

Federal Paid Sick Leave and Expansion of FMLA Benefits – Health Care Provider and Emergency Responder Exemptions

The Families First Coronavirus Response Act (FFCRA) provides paid sick leave and amends the Family and Medical Leave Act (FMLA) to include a new qualifying reason for leave related to COVID-19. However, the FFCRA permits employers to exempt “health care providers” and “emergency responders” from eligibility for these benefits.

Who qualifies for this exemption has been up for debate since the FFCRA was enacted, as the law is not entirely clear and does not provide definitions to be applied for the exemption. For health care entities, for example, whether the “health care provider” exemption would be applied sparingly and only to employees such as physicians who provide direct care to patients, or whether the exemption would be applied more broadly, has been a big question that needed to be answered. Thankfully new guidance issued by the U.S. Department of Labor (DOL) on March 28, 2020 has provided some clarification as to who constitutes a “health care provider” and an “emergency responder” for purposes of this exemption.

Under the DOL’s new guidance, for purposes of applying the exemption under the FFCRA, a **health care provider** includes anyone employed at any of the following:

- Any doctor’s office, hospital, health care center or clinic;
- Post-secondary educational institution offering health care instruction, or medical school;
- Local health department or agency;
- Nursing facility, retirement facility, or nursing home;
- Home health care provider;
- Any facility that performs laboratory or medical testing;
- Pharmacy; or
- Any similar institution, employer, or entity.

The definition of health care providers subject to this exemption also includes “any individual employed by an entity that contracts with any of the above institutions, employers, or entities... to provide services or to maintain the operation of the facility” and “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.” A health care provider may work in a permanent or temporary institution, facility, location or site.

The DOL has also clarified that, for purposes of applying the exemption, an **emergency responder** is any 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.” Examples of emergency responders include, but are not limited to:

- Military or national guard;
- Law enforcement officers;
- Correctional institution personnel;

- Firefighters;
- Emergency medical services personnel;
- Physicians, nurses, public health personnel;
- Emergency medical technicians, paramedics, emergency management personnel, and 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.

Although the DOL has encouraged employers to be judicious when using these definitions in order to minimize the spread of COVID-19, the DOL's guidance provides much comfort to employers who have been grappling with these questions.

Please note that these new COVID-19 laws are intricate and the information and guidance relating to these laws continues to evolve on a daily and sometimes even more frequent basis.

If you have any questions about this Information Memo, please contact [Jacqueline Smith](#), [Jessica Moller](#), any of the attorneys in our [Labor and Employment Law](#) or [Health Care Practice](#), or the attorney in the firm with whom you are regularly in contact.



Bond has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences. For information about our firm, practice areas and attorneys, visit our website, www.bsk.com. • Attorney Advertising • © 2020 Bond, Schoeneck & King PLLC

[CONNECT WITH US ON LINKEDIN: SEARCH FOR BOND, SCHOENECK & KING, PLLC](#)

[FOLLOW US ON TWITTER: SEARCH FOR BONDLAWFIRM](#)