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FFCRA Update: Recent Court Decision Striking Key Portions of the DOL's Final Rule May Impact Employers

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On April 1, we issued a [legal alert](#) regarding new paid leave benefits under the Families First Coronavirus Response Act (FFCRA). On August 3, in response to a legal challenge by the state of New York, a New York federal district judge struck down portions of the final rule issued by the U.S. Department of Labor (DOL) providing guidance on interpretations of the FFCRA.

Specifically, the court:

- Struck down the rule's "work availability" requirement (holding FFCRA benefits are available even when there is no work for the employee to perform);
- Found the definition of "health care provider" to be overly broad and too expansive;
- Held that the employer consent requirement for intermittent leave exceeded the DOL's authority under the statute (thereby giving employees the right to take intermittent leave in situations where health and safety is not at risk, such as when a child's school is closed or child care unavailable because of the pandemic); and
- Struck down the requirement for documentation prior to taking FFCRA leave to the extent it imposed anything different or more stringent than what the new statute required (the DOL's rule required certain documentation before an employee could take FFCRA leave, which the court found was more than what the FFCRA's notice provisions call for and improperly required advance notice before taking FFCRA leave).

This decision may only impact New York employers, but it potentially impacts all employers covered by the FFCRA. As much as we would like to provide more clarity on the impact of this court decision for employers outside of New York, there is no certainty at this time. Like everyone else following the FFCRA, we are awaiting a response from the DOL, which could be in the form of interim guidance, a revised rule or an appeal of the court's decision. We will issue another alert once we hear officially from the DOL. Stay tuned!

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