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Update to Paid Leave of the Families First Coronavirus Response Act

On Friday, September 11, the U.S. Department of Labor (DOL) issued an [update to the temporary rule](#) they issued in April regarding coronavirus leave. This update changes the definition of health care workers. Employees defined as health care workers are not required to have paid sick leave. Other employees of providers are required to have paid sick leave and expanded family and medical leave. The details of the updated definitions and requirements are provided below. This applies to employers with fewer than 500 employees. Aggregation of employees across locations is possible in certain instances. This rule applies to nursing facilities and all long term care facilities which would include IDD and assisted living providers that meet the definitions in the rule.

Providers should work with their employment counsel to determine whether these leave provisions apply.

This revision was issued in response to a district court decision in New York which found part of the original rule invalid. The revisions impact the definition of a health care provider which can be exempted from paid leave and emergency family and medical leave expansion act (EFMLEA) requirements. The new definition is limited to those providing health care services and those reporting to health care providers. This definition includes employees who may not directly interact with patients but provide services that are integrated with and necessary for the provision of patient care. Examples of duties considered necessary for patient care include bathing, dressing, and feeding a patient/resident who cannot perform the activity independently. For assisted living, this could include direct care providers, CNAs, personal care assistants, or other titles providing direct care to residents. Previously, all employees, regardless of job activity, in a health care facility were included in the broad definition of health care provider and thus excluded from the paid leave requirements.

DOL defines covered employees as “employees who do not provide health care services, even if their services could affect the provision of health care services.” Examples include building maintenance staff, human resources personnel, cooks, food services workers, and records and billing staff.

Covered paid sick leave for non-health care staff includes:

- Up to two weeks of COVID-19-related paid sick leave if an employee is
 - Under quarantine order from a government entity (local, state or federal);
 - Advised by a health care provider to self-quarantine;
 - Experiencing symptoms of COVID-19 and seeking medical diagnosis;
 - Caring for another who meets any of the above conditions; or

- Caring for a child whose school or childcare provider is closed due to COVID-19-related reasons.

EFMLEA for non-health care staff includes:

- Up to 12 weeks of expanded family and medical leave, some of which is paid in certain circumstances, if unable to work due to need to care for a child whose school or childcare provider is closed due to COVID-19-related reasons.

Currently, the coronavirus leave requirements are in place through December 31, 2020. Members should familiarize themselves with these [new requirements](#) which go into effect on Wednesday, September 16.

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