

Are Health Care Providers Exempt from the FFCRA Paid Leave Requirements?

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And who is a 'health care provider?'

These are questions we have grappled with since the Families First Coronavirus Relief Act ("FFCRA") was enacted one week ago (March 18, 2020). Here is what we know so far.

The FFCRA has two common provisions that apply to both the **Emergency Family and Medical Leave Expansion Act** (the "Emergency FMLA") and the **Emergency Paid Sick Leave Act** ("Emergency Paid Sick Leave"):

1. **An employer of a health care provider *may* exclude that employee from the FFCRA "public health emergency leave" requirements.** As of today, we interpret this to mean that employers of health care providers, as defined by the Family and Medical Leave Act of 1993 ("FMLA"), may choose to prohibit their health-care-provider employees from taking "public health emergency leave" and "paid sick time" pursuant to the FFCRA.
2. **The Labor Secretary *may* issue regulations that exclude certain health care providers from the definition of eligible employees under both the Emergency FMLA and Emergency Paid Sick Leave requirements.** As of today, such regulations have not been released. We hope that the U.S. Department of Labor will release instructive regulations soon. Until then, employers should operate under the FMLA definition of "health care provider."

Until we receive guidance from the U.S. Department of Labor, "health care provider"* includes only the following:

- **Doctor of medicine or osteopathy** who is authorized to practice medicine or surgery by the state in which the doctor practices;
- **Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors** (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the state and performing within the scope of their practice as defined under state law;
- **Nurse practitioners, nurse-midwives, clinical social workers and physician assistants** who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law; and
- **Christian Science Practitioners.**

The full definition of "health care provider" under the FMLA is available [here](#).

We will provide you with updates as they become available. In the meantime, the U.S. Department of Labor regularly updates this website to provide COVID-19-related information to employees and employers

***Note:** Division C of the FFCRA regarding Emergency FMLA does not define health care provider; however, the broader FMLA statute does define "health care provider" in 29 U.S.C. Section 2611(6). Sec. 5110(4) of the FFCRA regarding Emergency Paid Sick Leave provides that "health care provider" has the same meaning as under the FMLA.

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