Federal Court Severs Portions of Department of Labor Rules on FFCRA/EPSLA Leave

August 4, 2020

Porzio Client Alert

On August 3, 2020, the United States District Court for the Southern District of New York ("SDNY") ordered the United States Department of Labor ("USDOL") to remove several restrictions imposed on employees seeking to utilize paid leave under the Families First Coronavirus Response Act ("FFCRA") and Emergency Paid Sick Leave Act ("EPSLA"'). Employees no longer are required to provide documentation prior to utilizing EPSLA paid leave nor does an employee need to obtain an employer's consent to take intermittent leave. The SDNY Court also removed a restriction that prevented employees that "do not have work [to complete]" from seeking paid leave, and struck down the USDOL's definition of "health care providers." However, the balance of the USDOL's rules — including that employees need to provide documentation after utilizing EPSLA paid leave — remains in effect. For background information on the EPSLA, and a more in-depth analysis of the SDNY decision, please see below.

In response to the novel Coronavirus-2019 ("COVID-19") pandemic, the United States Congress passed the FFCRA and EPSLA to grant employees paid leave if certain conditions were met. The EPSLA requires covered employers to provide paid sick leave to employees with one of six qualifying COVID-19-related conditions. The conditions include that the employee:

1. "is subject to a Federal, State, or local quarantine or isolation order related to COVID-19";
2. "has been advised by a health care provider to self-quarantine due to concerns related to COVID-19";
3. "is experiencing symptoms of COVID-19 and seeking a medical diagnosis";
4. "is caring for an individual subject" to a quarantine or isolation order by the government or a healthcare provider;
5. is caring for a child whose school or place of care is closed, or whose childcare provider is unavailable, because of COVID-19; or
6. "is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor." Id. § 5102(a).

Under the EPSLA, an employer may deny leave to an employee with a qualifying condition if the employee "is a health care provider or an emergency responder."

On April 6, 2020, the United States Department of Labor ("USDOL") released regulations entitled the "Final Rule"1 interpreting the FFCRA and EPSLA. The Final Rule's definition of "health care providers" was found to be improperly broad, which included "anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction[.]" The USDOL admitted to the Court that most university professors would be unable to take paid leave pursuant to this definition. Another portion of the "Final Rule," which has since been struck down, restricted employees from utilizing paid sick leave if "the employer does not have work for the employee" or if

the employee failed to produce documentation from a medical professional prior to taking the leave. The Final Rule also required an employee to obtain an employer's consent if the employee wanted to take intermittent leave. It can do so no longer.

The State of New York challenged the aforementioned restrictions, and the Court concluded that the USDOL overstepped its authority. Most of the Final Rule remains in effect, but "the following portions, and only the following portions, of the Final Rule are [now] vacated: the work-availability requirement; the definition of 'health care provider'; the requirement that an employee secure employer consent for intermittent leave; and. . . . the requirement that documentation be provided before taking leave."

This decision will go into effect immediately, but the USDOL may seek a stay of the decision to pursue an appeal to the Second Circuit. Unless and until that occurs, employers nationwide must abide by the relaxed rules imposed as a result of the SDNY decision.

Should you require any assistance to ensure compliance, we would be happy to assist.

1https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act