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Compliance Brief

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about compliance, *at a glance*



Families First Coronavirus Response Act DOL Reacts to Court Decision Partially Invalidating Temporary Regulations

The U.S. Department of Labor (DOL) has released updated [temporary regulations](#) implementing the Emergency Family Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA) provisions under the Families First Coronavirus Response Act (FFCRA). The EFMLEA provides qualifying employees with paid sick leave during the COVID-19 crisis to care for a child absent from school due to school closure or childcare unavailability. The EPSLA provides employees with paid sick leave for self-care and family care due to possible COVID-19 contraction and exposure, as well as paid childcare leave.

The original temporary regulations are effective April 1, 2020, through December 31, 2020, which corresponds to the effective and sunset dates for the FFCRA. For an overview of the requirements of the EFMLEA and EPSLA, please review our UBA Advisor entitled "[Families First Coronavirus Response Act](#)" and the Advisor dedicated to the [Coronavirus Aid Relief, and Economic Security Act](#).

On August 3, 2020, the U.S. District Court for the Southern District of New York (court) [invalidated](#) certain provisions of the original temporary regulations implementing the EPSLA and EFMLEA.

Original Temporary Regulations Partially Invalidated

Under the original temporary regulations, an employee can only take leave under the FFCRA if the employee has a qualifying reason for leave and the employer has work available for the employee. The court invalidated this work-availability requirement with respect to the qualifying reasons for taking leave under the FFCRA. Under the court's holding, an employer is not required to have work available for an employee as a condition for an employee to be eligible for leave. This potentially opens the door for employees to claim eligibility for leave even if they are



furloughed, temporarily laid off, or are not working because the employer has temporarily ceased operations.

DOL's Response-Additional Temporary Regulations

In response to the court's decision, the DOL released additional temporary regulations that reaffirm certain portions and revises certain portions of its regulations described in Part I, Part II, and Part III of this Advisor series on the FFCRA leave regulations.

Highlights

- The DOL reaffirms that paid sick leave and expanded medical leave may only be taken by an employee when the employer has work for the employee to perform.
- The DOL reaffirms that when intermittent leave is permitted under the FFCRA regulations, an employee must obtain his or her employer's approval to take paid sick leave or expanded family and medical leave intermittently.
- The DOL revises its definition of "health care provider" to mean employees defined as health care providers under the Family and Medical Leave Act of 1993 and other employees who are employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care.
- The DOL clarifies that the information the employee must provide to the employer to support the employee's need for leave should be provided as soon as practicable, not necessarily prior to when leave is taken.
- Finally, the DOL clarifies when an employee may be required to give notice of expanded family and medical leave to his or her employer.

The [additional temporary regulations](#) became effective on September 16, 2020.

Employers should review their policies and procedures to ensure that leave under the FFCRA complies with applicable law, including the additional temporary regulations issued by the DOL.

9/22/2020

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