voluck, an attorney with Kaufman Dolowich & Voluck in Blue Bell, Pa. He said it may be renewed by the Trump administration, noting the Biden administration does not assume office until Jan. 20, 2021. Voluck said new legislation may expand the FFCRA's reach and clarify employer's paid-leave obligations.

Employers covered by FFCRA earn refundable tax credits that reimburse them for the cost of providing paid leave related to COVID-19.

"These need to be carried over to any new legislation to ease the financial strain on covered employers," he noted.

Senate Majority Leader Mitch McConnell, R-Ky., said he wants Congress to finalize a new coronavirus economic stimulus bill before the end of the year, but that might be difficult during a lame-duck session, according to Politico

(<https://www.politico.com/news/2020/11/04/mcconnell-coronavirus-package-year-end-434047>).

Sara Jodka, an attorney with Dickinson Wright in Columbus, Ohio, believes that there will be a FFCRA extension or supplemental legislation but not until Biden takes office. Biden's current COVID-19-related leave plans (<https://joebiden.com/covid-plan/>) would expand FFCRA to provide for 100 percent wage coverage up to \$1,400 a week, provide for paid leave during a mandatory quarantine or isolation period, and expand coverage to domestic workers, caregivers, gig-economy workers and other independent contractors. Employers would also continue to receive tax deductions and reimbursement for COVID-19-related paid leave.

Charles Thompson, an attorney with Ogletree Deakins in San Francisco, noted that the Biden administration may focus on other coronavirus priorities, such as putting money directly in people's pockets.

Nationwide Paid Leave

In addition to the FFCRA's paid-leave provisions, there is the longer-term consideration of whether a lasting nationwide paid-leave law may garner bipartisan support.

In the 116th Congress, Democrats and Republicans put forward several proposals to provide paid leave to new parents. In December 2019, Congress passed paid parental leave for qualifying federal employees. Senate Minority Leader Chuck Schumer, D-N.Y., has said he "will not stop fighting until this benefit is provided to all workers nationwide."

Biden supports the Family and Medical Insurance Leave Act, which is known as the FAMILY Act (https://urldefense.proofpoint.com/v2/url?u=https-3A__www.congress.gov_bill_116th-2Dcongress_senate-2Dbill_463_text&d=DwMFAg&c=nQOnw6HHAeKBNxj23OXhOw&r=uwxx9QJkKWt0Lh2vkOOmSVajKabYNPVCpSh6dkMkmxk&m=kBOUMZTkaJj4Gm6mmiy75X8j7IZNRuGNHDvFaqqibg8&s=R5WR8pfLX9A2sbtfim2otGkS4JU2KMtbbL4ssY3xJvY&e=). The proposed legislation would provide workers with paid time off to care for a newborn or recently adopted child, take care of themselves or family members with serious health conditions, or care for military family members and help them prepare for deployments.

Jodka noted, however, that the Biden-Harris campaign platform focused on expanding other employee rights, such as making it easier for workers to organize and collectively bargain, increasing the federal minimum wage, and extending overtime pay to more workers.

She thinks any paid-leave law will likely stem from an amendment to the FMLA, like the FFCRA did. "Employers, especially smaller ones, struggled—and continue to struggle—to meet the paid-leave requirements of the FFCRA," she said, "so it is likely that first attention will be to the COVID-19 response with a discussion of a federal paid-leave law well off into the future."

State and Local Trends

Some states and cities already provide paid leave, and their laws operate independently of federal law, Voluck explained. "States will likely become even more generous with paid leave," he predicted.

SHRM has long advocated (<https://advocacy.shrm.org/policy-areas/workplace-flexibility-leave/>) for a voluntary federal framework for paid leave, rather than a fragmented patchwork of state and local leave laws, and recently outlined employers' need for consistency and simplicity in a letter (<https://advocacy.shrm.org/wp-content/uploads/2020/09/9.14.20-SHRM-Response-to-DOL-RFI-Paid-Leave-Final.pdf>) to the U.S. Department of Labor's Women's Bureau.

Thompson thinks that states and local jurisdictions "will continue to be at the forefront of requiring that employers provide COVID-related leave."

Many jurisdictions—including Arizona, California, Colorado, Michigan, New Jersey, New York, Rhode Island, Washington and Washington, D.C.—have enacted their own emergency paid-leave laws (<https://www.mercer.com/content/dam/mercera/attachments/global/law-and-policy/gl-2020-states-cites-tackle-covid-19-paid-leave.pdf>) in response to the pandemic. Many cities in California and elsewhere have also passed supplemental leave ordinances. Employers should note that state and local COVID-19-related paid-leave laws may have different expiration dates.

"I think state laws will continue to trend upward in favor of paid-leave law mandates," Jodka said. "The most typical is a paid-sick-leave mandate, and with COVID-19 cases rising, the need to value proper medical care and time away from work without risking losing a paycheck is at an all-time high."

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