

**Labor and Employment Alert
December 31, 2020**

**Unpacking the Federal Stimulus Package's Direct Payments, Enhanced
Unemployment Payments, and FFCRA Leave Extension**

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Introduction:

There has been a great deal of discussion in the news lately about the latest Congressional stimulus package, which was ultimately signed by President Trump on Sunday, December 27, 2020, following his initial pushback. The stimulus package, officially known as the Consolidated Appropriations Act of 2021 (the "Stimulus"), is a behemoth piece of legislation that consists of nearly 5,600 pages, covering a broad array of appropriation matters.

The Stimulus addresses elements of the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which were both signed into law in March 2020. The FFCRA provides paid sick leave and family leave entitlements while the CARES Act provides economic relief for both out-of-work employees and businesses that are shut down or have curtailed business operations as a result of COVID-19. Both laws contained sunset provisions with an end date of December 31, 2020. With COVID-19 still ever-present, the Stimulus addresses the continuation of certain elements of the FFCRA and the CARES Act, and also includes a variety of new spending provisions that are unrelated to COVID-19.

The purpose of this Client Alert is to identify the key employment-related elements of the Stimulus in order to better understand what impact it will have on your businesses and organizations.

Highlights:

\$600 Direct Payments:

A noteworthy element of the CARES Act was its \$1,200 direct payments to qualifying Americans. The Stimulus once again includes direct payments, but the amount has been reduced to **\$600** for qualifying individuals. Like the last direct payment, in order to qualify, an individual cannot have an adjusted gross income that exceeds \$75,000 or \$150,000 for a joint return. Further, there is an **additional \$600 direct payment for every child dependent** of qualifying individuals.

The President has criticized the \$600 direct payment figure as being too low. On Monday, December 28, 2020, the U.S. House of Representatives passed a bill with a two-thirds

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majority that supports increasing the direct payment to \$2000. However, Senator Mitch McConnell blocked the House bill in the Senate. At this point, the fate of higher direct payments is unclear.

Enhanced Unemployment Payments:

When the CARES Act initially passed, it created three new federal unemployment programs.

- **Federal Pandemic Unemployment Compensation:** The CARES Act created a short-term, enhanced \$600 weekly unemployment payment in addition to the weekly unemployment benefit amount. This federal program was called the Federal Pandemic Unemployment Compensation (FPUC). The Stimulus partially restores FPUC by offering **\$300 on top of a recipient's weekly unemployment benefits**. This new benefit applies to all weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021.
- **Pandemic Unemployment Assistance:** The CARES Act also created the Pandemic Unemployment Assistance (PUA), which is a federal program that creates expanded unemployment coverage for certain self-employed individuals, gig workers, and other employees in non-traditional types of employment. The Stimulus **extends PUA** by increasing the length of time PUA benefits are available from 39 weeks to **50 weeks**. The Stimulus also extends the availability of PUA benefits until March 14, 2021. Eligible recipients as of March 14, 2021 may receive benefits up until April 5, 2021.
- **Pandemic Emergency Unemployment Compensation:** The CARES Act also created the Pandemic Emergency Unemployment Compensation (PEUC), which is a federal program that provides recipients with an additional 13 weeks of federally funded unemployment benefits when employees have exhausted their regular unemployment benefits or for individuals who are not eligible for regular unemployment benefits. The Stimulus **extends PEUC** and increases the length of time PEUC benefits are available from 13 weeks to **24 weeks**, in addition to a recipient's regular unemployment benefits. The Stimulus also extends the availability of PEUC benefits until March 14, 2021. Eligible recipients as of March 14, 2021 may receive benefits up until April 5, 2021.

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Extension of FFCRA Leave

Under the FFCRA, “covered” employers, which are employers that employ fewer than 500 employees, are required to provide emergency paid sick leave, which totals 80 hours for full-time employees, and expanded paid Family and Medical Leave Act leave, which totals 12 weeks (with the first 2 weeks being unpaid). In exchange for the paid leave mandates, certain employers are reimbursed with payroll tax credits. These paid leave mandates expire on December 31, 2020.

Under the Stimulus, there is no longer an explicit mandate requiring employers to provide these two types of paid leave after December 31, 2020. Instead, employers may *volunteer* to provide emergency paid sick leave or expanded paid Family and Medical Leave Act leave up until March 31, 2021. Should covered employers choose to voluntarily provide these leave benefits, they will be eligible to utilize payroll tax credits for reimbursement for the cost of providing such extended leave, up until March 31, 2021. Importantly, it appears that the tax credits are only available for unused allotments of paid FFCRA leave. Specifically, if employees have already exhausted their FFCRA paid leave entitlements, and employers provide additional leave, employers will not be able to receive tax credits for the additional leave.

While covered employers are no longer required to provide the two types of paid leave as laid out in the FFCRA after December 31, 2020, employers need to be mindful of other paid leave entitlements that may cover COVID-19-related absences. Such entitlements may include an employer’s own leave policies as well as the new Massachusetts Paid Family and Medical Leave law (PFML), which becomes effective on January 1, 2021. Accordingly, for any leave request, employers should review their policies and all applicable leave laws to determine if an employee has eligibility for leave under any of those provisions, even if the FFCRA is not applicable.

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This Client Alert was prepared by Brendan Collins, and was reviewed by Nan O'Neill, Kier Wachterhauser and Andy Waugh. If you have any questions, please contact Nan O'Neill or Kier Wachterhauser or the attorney assigned to your account, or call (617) 479-5000.

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