

DOL Updates FFCRA Regulations, Effective 9/16/2020, in Response to Federal Court Decision

By Barry Y. Freeman

In early August, a New York federal court struck down a number of Department of Labor (DOL) regulations applying the new Families First Coronavirus Response Act (FFCRA) as invalid. Specifically, the Court invalidated regulations: (1) limiting paid leave to those whose employers had work available; (2) exempting all health care employees from FFCRA benefits; (3) requiring employer consent before allowing intermittent FFCRA leave; and (4) requiring the employee submit documentation *before taking leave* of the reason for leave, the duration and, if relevant, authority for any government isolation or quarantine order). That case was *State of New York v. United States Department of Labor*, Southern District of New York Case No. 1:20-cv-03020.

Last week, the DOL responded with an updated rule, effective September 16th. The rule can be accessed [here](#). The DOL's updated rule directly addresses the federal court's concerns, modifies the DOL's prior rule, and makes the following rule determinations:

1. It re-establishes the DOL prior rule that paid FFCRA leave (both paid sick leave and paid emergency FMLA) can only be taken if the employee has work available from her employer. It cannot be taken if there is no work available (for example, if the employer is shut down).
2. It responds to the Court's concerns and limits health care employees exempt from FFCRA protections to those who actually provide diagnostic, preventative treatment services or other patient care. (Thus, employees of a health care entity who do not actually provide health services, such as IT professionals, billers, human resources personnel or records managers will be able to take advantage of FFCRA leave benefits.)
3. It re-establishes the prior rule requiring employer consent for intermittent FFCRA sick leave or paid emergency leave.
4. It responds to the Court's concerns and requires employees submit leave documentation as soon as practicable, but not necessarily before leave is taken, as the original rule required.

If you have any questions or concerns, please contact any of the listed Roetzel attorneys.

Doug Spiker

Practice Group Manager

Employment Services

216.696.7125 | dspiker@ralaw.com**Karen Adinolfi**330.849.6773 | kadinolfi@ralaw.com**Aretta Bernard**330.849.6630 | abernard@ralaw.com**Bob Blackham**216.615.4839 | rblackham@ralaw.com**Michael Brohman**312.582.1682 | mbrohman@ralaw.com**Eric Bruestle**513.361.8292 | ebruestle@ralaw.com**Arthur Brumett II**216.615.4856 | abrumett@ralaw.com**Helen Carroll**330.849.6710 | hcarroll@ralaw.com**G. Frederick Compton**330.849.6610 | fcompton@ralaw.com**Amanda Connelly**614.723.2012 | aconnelly@ralaw.com**Leighann Fink**330.849.6633 | lfink@ralaw.com**Monica Frantz**216.820.4241 | mfrantz@ralaw.com**Barry Freeman**216.615.4850 | bfreeman@ralaw.com**Morris Hawk**216.615.4841 | mhawk@ralaw.com**Phil Heebsh**419.708.5390 | pheebsh@ralaw.com**Deirdre Henry**216.615.4823 | dhenry@ralaw.com**Paul Jackson**330.849.6657 | pjackson@ralaw.com**Doug Kennedy**614.723.2004 | dkennedy@ralaw.com**Corey Kleinhenz**513.361.8282 | ckleinhenz@ralaw.com**Jonathan Miller**419.254.5273 | JDMiller@ralaw.com**Stephanie Olivera Mittica**330.849.6671 | solivera@ralaw.com**Nancy Noall**216.820.4207 | nnoall@ralaw.com**Nathan Pangrace**216.615.4825 | npangrace@ralaw.com**Brian Tarian**614.723.2028 | btarian@ralaw.com