

APTA – Guidance on CARES ACT – Related Labor Issues – PT/PTA Employment

The APTA continues to monitor member concerns with Labor Issues within the CARES ACT that have implications for employed PT and PTAs.

There are resources and guidance prepared by DOL regarding Families First Coronavirus Response Act (FFCRA). In [this DOL Q&A](#) (also copied below), question #56 addresses who is health care provider. (See also questions #38, which addresses employees eligible for this expanded leave, and #58, which addresses small businesses).

The DOL guidance of who constitutes a health care provider as outlined in question/answer #56 is much broader than the actual definition of health care provider in the statute and regulation that is referenced by Congress in FFCRA (Congress used the FMLA definition of health care provider). Under the FMLA statutory definition and interpreting regulation 29 CFR 825.125, physical therapy professionals are not explicitly identified as health care providers. As noted in 29 CFR 825.125, whether an employee physical therapist is considered a health care provider for purposes of FMLA depends upon whether the employer's group health plan or the employer accepts a physical therapist as eligible to certify a serious health condition when substantiating a claim for benefits. Per the statute and regulation, the only exempt employee health care providers from FFCRA are health care providers explicitly listed in the regulation as well as those that can assess a medical condition for purposes of certifying an FMLA-qualifying condition if a patient was seeking medical certification to take to their employer.

However, with this "broader" definition of health care provider as outlined in DOL's guidance in #56, it seems to allow employers to exclude anyone employed at a health care facility from paid sick leave and paid expanded FMLA leave, including PTs and PTAs in most scenarios, likely to enable health care providers to continue to operate and be adequately staffed to combat COVID-19.

That said, it is important to note that DOL *may end up narrowing their guidance* on who is considered a health care provider, particularly because it's much broader than that described in statute and regulation. So, DOL's guidance could be revised, and that needs to be closely monitored by employers and employees. In addition, even if an employer exempts a health care provider from receiving the expanded paid sick leave and paid FMLA leave under FFCRA, the employee may still be eligible for traditional unpaid FMLA leave or paid leave provided under other laws. Moreover, this exemption is optional and should be evaluated on a case-by-case basis. (DOL notes in #56 that "To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA").

DOL Guidance:

March 25:

- FFCRA Employee rights notice that employers are required to share:
 - https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- FFCRA Employee notice FAQs:
 - <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>
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March 24: Labor Department Provides More Information on Paid Sick Leave, FMLA Expansion

With requirements now in place for employers with 500 or fewer employees to provide paid sick leave and expanded FMLA benefits, the Department of Labor is rolling out guidance for both employers and employees. The latest resources — a [fact sheet for employers](#), a [fact sheet for employees](#), and a [questions and answers document](#) — shed light on a number of issues, including how to count hours for part-time employees, employee information on qualifying reasons for leave, and how small business can obtain exemptions from the mandates.

March 22: Labor Department Provides Information on Paid Leave Law, Fair Labor Standards Act

With the Families First Coronavirus Response Act now signed into law, the U.S. Department of Labor has published resources that explain the essential elements of the mandated paid leave now in place for employers of fewer than 500 people. Also included on the page: questions and answers about the Fair Labor Standards Act and the Family and Medical Leave Act.

March 22: Feds Announce Reimbursement Program for Employers Required to Provide Leave

The U.S. Treasury Department, Internal Revenue Service, and Department of Labor announced that small and midsize employers can begin taking advantage of two new refundable payroll tax credits, designed to immediately and fully reimburse them for the cost of providing coronavirus-related paid leave to their employees. The paid leave was mandated as part of the Families First Coronavirus Response Act signed into law on March 18. The relief measures include reimbursement for up to 80 hours of paid sick leave and expanded child care leave, with the Department of Labor asserting that the funds will be "quick and easy to obtain." Employers required to provide the leave also will be reimbursed for health insurance costs and will receive dollar-for-dollar tax offsets against payroll taxes. Employers with fewer than 50 employees are eligible for an exemption from the paid leave requirements. The labor department will be providing guidance to more clearly articulate this standard. Employers with 500 employees or more were not required to provide leave.

For more information, see: [DOL Resources: COVID-19 and the Workplace](#)

See also [Private Practice Section](#) resources:

- https://ppsapta.org/sl_files/F278F5E4-0C61-F272-DD9BC2C1F498D8CF.pdf
- <https://ppsapta.org/physical-therapy-covid-19.cfm>

FPTA will share additional guidance from APTA regarding DOL once it is available.

