



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

A Bond Webinar Series
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Introduction



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Update from Albany

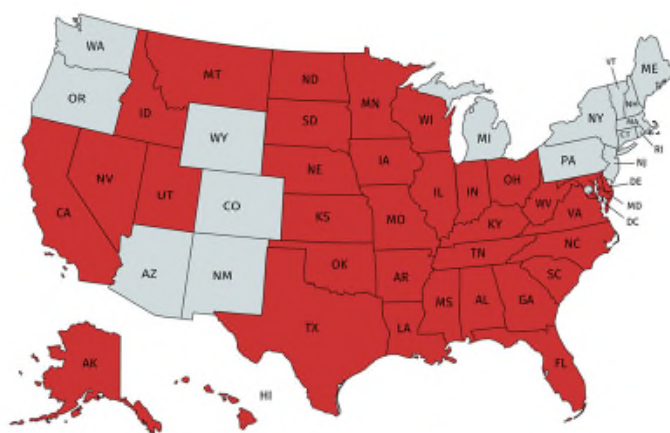


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Executive Order 202.60

- 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



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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.



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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.



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DOL Revised FFCRA Regulations



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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.



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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.



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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.



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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.



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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.



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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.).



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New EEOC COVID Guidance



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COVID Litigation Update



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Update from Albany

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