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Client Alert Applies To: Self-Funded, Fully-Funded, Large Group, and Small Group

August 7th, 2020

FFCRA Court Ruling

A New York federal judge recently struck down several portions of the final Department of Labor Rule (“Final Rule”) regarding the Families First Coronavirus Relief Act (FFCRA), providing a more employee-friendly interpretation of FFCRA. It is unclear if the Court’s ruling applies nationally, or just in New York. The Court’s ruling addressed four issues: (i) the work availability requirement; (ii) the Health Care Provider exemption; (iii) use of intermittent leave and (iv) documentation requirements.

Work Availability

FFCRA provides two types of leave to qualifying employees: Emergency Family and Medical Leave (EFML) and Emergency Paid Sick Leave (EPSL). EPSL is available to employees who cannot work or telework because of one of the following reasons:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine related to COVID-19;
3. The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. The employee is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. The employee is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
6. The employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

EFML is similarly available to employees unable to work or telework due to a need to care for a child whose school or place of care is closed or unavailable due to COVID-19 related reasons.

The DOL’s Final Rule imposed a “work-availability” requirement for EFML and three of the six qualifying reasons for EPSL, meaning that FFCRA leave is not available if the employer does not have work for the employee. In essence, under the DOL’s rule, if the employer has temporarily shut down due to a shelter in place order or decreased business, employees are not eligible for FFCRA leave. The New York court struck down this requirement and seems to hold that covered businesses subject to the court’s ruling which have temporarily closed operations because of a governmental order or other reason would have to provide FFCRA leave to employees who are not working because of the business shutdown.

Health Care Provider Exemption

FFCRA permits employers to exclude “health care providers” from the Act’s leave benefits. The Final Rule defines health care provider very broadly and would allow employers to exclude anyone who worked for an employer that is a medical provider or a business related to medical providers. Under the court’s ruling, the health care provider exemption would only cover a few limited positions specifically defined in FFCRA.

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Intermittent Leave

The Final Rule provides that employees can take intermittent EPSL and EFML only for certain qualifying conditions and with employer consent. The court upheld the limited circumstances under which intermittent leave could be taken, but held that in those circumstances, employer consent cannot be required.

Required Documentation

The Final Rule states that employees must provide employers with documentation prior to taking leave. The Court held that the needed documentation cannot be required before leave is taken. The employer can require the employee to follow reasonable notice procedures after the first day of absence, and can require the needed documentation, but not in advance of the leave. This portion of the court's ruling may not have much impact on employers, as many employers have not required the documentation in advance of the leave or denied leave on that basis.

Conclusion

As noted above, it is unclear whether this ruling applies in jurisdictions other than New York state, and it may be appealed. However, if future FFCRA leave requests implicate any of the above issues, you may want to consult with legal counsel regarding FFCRA's requirements.

Please visit www.moreton.com/news-events/ for more information and to view other client alerts. This Client Alert was written by Carolyn Cox, Moreton & Company's in-house corporate counsel who provides our clients with compliance services. For additional questions, please contact Carolyn at 801-715-7110 or ccox@moreton.com.

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