

# UPDATE: New Regulations Define Broadly Health Care Providers Excluded from Paid Expanded Medical Leave and Paid Sick Leave Requirements



**Megan Hargraves**  
mhargraves@mwlaw.com  
(501) 688.8871



**Nathan Read**  
nread@mwlaw.com  
(479) 464.5663

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In the wake of phase three of coronavirus relief in the form of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), lawmakers are discussing phase four. For this update, however, we go back to phase two, the Families First Coronavirus Response Act (FFCRA). The FFCRA contains several important provisions that require employers to offer paid leave for employees unable to work due to issues related to coronavirus (or COVID-19), whether through illness, quarantine, illness of a family member, or school closures. [Read our update on FFCRA](#) and its implications for employers.

Though the FFCRA created a “special rule” for health care providers—allowing their employers the discretion to exclude them from paid sick time and leave requirements—it did not define the term health care provider. Instead, Congress referred to the Family and Medical Leave Act (FMLA) definition, which includes doctors and anyone determined by the Secretary of Labor to be capable of providing health care services, and granted the Secretary of Labor the authority to issue regulations to exclude “certain healthcare providers” from the definition of employee. On April 1, 2020, the Secretary of Labor issued temporary regulations and exercised his authority from Congress, issuing regulations broadly defining “health care provider.”

The regulations define health care provider to include anyone employed at any hospital, health care center clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. The regulations do not limit the definition of health care provider to those employees directly involved in patient care and treatment. Instead, the regulations broadly define health care provider based on the employer, rather than the job duties of the employee.

In addition to issuing regulations, the DOL updated its [questions and answers](#) page to address who is a health care provider. The definition includes any individual employed by an entity that contracts with any of the institutions, employers, and entities listed in the regulations. It further includes anyone employed by any entity that is involved in making COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This could conceivably include factory workers employed by a manufacturer creating personal protective equipment. If those factory workers are health care providers

under the FFCRA, the manufacturer would have the discretion deny them paid expanded medical leave and paid sick leave even if the manufacturer were otherwise a covered employer.

The DOL emphasizes: "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."