



CLIENT ALERT:

**Court Strikes Down U.S. Department of Labor's
Expansive Definition of "Health Care Provider;"
Limiting the Ability of Dentists to Deny Leaves of Absence to Their Employees
Under The Families First Coronavirus Response Act**

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In a May 6, 2020 memorandum to the R.I. Dental Association, we cautioned that the "health care provider" exemption from the employee-leave requirements of the Families First Coronavirus Response Act (the "FFCRA") might not apply to certain dental-office employees. This Client Alert is to call to your attention a recent federal court decision that has clarified the issue.

Today, in a case brought by the State of New York against the U.S. Department of Labor (the "DOL"), the U.S. District Court for the Southern District of New York held that the DOL's temporary rule, which expanded the definition of "health care provider" to cover any employee of a health care provider (as opposed to just certain licensed professionals) exceeded the DOL's authority.

Although dentists remain covered by the exemption (meaning that dentists *themselves* are not entitled to FFCRA leave), the Court's decision struck down the DOL's definition, which effectively covered "anyone employed by any entity that provides medical services."

To put it another way, the simple fact that an employee works for a dentist is no longer a reason, in and of itself, to deny the employee FFCRA leave. To be excluded from coverage, the employee needs to fit within the much narrower definition of "health care provider" under the Family and Medical Leave Act, which covers (among other categories of professionals) doctors, dentists, clinical psychologists, chiropractors, nurse practitioners, and physician assistants.

In light of this development, dentists should assume that hygienists, receptionists, bookkeepers, schedulers, x-ray technicians, and other "rank-and-file" employees are entitled to FFCRA leave; unless they do not otherwise qualify (for example, based upon the reasons for which the employees are requesting leave).

If you have further questions, please do not hesitate to contact us.

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