



Coronavirus:
Update and Discussion on Continuing Legal
and Practical Issues Related to COVID-19

A Bond Webinar Series
September 15, 2020

 **BOND** SCHOENECK
& KING ATTORNEYS

1

Introduction



Peter A. Jones
Deputy Chair, Labor & Employment
pjones@bsk.com
Syracuse, NY

 **BOND** SCHOENECK
& KING ATTORNEYS

2

Update from Albany

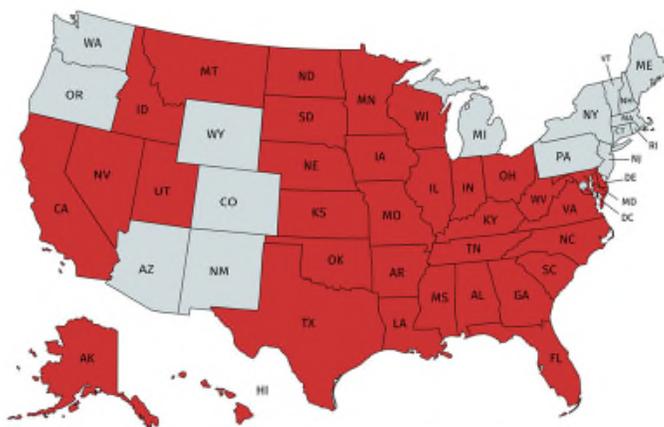


Caitlin A. Anderson

Associate
canderson@bsk.com
Albany, NY



3



4

Executive Order 202.60

- Travel Advisory Paid Leave
 - Employee may qualify for paid leave if the employee traveled to a state **before** it was placed on the travel advisory list.
- Effective September 4



5

Executive Order 202.61

- Schools: must report daily all COVID-19 testing/diagnoses among students, teaching staff, employees, volunteers.
- “Licensed professionals” administering COVID-19/flu tests must now ask:
 - (1) if the individual attends school and if so, where?
 - (2) where does the individual work?
 - (3) whether the individual works/volunteers at a school?
- This information must be reported to DOH.



6

Executive Order 202.61

- Municipalities: boards of election must develop a plan to allow registered voters to drop off absentee ballots at the board of election, early voting location, or election day polling place.
 - These voters must be in a line separate from the in-person voters.
 - Plans must be submitted to the State Board of Elections by September 21, 2020.



7

DOL Revised FFCRA Regulations



Jessica C. Moller

Member
jmoller@bsk.com
Garden City, NY



Theresa E. Rusnak

Associate
trusnak@bsk.com
Rochester, NY



8

Introduction

- On August 3, 2020, a judge in the Southern District of New York struck down four parts of the FFCRA regulations in *New York v. U.S. Dep't of Labor*.
- On September 11, 2020, DOL released revised regulations in response to the decision.
- Revised regulations are effective immediately.



9

Work Availability

- DOL Original Rule: Employees are not entitled to FFCRA leave, even if they experience a qualifying event, if the employer does not have work for them to do.
- Court Ruling: Employees are entitled to FFCRA even when their employers do not have work for them, if they experience a qualifying event.
- DOL Response: DOL declined to revise its original rule. Work must be available for an employee to use FFCRA leave.



10

Intermittent Leave

- DOL Original Rule: Employer consent is required for intermittent leave under the FFCRA.
- Court Ruling: The DOL's regulations on employer consents were not sufficiently explained by the DOL, and therefore, employer consent could not be required.
- DOL Response: DOL declined to revise its original rule, and employer consent is still required for intermittent leave. **HOWEVER**, there is a notable exception with the hybrid schooling scenario.



11

Notice and Documentation

- DOL Original Rule: Employers could require documentation of the need for leave.
- Court Ruling: Documentation cannot be required as a pre-condition of granting the leave.
- DOL Response: DOL revised its regulations, and now, documentation can be required as soon as practicable.
- Special Note: Notice of the reason for leave can only be required after the first day of EPSL.



12

Health Care Provider

- DOL Original Rule: Any individual who worked for a health care entity was a health care provider, and thus, exempt from the FFCRA.
- Court Ruling: DOL's definition of health care provider was too broad.
- DOL Response: DOL revised its regulations, and now, health care provider is limited to those who provide diagnostic services, preventative services, treatment services and/or other services that are integrated with and necessary to the provision of patient care.



13

New Regulations: EPSL

- Clarifies (3): Advised by a healthcare provider to self-quarantine
 - Advise to self-quarantine must be based on a belief that:
 - Employee has or may have COVID-19; or
 - Employee is particularly vulnerable to COVID-19; and
 - Following the advice of the provider prevents the employee from being able to work
- Clarifies (4): Seeking medical diagnosis for COVID-19
 - Employee may take leave if the employee has: fever, dry cough, shortness of breath, or any CDC- described COVID-19 symptoms, and
 - Leave is limited to the time an employee needs to obtain the medical diagnosis (such as waiting for test results or an appt.).



14

New EEOC COVID Guidance



Erin S. Torcello

Member
estorcello@bsk.com
Buffalo, NY



15

COVID Litigation Update



Curtis A. Johnson

Member
cjohnson@bsk.com
Rochester, NY



16

Update from Albany

Caiti Anderson, canderson@bsk.com

DOL Revised FFCRA Regulations

Jessica Moller, jmoller@bsk.com

Theresa Rusnak, trusnak@bsk.com

New EEOC COVID Guidance

Erin Torcello, estorcello@bsk.com

COVID Litigation Update

Curt Johnson, cjohnson@bsk.com



17

The information in this presentation is intended as general background. It is not to be considered as legal advice. Laws change often and information becomes rapidly outdated.

All rights reserved. This presentation may not be reprinted or duplicated in any form, without the written authorization of Bond, Schoeneck & King PLLC.



18