**Department of Labor revises regulations that implemented the FFCRA paid sick leave and expanded family and medical leave provisions**

**Background**

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers (generally those who employ fewer than 500 employees) to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions apply from the effective date through December 31, 2020. Under the FFCRA, health care providers and emergency responders may be excluded by their employer from emergency paid sick leave and/or expanded family and medical leave.

The Department of Labor issued its initial temporary rule implementing provisions under the FFCRA on April 1, 2020. In implementing these provisions, the DOL adopted a broad definition of health care provider. See APTA's April 3, 2020 story.

On August 3, a New York federal court judge invalidated several pieces of U.S. Department of Labor guidance on limitations of the Families First Coronavirus Response Act. The DOL guidance provided avenues for employers to deny paid time off mandated in the act to certain employees and in certain circumstances — one such exemption being an employee's status as a "health care provider." In **the ruling**, the judge declared the provisions invalid, declaring that the DOL guidance exceeded its scope of authority. The act's paid time off and family leave provisions apply to employers with fewer than 500 employees

On September 11, the U.S. Department of Labor's Wage and Hour Division posted revisions to regulations that implemented the paid sick leave and expanded family and medical leave provisions of the Families First Coronavirus Response Act. The revisions made by the new rule clarify workers' rights and employers' responsibilities under the FFCRA's paid leave provisions, in light of the U.S. District Court for the Southern District of New York's August 3, 2020 decision that found portions of the regulations invalid.

To summarize, the revisions do the following:

- Reaffirm and provide additional explanation for the requirement that employees may take FFCRA leave only if work would otherwise be available to them.
- Reaffirm and provide additional explanation for the requirement that an employee must have employer approval to take FFCRA leave intermittently.
- **Revise the definition of "health care provider" to include only employees who meet the definition of that term under the Family and Medical Leave Act regulations or who are employed to provide diagnostic services, preventative services, treatment services, or other services that are integrated with and necessary to the provision of patient care which, if not provided, would adversely impact patient care.**
- Clarify that employees must provide required documentation supporting their need for FFCRA leave to their employers as soon as practicable.
- Correct an inconsistency regarding when employees may be required to provide notice of a need to take expanded family and medical leave to their employers.

The revisions to that temporary rule will become effective immediately upon publication in the Federal Register.

**What this means:**

As noted above, DOL has amended the definition of health care provider for purposes of the Families First Coronavirus Response Act emergency paid sick leave and expanded family and medical leave provisions; DOL adopted a revised definition of *health care provider* for purposes of the employer's optional exclusion of employees who are health care providers from FFCRA leave. DOL's revised "health care provider" definition is clear that employees it covers must themselves must be capable of providing, and employed to provide diagnostic, preventative, or treatment services or services that are integrated with and necessary to diagnostic, preventive, or treatment services and, if not provided, would adversely impact patient care.

PTs and PTAs were considered health care providers under the previous DOL regulations on FFCRA (issued April 1, 2020). Under the newly revised DOL regulation, **PTs and PTAs employed to provide health care services** fall under the definition of health care provider whose employers *may elect* to exclude from taking expanded paid leave or emergency sick leave under the FFCRA.

**Note:** The revised definition of health care provider as described above applies only for the purpose of determining whether an employer **may elect to exclude an Employee from taking leave under the FFCRA [Emergency Paid Sick Leave Act and/or the Emergency Family and Medical Leave Expansion Act].** This definition does not otherwise apply for the purposes of the FMLA. Nor does it identify health care providers whose advice to self-quarantine may constitute a qualified reason for paid sick leave under FFCRA section 5102(a)(2).

Questions can be sent to advocacy@apta.org