Engage PEO Client Alert:

Federal Court Strikes Down Provisions of Families First Coronavirus Response Act (FFCRA)

On August 3, 2020, a federal court in New York struck down certain key provisions of the Department of Labor's (DOL's) Final Rule containing implementation guidance for the FFCRA in a lawsuit brought by the State of New York. This suit challenged the DOL's interpretation of how certain provisions would be implemented, impacting entitlement to benefits under the Emergency Paid Sick Leave Act (EPSL) and Emergency Family Medical Leave Act (EFMLA) for a number of employees.

What Provisions are at Issue?

Availability of Work - The DOL's original guidance provided that if the employer does not have work available for the employee, they will not be entitled to leave. For example, if the employer had to close its doors and/or reduce staff, resulting in furloughed employees, those employees would not be entitled to paid leave under the FFCRA. The federal court's decision overturned this provision, therefore opening the door to furloughed employees being able to take paid leave for qualifying reasons under the FFCRA.

Healthcare Provider Exclusion - The healthcare provider exclusion for paid leave under the FFCRA provides that any employee employed in a myriad of healthcare-related businesses would be not be entitled to paid leave. The lawsuit called into question the overly-broad nature of the definition of "health care provider," suggesting that those employees who are not directly involved in providing care should not be excluded, such as those working in the cafeteria of a health care facility, or a librarian at a medical school. The federal court's decision, therefore, "requires at least a minimally role-specific determination."

Employer Consent for Intermittent Leave - Under the existing guidance, intermittent leave can only be taken if two primary criteria are met: 1) if there is no risk of spreading the virus by taking intermittent leave (such as when leave is taken to care for a child whose school or childcare has been closed due to COVID-19, or where the employee is able to work remotely if leave is taken because of exposure to or diagnosis of COVID-19); and 2) if both the employer and employee agree. The Court upheld the first prong of that analysis, however struck down the need for the employer to consent to intermittent leave.

Documentation as a Pre-Condition to Leave - Existing DOL rules provide that an employee must furnish the employer with documentation containing information regarding the reason for and duration of the leave prior to taking the leave. Under the Court's decision, an employer cannot require this type of documentation prior to taking leave. Nevertheless, the Court's decision did not alter the overall provision that documentation is required to support an employee's request for leave.

What Happens Next?

It is still unclear to what extent this decision will apply nationwide, but, absent further action from the DOL, it will at least apply in New York. The DOL may appeal this decision, which could include a stay of the decision while the appeal is pending. Alternatively, the DOL could amend its official guidance and interpretations of the FFCRA and re-issue guidance that complies with the order. **Engage will continue to monitor the situation closely and notify clients of any further activity regarding this case.**

If you have questions, please contact your Engage HR Consultant.