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District Court Strikes Down DOL Regulation Exempting Non-Healthcare Workers from Paid Leave

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On August 3, 2020, the U.S. District Court for the Southern District of New York struck down part of a Department of Labor ("DOL") regulation that would have prevented huge swaths of employees from taking paid leave under the Families First Coronavirus Response Act ("FFCRA"). The court's holding has important consequences for employees who may need to take leave from work to care for themselves or others during the ongoing COVID-19 pandemic.

Congress passed the FFCRA on March 18, 2020, to provide paid leave for employees who are experiencing symptoms of COVID-19, are quarantined and cannot work because of COVID-19, or are caring for someone who is quarantined, or a child whose school or care provider is closed, because of COVID-19. In recognition of the essential role of frontline health care workers during the pandemic, however, the FFCRA permits an employer to deny an employee's request for qualifying leave if the employee is a "health care provider or emergency responder." The Act defines "health care provider" as "a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate)" or "any other person determined by the Secretary [of Labor] to be capable of providing health care services." The Act also expressly authorizes DOL to "issue regulations to exclude certain health care providers and emergency responders from" from eligibility for paid leave.

DOL Expands Definition of 'Health Care Provider'

On April 1, 2020, DOL issued a regulation implementing the FFCRA that significantly expanded the definition of "health care provider," thereby excluding additional employees from eligibility for paid leave under the Act. The definition covered, among other employees, "anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, [or] pharmacy[.]" In its motion to dismiss, DOL conceded that its definition would encompass many employees who

are not traditionally considered healthcare workers, such as professors, librarians, and cafeteria managers at a university with a medical school. In this sense, DOL's new definition of "health care provider" created an exception that threatened to swallow the rule.

District Court Rejects DOL Definition

In its opinion invalidating the DOL definition, the court held that the FFCRA requires DOL to determine that a particular employee is "capable of furnishing healthcare services . . . not that [the employee's] work is remotely related to someone else's provision of healthcare services." DOL's definition, the court found, "hinges entirely on the identity of the employer, in that it applies to anyone employed at or by certain classes of employers," as opposed to the identity of the employee, in violation of the statutory text. Administrative procedure law therefore "unambiguously foreclose[d] the [DOL's] definition" of "health care provider." Finding further that DOL's definition of "health care provider" was severable from the remainder of the regulation, the court simply invalidated that provision, restoring the definition of "health care provider" to the more limited one in the text of the statute.

The court also rejected DOL's argument that its definition "operationalizes" the goal of "maintaining a functioning healthcare system during the pandemic." Acknowledging that employees who "do not directly provide healthcare services to patients – for example, lab technicians or hospital administrators – may . . . be essential to the functioning of the healthcare system," the court nevertheless held that this rationale could not supersede the "unambiguous terms" of the FFCRA, which require DOL to determine whether a particular employee can provide healthcare services.

Keeping Employees Safe

More broadly, by enabling more employees to stay at home without sacrificing a paycheck, the court's holding bolsters the FFCRA's dual purpose of limiting the spread of COVID-19 while at the same time providing financial relief to American workers. The DOL regulation, on the other hand, would have forced employees to report to work despite symptoms of or exposure to COVID-19, increasing the risk of spreading the virus to others, or take leave without pay.

If you need to take leave from work because you are experiencing symptoms of or were exposed to COVID-19, or to take care of a loved one who is at home because of COVID-19, consider consulting with an employment attorney to determine whether you may be eligible for paid leave under the FFCRA.