

LEGAL UPDATE

DOL Revises FFCRA Regulations in Response to Court Decision

The U.S. Department of Labor (DOL) has issued revisions to regulations that implement the paid sick leave and expanded family and medical leave provisions of the Families First Coronavirus Response Act (FFCRA). The revisions were issued in response to a New York federal court decision that struck down parts of the regulations. The revisions take effect Sept. 16, 2020.

Summary of Revisions to the FFCRA Regulations

The revisions reaffirm and provide additional explanation for two provisions of the regulations:

- The requirement that employees may take FFCRA leave only if work would otherwise be available to them
- The requirement that an employee have employer approval to take FFCRA leave intermittently

The DOL also revised the definition of “health care provider” to include only employees who meet the definition of that term under the Family and Medical Leave Act regulations or who are employed to provide services that are integrated with and necessary to the provision of patient care (such as diagnostic, preventive or treatment services).

The revisions also clarify that:

- Employees must provide required documentation supporting their need for FFCRA leave to their employers as soon as practicable (rather than always prior to taking leave).
- For expanded family and medical leave, advance notice is not prohibited and is typically required if the need for leave is foreseeable, such as when an employee has advance notice of a school closing.

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Important Dates

April 1, 2020

The DOL issued regulations under the FFCRA’s employee leave provisions.

Aug. 3, 2020

The Federal District Court for the Southern District of New York partly vacated the FFCRA leave regulations.

Sept. 16, 2020

Revisions to the FFCRA regulations take effect.

The revised regulations narrow the definition of health care providers whom employers may exclude from FFCRA leave.



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