

DOL Releases Revised Rule in Response to Invalidated Provisions of the FFCRA

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As we previously reported, last month, a New York federal court invalidated certain provisions of a Department of Labor (DOL) rule implementing the paid sick leave and expanded FMLA leave provisions of the FFCRA. Late last week, the DOL responded, confirming that the order vacating these provisions is applicable nationwide. The DOL has released a revised rule, which went into effect on September 16, 2020. The revised rule makes the follow changes:

- ***Work-Availability Rule:*** Reaffirms the requirement that employees may take FFCRA leave only if work would otherwise be available to them, and provides additional explanation for this requirement.
- ***Intermittent Leave:*** Reaffirms the requirement that an employee have employer approval to take FFCRA leave intermittently, and provides additional explanation for this requirement.
- ***Definition of Healthcare Provider:*** Revises the definition of "healthcare provider" to include only employees who

meet the definition of that term under the Family and Medical Leave Act regulations or who are employed to provide diagnostic services, preventative services, treatment services, or other services that are integrated with and necessary to the provision of patient care which, if not provided, would adversely impact patient care.

- ***Documentation:*** Clarifies that employees must provide required documentation supporting their need for FFCRA leave to their employers as soon as practicable, and corrects an inconsistency regarding when employees may be required to provide notice of a need to take expanded family and medical leave to their employers.

This is good news for employers, as it provides clarity on the FFCRA and generally clarifies, rather than changes, its previous rule.

The Labor & Employment Attorneys at Levenfeld Pearlstein continue to monitor developments in labor and employment law. We're here to guide you through any questions or concerns you might have.