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New York Federal Judge Vacates Four Provisions of FFCRA's Paid Leave Rules

Background

Since the Families First Coronavirus Relief Act (FFCRA) was passed back in March 2020, the Department of Labor (DOL) has issued numerous regulations determining how the law should be applied, especially its paid leave provisions. The DOL's final rule on the FFCRA's paid leave provisions, issued on April 1, 2020, can be found [here](#) as a reference.

Summary

Shortly after the DOL issued its final rule on the FFCRA's paid leave provisions, the State of New York filed suit challenging some of the DOL's regulations. On August 3, 2020, a New York federal district court issued a ruling striking down four key regulations. The impact of this decision on

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employers, especially those located outside New York State, remains to be seen. See below for a summary of the regulations that were overturned by the New York district court.

Definition of who qualifies for the health care provider exemption:

Both paid leave provisions of the FFCRA offer an exemption to employers of “a health care provider or an emergency responder,” meaning that employers do not have to offer paid benefits to these employees. The DOL’s regulations establish a broad definition of “health care provider,” including “anyone employed at” a doctor’s office, hospital, medical school, or other facilities “where medical services are provided.” The Court overturned this “vastly overbroad” definition since it includes many employees who do not actually provide medical care.

Exclusion from benefits for employees whose employers do not have work for them:

Under the FFCRA’s paid leave provisions, the DOL has stated that employers do not need to provide paid leave to employees if they do not have work available for them. The DOL argued that under these circumstances, the employee would not be able to work regardless of the reason for their leave, but the Court overturned the exemption. The court ultimately focused on whether the DOL had the authority to include a “work availability” provision in any aspect of the final rule.

Requirement to get consent for intermittent leave for certain qualifying reasons:

DOL regulations permit employees to take Paid Sick Leave or Expanded Family and Medical leave intermittently rather than in a single continuous period as long as the employer and employee agree to this. However, the DOL states that intermittent leave may only be exercised under “circumstances where there is minimal risk that the employee will spread COVID-19 to other employees.”

The Court agreed with the DOL that in some cases intermittent leave may be barred due to public health concerns. For instance, an employee who has been diagnosed with or exposed to COVID-19 may be barred from returning intermittently due to the risk of spreading the virus. However, the Court ruled that in cases that “do not implicate the same public-health considerations,” employer approval of intermittent leave cannot be required.

Requirement to provide documentation before taking leave:

DOL regulations state that employees must provide specific documentation to their employer prior to taking leave under the FFCRA’s paid leave provisions. However, the FFCRA itself does not establish this requirement.

Rather, it says that employees must provide reasonable notice to continue receiving paid sick time **after** the first workday an employee receives paid sick time. This language seems to conflict

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with the DOL's required timeline for employees to provide notice, and the Court has ruled against the DOL's advance notice requirement.

While striking down any requirement that documentation be provided as a **precondition** to leave, however, the Court left intact the final rule's overall documentation requirement to support the need for leave.

Employer Next Steps

- Employers both in and outside of New York State should take notice of the district court's decision and continue monitoring DOL advice on these regulatory matters.
- Due to the legally fraught nature of this issue, employers should not make any decision to deny an employee's paid leave request under the FFCRA without consulting with legal counsel or HR Knowledge.
- If you are a Full-Service or Virtual HR client and would like our assistance with updating your FFCRA policies, please [email us](#).

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