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FFCRA Paid Leave Regulations Partially Invalidated by District Court

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On August 3, 2020, the U.S. District Court for the Southern District of New York invalidated four separate provisions in temporary regulations previously issued by the U.S. Department of Labor (“DOL”) regarding emergency paid leave under the Families First Coronavirus Response Act (“FFCRA”). It appears the Court’s decision may apply with respect to certain counties in New York. However, it is not clear whether the ruling applies nationally or retroactively. In addition, the DOL is likely to appeal the decision which may create additional uncertainty.

Background

The FFCRA requires employers with less than 500 employees to provide emergency paid sick leave and paid expanded family and medical leave to eligible employees for certain reasons related to COVID-19. The FFCRA also provides tax credits to reimburse employers that provide paid leave to employees.

In response to passage of the FFCRA, the DOL issued temporary regulations to implement the paid leave requirements. The temporary regulations provide guidance to employers on employee eligibility for paid leave, identify when paid leave can be intermittent, define eligible and excludable employees, clarify documentation and recordkeeping requirements, and address other issues under the FFCRA.

According to separate IRS guidance on the FFCRA, employers are required to comply with the DOL’s temporary regulations in order to qualify for tax credits to reimburse them for paid leave that they provide under the FFCRA.

Lawsuit

The State of New York filed a lawsuit against the DOL, claiming that the temporary regulations exceed the DOL’s authority under the law because the regulations restrict the use of paid leave beyond what the FFCRA statutory requirements permit. The District Court agreed with the

State of New York, and ruled against the DOL on the following four provisions in the temporary regulations:

- The requirement that work be available to an employee in order to qualify for paid leave
- The definition of health care provider that could be denied leave
- Employer ability to deny intermittent leave
- Allowing an employer to require documentation prior to the use of paid leave

Work Availability

The temporary regulations state that eligible employees can qualify for paid leave under the FFCRA only if they have work available from their employer, and they are unable to perform the work because of reasons related to COVID-19. In other words, employees are not eligible for paid leave under the FFCRA if their employer does not have work available for them.

The court concluded that the FFCRA does not include a “work availability” requirement, and therefore ruled that the inclusion of such a requirement in the temporary regulations is invalid.

Definition of Health Care Provider

The temporary regulations define a “health care provider” broadly to include almost all employees working at a hospital, doctor’s office or other medical facility. The employer is permitted under the temporary regulations to exclude “health care providers” from eligibility for paid leave under the FFCRA, unless the “health care provider” has the employer’s consent.

The court ruled that the definition was too broad because it includes employees whose roles are completely removed from the provision of healthcare services.

Intermittent Leave

The temporary regulations allow employees to take paid leave under the FFCRA intermittently only if the employer gives its consent to the employee and only in certain situations.

The court ruled that the requirement that the employer agree or approve an employee’s request for intermittent leave is unreasonable, and therefore invalid.

Documentation Requirements

The temporary regulations require employees to provide their employer with documentation of the need for leave prior to taking paid leave under the FFCRA.

The court ruled that the documentation requirements in the final rule exceed what is permitted by the statute, and therefore are invalid.

FFCRA Tax Credits

The FFCRA also provided refundable payroll tax credits to help employers fund paid leave to employees. In general, the tax credits are available for leaves approved by the FFCRA. Additional issued guidance clarified that employers would be allowed to deny paid leave to an employee that could not provide documentation needed to claim the tax credits. The court’s ruling in this case does not clarify any impact on the availability of tax credits relative to the regulations that are invalidated. In other words, it is not certain that employers that follow the ruling and make paid leave more widely available to their employees will be eligible for the related tax credits.

Additional guidance is needed from the IRS on the impact of the ruling on FFCRA tax credits.

Employer Action

The court ruling does not state whether it applies outside of the six counties that comprise the Southern District of New York (i.e., New York, Bronx, Westchester, Putnam, Rockland, Orange, Dutchess, and Sullivan counties). Additionally, the court does not state whether the ruling has a retroactive effect. If an employer had previously denied leave or excluded employees from eligibility based on the invalidated rule, it is not clear whether the employer is required to provide paid leave retroactively.

Employers should continue to monitor the DOL and IRS for additional guidance on paid leave and related tax credits under the FFCRA. Employers should discuss implications of this decision with their employment counsel, particularly if operating in the New York counties listed above. We will continue to provide guidance as this issue develops.