Mandatory Paid Leave For Employees Impacted By COVID-19 Will Become Voluntary In 2021 Under The Consolidated Appropriations Act

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As many employers are aware, the Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Act Expansion set forth in the Families First Coronavirus Response Act (FFCRA) are set to expire on December 31, 2020. With the effects of COVID-19 still impacting the American workforce significantly, many employers are wondering whether, and to what extent, they will remain obligated to continue providing paid leave to eligible employees. The answer to this question lies within the Consolidated Appropriations Act, 2021, enacted December 27, 2020, under which the paid leave mandates of the FFCRA will become voluntary for the first quarter of 2021.

Specifically, Section 286 of the Act amends the FFCRA to set forth that employers no longer will be legally obligated to offer the paid leave mandated in the 2020 version of the law, but may be entitled to the FFCRA tax credit for doing so, with the amendment set to expire on March 31, 2021. The Act does not, however, expand the original leave entitlement, so employers must keep in mind that the credit will be available only for paid leave provided to employees who have not already exhausted their available FFCRA leave. The Act also leaves undisturbed the coverage provisions of the FFCRA, so employers that were ineligible for the credit under the 2020 FFCRA will remain ineligible, including government entities (such as public school districts).

As always, employers also must keep in mind the importance of applying federal leave laws in conjunction with state leave laws, such as New Jersey's Earned Sick Leave Law, New Jersey's Family Leave Act, and the requirements of the New Jersey Law Against Discrimination, which, depending on the circumstances, may require employers to offer leave beyond that which is mandated by federal law.

Employers with questions regarding how to apply COVID-19 leave laws in specific situations are encouraged to reach out to a Porzio attorney for guidance.