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Federal Court Strikes Down FFCRA Regulations

Gray Reed Legal Alert

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On Monday, a New York federal court struck down several Department of Labor (DOL) regulations concerning the Families First Coronavirus Response Act (FFCRA), the recent federal law that provides paid sick leave and expanded FMLA leave for employees impacted by COVID-19. The affected regulations include: (1) the classification of employees as "health care providers" who may be exempted from paid leave benefits; (2) the work availability requirements for benefits eligibility; (3) the requirement that employees provide documentation prior to leave; and (4) the mandate that employees obtain their employers consent to take intermittent leave. All other provisions of the DOL's FFCRA regulations remain in effect. Although the DOL may appeal the court's decision and request that the decision be stayed pending the appeal, employers should assume for now that they cannot rely on the vacated regulations.

Here is what employers need to know about the eliminated regulations:

Health Care Provider Exemption

The FFCRA allows employers of employees who are "health care providers" to elect to exempt each such employee from expanded FMLA or paid sick leave benefits. The original rule implemented by the DOL defined a "health care provider" very broadly as "anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity" or anyone who is employed by an entity that provides services to support the operations of any health care facility.

Although the DOL argued that the broad definition was necessary to "maintaining a functioning healthcare system during the pandemic," the court concluded that the definition was "vastly overbroad." The court further noted that the rule did not comport with the FMLA's definition of "health care provider," which includes only "a doctor of medicine or osteopathy who is authorized to practice medicine or surgery" or "any other person determined by the Secretary to be capable of providing health care services." In the absence of any further DOL regulations concerning exemptions for "health care providers," employers should apply the exemption only to those employees who meet the FMLA definition of a "health care provider."

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Work Availability Requirements

The DOL's regulations provided that, under certain circumstances where an employee had not themselves contracted or experienced symptoms of COVID-19, the employee would not be eligible for paid sick leave if the employer did not have work for the employee. The easiest scenario to imagine here is where, for example, a restaurant employee requests qualifying paid sick leave under the FFCRA, but the restaurant is subject to a shutdown order from the state or local government and thus has no work for the employee. Under the DOL's regulations, the employee would not have been entitled to leave. However, with that regulation vacated, employees who qualify for paid sick leave are entitled to it, regardless of whether the employer actually has work for the employee to do.

Leave Documentation

It is understandable that employers would want appropriate documentation supporting the need for FFCRA leave prior to granting an employee leave. And that it precisely what the DOL's regulations required. The court, however, concluded that this requirement was inconsistent with the explicit language of the statute, which only allows employers to request documentation *after* the first workday for which an employee receives paid leave. As such, employers may no longer require an employee to provide documentation *before* taking FFCRA leave.

Employer Consent for Intermittent Leave

The DOL's regulations permit employees to take FFCRA leave intermittently in certain circumstances. While the court largely left those regulations intact, it struck down the requirement that employees obtain employer consent to take leave intermittently. The court noted that there was no support in the statute for such a requirement and that employer consent does not implicate public health considerations that may otherwise justify it. As such, employees who are eligible to take FFCRA leave intermittently may do so simply by notifying their employers and are not required to obtain their employer's consent.

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