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Court Vacates Parts of FFCRA Regulations, Including Healthcare Provider Definition

By Francis P. Alvarez and Patricia Anderson Pryor

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The federal district court in New York struck down four provisions in the Department of Labor's (DOL) Families First Coronavirus Response Act (FFCRA) regulations on August 3, 2020, four months after the regulations went into effect, and five months before the FFCRA is set to expire. *State of New York v. U.S. Department of Labor, et al.*, No. 1:20-cv-03020 (S.D. N.Y. Aug. 3, 2020).

Shortly after the DOL issued its FFCRA regulations, the state of New York filed a lawsuit challenging some of the provisions.

The four provisions struck down include:

- The definition of who qualifies for the healthcare provider exemption;
- The exclusion from benefits of employees whose employers do not have work for them;
- The requirement that employees secure consent for intermittent leave for certain qualifying reasons; and
- The requirement that documentation be provided before taking leave.

The court let stand the remaining provisions of the DOL's regulations.

The court's decision leaves open many questions for employers who are trying to comply with the law. (It also demonstrates the inherent issues when Congress and federal agencies try to rush through legislation and regulations.) Employers who have been following the regulations may find themselves at risk. The decision leaves employers to surmise the answers to important questions, such as what definition of healthcare provider should be used under the FFCRA, and whether employees on furlough or who otherwise do not have work available (regardless of whether the employee is unable to work due to a COVID-19 issue) are eligible for pay.

For public employers and employers with fewer than 500 employees, the rules have changed. The implications of the court's ruling are complicated.

Contact your Jackson Lewis attorney with any questions and for assistance in developing an approach that helps minimize the risk for your organization.

Meet the Authors

Francis P. Alvarez

Principal
New York Metro
White Plains 914-872-6866
Email

Patricia Anderson Pryor

Principal and Office Litigation Manager
Cincinnati 513-322-5035
Email

*The National Operations Center serves as the firm's central administration hub and houses the firm's Facilities, Finance, Human Resources and Technology departments.