The DOL Defines the "Emergency Responder" and "Health Care Provider" Exemption from FFCRA

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With the April 1, 2020, effective date of the Families First Coronavirus Response Act (FFCRA) looming, the Department of Labor (DOL) on Saturday afternoon, March 28, 2020, issued critical new guidance defining which employees can be considered an "emergency responder" or "health care provider" and thus exempted by employers from FFCRA coverage. The full guidance, "Families First Coronavirus Response Act: Questions and Answers" can be found here. The guidance specifically related to the definitions of "emergency responder" and "health care provider" are Questions 56 and 57 in the guidance and are re-printed below for convenience.

> **Question 56: Who is a "health care provider" who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?**
> For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.
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> This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19. 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.

Question 57: Who is an emergency responder?
For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

Local governments are strongly encouraged to work closely with their corporation counsel, municipal attorney or outside counsel to carefully craft the materials necessary to implement the FFCRA leaves, including identification of employees and positions that are "emergency responders" or "health care providers" and exempt from the new requirements imposed by the FFCRA.

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