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Since the Families First Coronavirus Response Act was signed on March 18, 2020, employers of health care providers have wondered how much of their workforce would be eligible for paid sick leave and emergency FMLA leave. (Our prior blog post on this topic is available here.) Just in time for the April 1 effective date of the FFCRA, the Department of Labor has provided new guidance. (The guidance is available here)

While existing FMLA regulations provided exemptions for a number of specific provider types, many employees of health care facilities would not have been exempt. Under the DOL’s updated guidance, the health care exemption applies to everyone employed at a:

- doctor’s office
- hospital
- health care center
- health clinic
- pharmacy
• post-secondary educational institution offering health care instruction
• medical school
• nursing facility
• retirement facility
• nursing home
• home health care provider
• facility that performs laboratory testing
• facility that performs medical testing
• local health department or agency

The guidance also includes a catch-all category for employers similar to the listed employers. Further, the guidance allows exemptions for employees of entities that provide services to or maintain the operations of any of the employers listed above. **Accordingly, all clinicians and non-clinical staff members working for health care employers or their contractors / vendors are exempt – they do not qualify for either paid sick leave or emergency FMLA leave under the FFCRA.**

While the definition of health care provider is quite broad, the DOL urges employers to “be judicious” in exempting workers apparently based on its concern that employees could spread COVID-19 if leave is not available. This guidance is an important reminder to employers to consider how their policies may influence whether an employee who is sick will feel incentivized to come to work.

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