

Department of Labor Issues New Guidance on Families First Coronavirus Response Act Definitions of “Health Care Provider” and “Emergency Responder”

by Jillian Kornblatt

The Department of Labor issued its third set of guidance explaining the Families First Coronavirus Response Act (FFCRA). Its latest iteration of FAQs clarifies that “health care providers” actually has two different meanings in the Act—one of which greatly expands the term to include employees that were previously understood to be outside the scope of the definition. The FAQs also define “emergency responders”—a term that was left undefined in the FFCRA.

The FFCRA allows employers to exclude “health care providers and emergency responders” from application of its paid sick and expanded family and medical leave provisions. Our previous summary of the FFCRA as it applies to health care providers and emergency responders can be found [here](#). The FFCRA provides that “health care provider” has the same meaning as under the FMLA, which is limited to a specified group of professions, such as doctors, dentists, nurse practitioners, clinical psychologists, and other individuals authorized to diagnose and treat physical or mental health conditions.

In its latest FAQs, the DOL states that for purposes of *determining individuals whose advice to self-quarantine can be relied on as a qualifying reason for paid sick leave*, the DOL retains the FMLA’s definition of health care provider:

The term “health care provider,” as used to determine individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

However, for purposes of *determining individuals who may be excluded by their employer from paid sick leave and/or expanded family and medical leave*, the DOL adds a second definition of health care provider, which expands the FMLA’s definition to include “anyone” who works for or contracts with a health care employer:

For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is

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anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

The latest FAQs also define "emergency responders":

For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

While FAQs are merely advisory and do not have the force of law, courts may look to them for informal guidance. Employers should consult with counsel about how the FFCRA applies to their employees and institution at large. As the DOL continues to

refine the FAQs, Dorsey's labor and employment lawyers are keeping a close watch on how this guidance may impact our clients.