

NY Federal District Court Invalidates Key FFCRA Paid Leave Regulations

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A recently issued court decision created significant uncertainty as to the application of the Families First Coronavirus Response Act (“FFCRA”) to health care providers, such as our Caring Communities members who have fewer than 500 employees. On August 3, 2020, a federal judge in the United States District for the Southern District of New York vacated four key provisions from the U.S. Department of Labor’s FFCRA regulations (“DOL Regulations”), including the provision allowing for the exclusion of “health care providers” from coverage under FFCRA. Our summary of FFCRA and the guidance issued thereafter can be found [here](#).

The now vacated DOL Regulation included in the definition of “health care provider” anyone who is employed by an entity that provides health care services. The District Court found this definition to be so “vastly overbroad,” that it included employees “whose roles bear *no nexus whatsoever* to the provision of healthcare services.” The District Court pointed out that this excessive interpretation resulted from the fact that the DOL based the definition of “health care provider” on the identity of the *employer*, rather than the skills, role, duties, or capabilities of a class of *employees*. However, the Court did not give any definitive instructions as to how the term “health care provider” should be redefined for purposes of FFCRA. Moreover, it is also unclear whether this decision will have a retroactive effect or whether it impacts employers nationwide.

In addition to striking down the health care provider definition, the Court also vacated three other regulations involving: the provision that employers

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would not have to provide FFCRA leave benefits unless the employer had work available; the requirement that an employee obtain employer consent for intermittent leave for certain FFCRA leave benefits; and the requirement that documentation be provided before taking leave.

We anticipate that the DOL will either appeal the decision or issue amended regulations or both. In the interim, the uncertainty will continue with more questions than definitive answers. Therefore, to minimize potential risk, we advise that each situation be evaluated on a case-by-case basis and that you consult with your Laner Muchin labor and employment counsel regarding your obligations under FFCRA.