

## **Update re Families First Coronavirus Response Act (FFCRA) - Department of Labor Expands Benefits to Parents of Adults with Disabilities**

The US Department of Labor (DOL) has issued a regulations implementing the sections of the Families First Coronavirus Response Act (FFCRA) that expand paid leave and family and medical requirements under the Family and Medical Leave Act (FMLA) through December 31, 2020. Division E of the FFCRA, “The Emergency Paid Sick Leave Act” (EPSLA), entitles certain employees to take up to two weeks of paid sick leave, and Division C of the FFCRA, “The Emergency Family and Medical Leave Expansion Act” (EFMLEA), permits certain employees to take up to twelve weeks of expanded family and medical leave, ten of which are paid, for specified reasons related to COVID-19. DOL’s regulations indicate that these benefits will be extended to parents who have to step in to care for an adult with a disability whose program has closed or care worker is sick.

While early drafts of FFCRA expressly extended these benefits to anyone who needed to support an adult friend or family member with a disability whose usual supports were unavailable due to COVID-19 related issues, the final version removed that provision. However, DOL is using its authority to determine that such individuals will be eligible for the benefits under both sections, but only if they are a parent of the adult they are caring for.

DOL recognizes that the EFMLEA defines “qualifying need related to a public health emergency” as a need for leave “to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.” This definition, DOL says, “can be read to narrow the FMLA definition of son or daughter, which includes children under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.” Meanwhile, DOL points out, the FMLA definition of “son or daughter” when, among other things, the employee is unable to work because the employee is caring for a son or daughter of the employee if: “(a) The school or place of care of the son or daughter has been closed; or (b) the child care provider of such son or daughter is unavailable, due to COVID-19 related reasons.” DOL “believes it would create needless confusion and complication to have different rules under the EFMLEA and the EPSLA for when an employee may take leave to care for his or her son or daughter whose school or place of care is closed or child care provider is unavailable due to COVID-19 related reasons,” and is therefore “treating the definitions as the same (i.e., to include children under 18 years of age and children age 18 or older who are incapable of self-care because of a mental or physical disability), pursuant to its statutory authority to issue regulations to ensure consistency between the EPSLA and the EFMLEA.”

Another reason for paid sick leave applies “where an employee is unable to work because he or she needs to care for an individual who is either: (a) subject to a Federal, State, or local quarantine or isolation order; or (b) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.” This benefit does extend to people caring for adults, but may not be taken to care for someone with whom the employee has no personal relationship. Rather, the individual being cared for “must be an immediate family member, roommate, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined.” The

individual being cared for must: “(a) be subject to a Federal, State, or local quarantine or isolation order as described above; or (b) have been advised by a health care provider to self-quarantine based on a belief that he or she has COVID-19, may have COVID-19, or is particularly vulnerable to COVID-19.”

The regulations are available at <https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>.