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DOL revises FFCRA regulations; changes definition of “health care provider”

INSIGHTSLEGAL UPDATE

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The U.S. Department of Labor (DOL) recently issued updated regulations clarifying and revising several provisions of the Families First Coronavirus Response Act (FFCRA). Importantly, the updated regulations alter the definition of “health care provider,” such that employees previously excluded from FFCRA leave requirements may now be eligible for paid leave.

The DOL's prior, broader definition of "health care provider" included anyone employed by a practice or employed by a contractor at hospitals, medical schools and other places "where medical services are provided." The DOL revised this definition to now permit healthcare systems and practice groups to exclude only from the requirements of the FFCRA employees defined as "health care providers" under the Family and Medical Leave Act (FMLA), as well as other employees "who are employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care."

The DOL concluded that, for purposes of the FFCRA, Congress' intent was not to encompass all individuals employed by a healthcare practice such as IT professionals, maintenance staff, human resources personnel, and billing staff, since they are "too attenuated" from patient care.

However, the DOL did not limit the application of the FFCRA optional leave exclusion provision strictly to physicians and others who make medical diagnoses. Rather, "health care services" may encompass relevant services even if not performed by individuals with a license, registration or certification.

Accordingly, healthcare employers must now be aware certain employees may now be entitled to leave under the FFCRA who, under the prior definition of "health care provider," were not. This requires immediate action by employers and a re-evaluation of their prior practices and policies since the new rule goes into effect on September 16, 2020.

The regulations also revise the FFCRA to clarify that employees must provide employers with information substantiating the basis for their FFCRA leave "as soon as practicable," and that intermittent leave is only available with employer approval and (1) to the extent it does not unduly disrupt the employers' operations; and (2) to the extent the leave-qualifying reasons do not exacerbate the risk of COVID-19 contagion.

Saxton & Stump labor employment attorneys Rick Hackman, Morgan Hays and Steve Fleury are available to discuss how your organization may be impacted by the updated regulations and how to ensure compliance.

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