

President Trump Signs COVID-19 Stimulus Bill Extending and Modifying Key Employment Provisions

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Who Needs to Know

All employers covered by the FFCRA, employers attempting to recall or hire employees currently receiving unemployment benefits and possibly eligible for extended benefits, and employers who may conduct future furloughs, layoffs, or job eliminations.

Why It Matters

The \$900 billion stimulus was passed on the eve of the expiration of several key CARES Act benefits and will have an immediate impact on employers and workers as the calendar turns to 2021.

Late on December 27 and nearly a week after being passed by Congress, President Trump finally signed the [Consolidated Appropriations Act of 2021](#) (the Act) into law. In addition to funding the federal government through the end of September 2021, the Act also allocates \$900 billion to COVID-19 relief. Employers will find at least two provisions of the Act particularly interesting: an extension of federal unemployment insurance benefits assistance and tax credits for COVID-19-related leave (but no corresponding mandate to provide COVID-19-related leave).

Federal Unemployment Assistance Extended

The Continued Assistance for Unemployed Workers Act of 2020 extends and modifies three [CARES Act benefits programs](#) through March 14, 2021, as well as imposes various other requirements on state unemployment compensation programs:

- **Unemployed to Receive \$300 Weekly Supplement.** The Act reinstates the popular Federal Pandemic Unemployment Compensation (FPUC) benefit that entitled all unemployment compensation recipients to receive an additional \$600 a week stipend from March through the end of July 2020. Under the Act, individuals receiving unemployment compensation will once again be eligible for an FPUC benefit stipend. However, this stipend will only amount to \$300 per week. The extended FPUC benefit will be payable to eligible individuals for weeks of unemployment beginning after December 26, 2020 and ending on or before Sunday, March 14, 2021 (amounting up to an additional 11 weeks of FPUC benefits).
- **Pandemic Unemployment Assistance Continued.** The Pandemic Unemployment Assistance (PUA) program under Section 2102 of the CARES Act provided unemployment insurance benefits for individuals such as independent contractors and other gig workers who do not typically qualify for unemployment compensation benefits. The PUA program was extended for weeks of unemployment ending March 14, 2021. Further, anyone currently receiving PUA benefits who has not exhausted them (up to 50 weeks total under the Act) as of the week of unemployment ending Sunday, March 14, can continue to receive benefits through the first full week of April. States receiving applications for PUA benefits must now request that claimants provide documentation of

self-employment or intent to begin self-employment within 21 days of application (not just “self-certification” as required under the original CARES Act) and verify applicant identity.

- **Extended Pandemic Emergency Unemployment Compensation.** The Pandemic Emergency Unemployment Compensation (PEUC) benefits established under Section 2107 of the CARES Act provided for an additional 13 weeks of state benefits after an individual exhausted all regular state benefits. The Act amended this provision to allow a total of up to 24 weeks of state benefits after individuals exhaust their regular state benefits. Thus, depending on their state of residence, most individuals should be eligible for up to 50 total weeks of benefits. This extension also lasts through March 14, 2021, but like the PUA extension, individuals receiving benefits as of March 14 who retain weeks of eligibility after that date may continue to receive benefits through the first full week of April.
- **Reporting Refusal to Return to Work.** In a development that will bring relief to many employers struggling to retain or draw workers back to work while competing with a \$600 FPUC weekly payment between March and July, the Act includes a Return-to-Work reporting requirement. States now must create a mechanism allowing employers to report employees who refuse an offer of work without good cause. The Act also requires the creation of a state notice to workers about state return-to-work laws and a worker’s right to refuse suitable work or work they consider dangerous. As we [previously covered](#), the federal Department of Labor has encouraged states to adopt such mechanisms, and many have done so voluntarily, but this unified federal requirement should reduce the incentive for employees to turn down offers of work in favor of collecting benefits. Such a requirement should likewise make it easier for employers to let states know when they’ve done so to better enable denial of benefits to those who refused work without good cause.
- **Other Changes.** The Act contains other unemployment compensation-related provisions, including extending short-time compensation programs (popularly known as “workshare” programs); authorizing states to waive benefit overpayments in cases where the claimant is not at fault; and providing funding for 50% of a states’ first week of unemployment benefits (during the typically unpaid one-week “waiting period” before benefits begin under most state laws) if states choose to waive the waiting week.

FFCRA Leave to Become Voluntary January 1

In March, Congress adopted various COVID-19-related paid leave programs under the [Families First Coronavirus Response Act](#) (FFCRA). The FFCRA mandated that employers with fewer than 500 employees provide eligible employees leave under the Emergency Family and Medical Leave Expansion Act (EFMLEA) and Emergency Paid Sick Leave Act (EPSLA). These mandatory leave programs provided a refundable tax credit equal to qualifying EFMLEA and EPSLA wages paid to employees and were set to expire on December 31. Under the Act, these provisions will now become strictly voluntary, but employers that choose to continue providing EFMLEA and EPSLA leave will still be eligible to receive a tax credit for all wages paid for leave taken before March 31, 2021.

The EPSLA provided up to two weeks of paid leave (80 hours for full-time employees) for a variety of COVID-19-related reasons. The EFMLEA required employers with fewer than 500 employees to provide up to 12 weeks of partially paid coronavirus-related, job-protected family leave if the employee was unable to work (or telework) due to a need for leave to care for a minor child if the child’s school or place of care was closed or the child’s childcare provider was unavailable due to COVID-19.

While the release of safe and effective [COVID-19 vaccines](#) appear to be the “beginning of the end” of the coronavirus pandemic, 2021 will still represent a challenging year for employers nationwide. As such, Troutman

Pepper labor and employment attorneys are pleased to work with our clients and friends as employers continue to navigate the myriad human resources headaches created by the pandemic.

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