"US Department of Labor Issues Revised Regulations for the Families First Coronavirus Response Act"

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The US Department of Labor issued new regulations to clarify the Families First Coronavirus Response Act (FFCRA) and to address questions that have arisen by courts interpreting the Act. The revisions affirm that an employee can only take leave under the FFCRA if work is otherwise available and the employee is unable to work for a COVID-19 qualifying reason. Additionally, advance notice of the need for emergency sick leave is not required under all circumstances but should be given as soon as possible. But if the need is foreseeable, prior notice should be given in advance of the leave. Likewise, documentation need not be given before taking paid sick leave or expanded family and medical leave, but should be provided as soon as practicable. Employees must obtain approval from their employer to take intermittent leave under the FFCRA.

The revisions also narrowed the definition of "healthcare provider" after criticism that the definition was overly broad. Instead of including every employee of a health care provider, only workers that can be deemed a healthcare provider under the FMLA fall within the exclusion. A healthcare provider is also a worker who provides diagnostic, treatment or other services that are necessary and integral to patient care. Employers who may excluded employees under the healthcare provider exception to the FFCRA may want to revisit their exclusions.

The revisions to the FFCRA take effect on September 16, 2020. For more details, see: https://www.dol.gov/newsroom/releases/whd/whd20200911-2