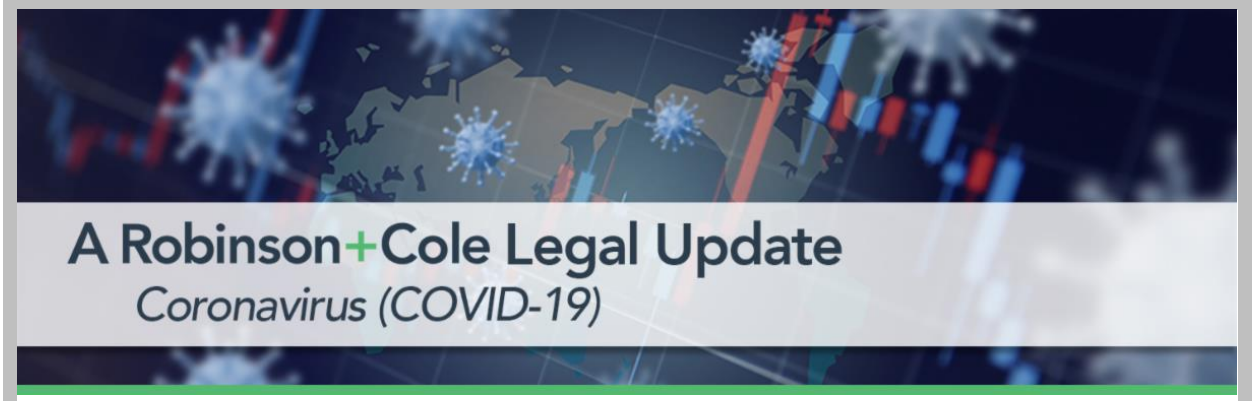

August 19, 2020

Federal District Court Expands Employee Paid Leave Rights Under FFCRA

A United States federal district court judge in the Southern District of New York struck down four regulations issued by the United States Department of Labor (DOL) limiting paid leave entitlements under the Families First Coronavirus Response Act (FFCRA). In the Court's August 3, 2020 decision, Judge J. Paul Oetken found the DOL exceeded its authority (a) by determining that employees were not entitled to paid leave if the employer determined no work was available, (b) broadly defining "health care provider," resulting in the exclusion of workers otherwise entitled to paid leave, (c) requiring an employer's consent before a worker could take intermittent leave, and (d) requiring workers to provide documentation prior to taking leave. *State of New York v. United States Department of Labor*, Case No. 20-CV-3020 (S.D.N.Y. Aug. 3, 2020), available here.

Adopted by Congress and signed by the President in March 2020, the FFCRA gives eligible employees paid and unpaid leave for up to 12 weeks for designated circumstances related to COVID-19, including leave to care for a child under the age of 18 whose school, place of care, or child care is closed due to a COVID-19-related reason. The cost of paid leave is offset by a dollar-for-dollar credit on federal withholding and payroll taxes. The FFCRA became effective April 1, 2020, and the DOL issued interim final regulations on April 6, 2020. Because many states had already implemented mandatory stay-at-home orders when the law became effective, many employers did not believe the paid leave entitlement was available to their workers. The DOL's regulations seemed to confirm this understanding, as the DOL took the position that workers were not entitled to paid leave if work was otherwise not available.

By invalidating that DOL's interpretation, however, the Court's decision potentially opens the door for workers to claim retroactive paid leave. In other words, the Court's decision potentially means that workers were entitled to paid leave even if their employer was closed because of a stay-at-home order or the individual was otherwise on a layoff.

This decision may have particular importance for employers handling employee requests for intermittent leave under the FFCRA that may be necessitated by school reopenings. Specifically, employees who are parents, guardians, and caretakers may need to request intermittent leave in situations in which their child's school opening plan results in the child engaging in remote learning at home for all or part of the school day or week. Under the DOL's interpretation, employers were strongly encouraged to provide intermittent leave under these circumstances, but were not required to do so. Under the Court's decision, employers would be required to provide such leave to eligible employees. Employers faced with these requests should consult competent employment counsel for assistance in navigating this issue and developing a response. This decision also may have particular importance for health care employers that relied on the DOL's definition of "health care provider." This decision, if applicable to health care employers, may allow employees whom those employers had excluded from paid leave to assert claims now for paid leave under the FFCRA.

The Court's ruling did not address the geographic scope of the ruling nor did the Court issue any injunctive relief against the DOL. The decision may be read narrowly, and confined to the parties within the Southern District of New York, or more broadly, and expanded to employers in other jurisdictions. It is unclear whether other courts will adopt or reject the Court's analysis and decision.

As of the date of this alert, no appeal or other action has been filed in the case. While an appeal seems likely and the DOL might seek to reissue the challenged regulations in a revised form, employers may wish to confer with legal counsel to assess the impact of the court's decision on past, current and future leave entitlements related to the FFCRA.

Robinson+Cole's Labor, Employment, Benefits + Immigration attorneys are ready to assist clients and friends with questions regarding the Families First Coronavirus Response Act (FFCRA).

Read more legal updates, blog posts, and speaking engagements related to this area on **Robinson+Cole's Coronavirus Response Team** page and feel free to contact any member of our team with questions.

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