

Labor and Employment Alert: COVID-19: DOL Substantially Broadens the FFCRA “Health Care Provider” Exemption For Paid Sick and Family Leave

The U.S. Department of Labor (DOL) has issued guidance regarding the Families First Coronavirus Response Act (FFCRA) that is of particular importance to employers in the health care field. Although the FFCRA has exceptions that allows employers to deny paid sick leave and paid family leave to “health care providers” — the paid sick leave provisions of the FFCRA essentially limited the definition of a “health care provider” to the following types of employees: a doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse-midwife, clinical social worker, and physician assistant). This meant that a health care provider employer could **only** deny FFCRA benefits to the foregoing types of employees and could not deny benefits to other employees such as technicians, medical assistants, receptionists, aides, etc.

The guidance published by the DOL this weekend has gone in almost the completely opposite direction. Specifically, the DOL expanded the definition to include **any employee** of a health care provider employer. Specifically, the guidance provides that a health care provider is “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.” The definition also includes “any individual employed by an entity that contracts with any of the above institutions, employers, or entities, institutions to provide services or to maintain the operation of the facility.” To read the full guidance, click [here](#) and see Question 56.

Although this is great news for employers in the health care industry, they must remember that their employees still may have rights to time off from work for certain COVID-19-related issues under applicable state law. As an example, the employer may be able to deny paid sick and family leave time under the FFCRA; however, they might have to grant an employee such time off under New Jersey’s Earned Sick Leave Law and/or the New Jersey Family Leave Act. Further, the DOL guidance also specifically states that employers should be “judicious when using this definition to exempt health care providers from the provisions of the FFCRA.” As such, it is recommended that employers seeking to utilize this exemption obtain legal counsel to ensure they are acting in compliance with the FFCRA and all other applicable laws.