NY Federal Court Partially Vacates FFCRA Leave Regulations

In a case brought by the New York attorney general, a New York federal district court has vacated portions of regulations issued by the U.S. Department of Labor (DOL) under the Families First Coronavirus Response Act (FFCRA). As yet, it is unknown whether the DOL will appeal the decision, whether other states will bring similar court actions or, if they do, whether courts in other jurisdictions would reach the same result. Employers are advised to stay updated on developments in these areas to ensure their FFCRA leave policies comply with the law.

The opinion struck down the following provisions in the FFCRA leave rules:

- The requirement that an employer have work available for an employee taking leave;

- The definition of health care providers who may be denied leave;

- The requirement that employers consent to intermittent leave; and

- The requirement that employees provide documentation for leave before taking leave.

The judge in the case noted that the work availability requirement could "considerably narrow the statute's potential scope" due to the decrease in work immediately available for employees who otherwise remain formally employed, as a result of the COVID-19 emergency.

FFCRA Paid Leave

The FFCRA provides paid leave for specified coronavirus (COVID-19)-related reasons. Two types of leave are required under the act: emergency paid sick leave of up to 80 hours, and up to 12 weeks of partially compensated emergency family medical leave under an expansion to the Family and Medical Leave Act.

Highlights

Work Available
The court struck the regulatory prohibition on FFCRA leave for employees whose employer does not have work available for them.

Health Care Employees
The regulatory definition of health care employees who may be excepted from FFCRA leave was ruled too broad.

The court said the "work available" requirement could considerably narrow the leave benefit due to the pandemic's effect on businesses nationwide.