

## **New York District Court Vacates Parts of FFCRA Regulations Including Healthcare Provider Definition**

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Shortly after the Department of Labor issued its FFCRA regulations, the state of New York filed a lawsuit challenging some of the provisions. Today (four months after the regulations went into effect, and just five months before the FFCRA is set to expire), the federal district court in New York struck down four provisions in the regulations. The four provisions struck down include:

- the definition of who qualifies for the healthcare provider exemption;
- the exclusion from benefits of employees whose employers do not have work for them;
- the requirement that employees secure consent for intermittent leave for certain qualifying reasons; and
- the requirement that documentation be provided before taking leave.

The court let stand the remaining provisions of the DOL's regulations.

The court's decision leaves open a lot of questions for employers who are trying to comply with the law (and also demonstrates the inherent issues when congress and federal agencies try to rush something through). Employers who have been following the regulations, may now find themselves at risk. And the decision leaves employers left to surmise important questions such as what definition of healthcare provider should be used under the FFCRA, and whether employees on furlough or who otherwise do not have work available (regardless of whether the employee is unable to work due to a COVID issue) are eligible for pay.

The court's decision creates new risks for employers trying to comply. For public employers and employers with less than 500 employees, the rules have changed. Contact your Jackson Lewis attorney for assistance in developing an approach that helps minimize the risk for your organization.

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