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Revised DOL Regulations Limit Scope of Health Care

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By Natalie Sanders on 09.14.2020
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On Friday, Sept. 11, 2020, the U.S. Department of Labor (DOL) issued revisions to their original regulations on paid leave under the Families First Coronavirus Response Act (FFCRA). These revisions are in response to the Aug. 3, 2020 decision by a federal court in New York that invalidated portions of the original regulations. Most significantly, the revisions provide a new, narrower definition of who qualifies as a "health care provider" for purposes of the FFCRA.

Under the FFCRA, two types of paid leave were made available to employees working for an employer with fewer than 500 employees. A covered employer, however, can elect to exclude health care providers from taking leave. Originally, the DOL issued a broad definition of health care provider that essentially allowed employers to exempt all of their employees if the employer was in the business of providing health care services. The new definition places the focus on a specific employee's job duties, rather than the employer's business when determining if the health care provider exemption applies.

The new regulations differentiate between employees who actually provide health care services and those who do not. This now makes it unlikely that a covered employer can exempt all of their employees on the basis that the employer is in the business of providing health care.

Under the revised regulations, a health care provider is defined as someone who provides "diagnostic services, preventative services, treatment services, or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care."

The revised regulations go on to provide specific examples of the types of employees who do and do not qualify as health care providers, making clear that the following employees do not qualify even if their job responsibilities could affect the delivery of health care services:

- IT professionals;
- Building maintenance staff;
- Human resources personnel;

- Cooks;
- Food service workers;
- Records managers
- Consultants; and
- Billers.

In addition to changing the definition of health care provider, the revised regulation changed when an employee must provide supporting documentation to their employer, switching from before the leave to "as soon as practicable." The revision also clarifies that an employee need not provide notice of the need for leave in advance, but should do so as soon as practicable after the first missed workday.

With respect to other areas of the regulations that were ruled invalid by the New York federal court, the DOL stood by the substance of their original regulations. The DOL offered additional explanations and some clarifying revisions, but ultimately kept intact the following guidance:

- An employee can take leave under the FFCRA only if work is otherwise unavailable to the employee.
- Where intermittent use of FFCRA leave is permitted under the regulations, the employer must agree to its use intermittently.

If you would like to know more about the FFCRA, please contact a member of our Labor & Employment team, linked below.

Brooks Pierce is dedicated to keeping our clients fully informed during the COVID-19 crisis. For more information, please visit our COVID-19 Response Resources page.

Tags: Families First Coronavirus Response Act, U.S. Department of Labor