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DOL Issues Revised FFCRA Regulations

Following a federal district court decision invalidating certain portions of the regulations issued by the U.S. Department of Labor (DOL) under the Families First Coronavirus Relief Act (FFCRA), the DOL issued revised regulations last week. The revised regulations are effective September 16, 2020 and are set to expire along with FFCRA's paid leave provisions on December 31, 2020. Here are the highlights:

- **Work Availability Requirement:** The regulations affirm and explain the requirement that an employee may only take FFCRA leave if an employer has work for the employee, but the employee cannot work due to a COVID-19-related qualifying reason. If there is no work for an individual to perform due to circumstances other than an FFCRA qualifying reason for leave (e.g., the worksite is closed), the employee "would have no work from which to take leave."
- **Employer Approval of Intermittent Leave:** The regulations also affirm and explain that employer approval is required for intermittent FFCRA leave, in order to avoid unduly disrupting the employer's operations. The regulations clarify the difference between intermittent leave, which is taken in separate blocks due to a single qualifying reason, and separate, consecutive requests for leave.
- **Definition of Healthcare Provider:** The regulations revise and narrow the definition of "healthcare provider" for purposes of identifying employees who may be denied FFCRA leave. The revised definition includes individuals who are employed to provide diagnostic, preventive, or treatment services, or services that are integrated with and necessary to providing patient care (such as bathing, dressing, hand feeding, and transporting patients and laboratory samples).
- **Notice and Documentation Requirements:** The regulations clarify that employees need not give notice or provide required documentation prior to taking FFCRA leave, but rather as soon as practicable. Nevertheless, if the need for leave is foreseeable, it will typically be practical for employees to provide notice before taking leave, and, in most cases, required documentation will be submitted when notice is provided.

The revised regulations can be accessed here: www.govinfo.gov/content/pkg/FR-2020-09-16/pdf/2020-20351.pdf

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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