On March 18, 2020, Congress passed the *Families First Coronavirus Response Act (FFCRA)*, providing some employees up to 10 paid sick days and up to 12 weeks of family leave (with 10 of the weeks paid), in addition to other critical measures. This was the first time Congress required federal paid leave for private sector workers—an important first step in ensuring workers earning low wages have access to these benefits during the COVID-19 pandemic. Along with other guidance, the U.S. Department of Labor (DOL) issued a *Temporary Rule: Paid Leave under the Families First Coronavirus Response Act*, effective April 2 – December 31, 2020.

This fact sheet provides additional information about the impact of DOL’s guidance and temporary regulation on employees’ rights to paid sick days and paid family leave, beyond what is included in CLASP’s *Paid Sick Days and Paid Leave Provisions in FFCRA and CARES Act* fact sheet. Many of DOL’s interpretations of the FFCRA significantly undermine the law’s purpose to provide crucial paid sick days and paid family leave to workers who need to care for themselves and others because of COVID-19.

**Beneficial Guidance for Employees**

- Employees are eligible for up to 12 weeks’ paid leave to care for a *son or daughter* whose school or place of care is closed, or whose child care provider is unavailable because of COVID-19.
  - DOL interpreted *son or daughter* consistent with existing Family and Medical Leave Act (FMLA) regulations to include:
    - a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age; or
    - an adult son or daughter (18 years of age or older) who is incapable of self-care because of a mental or physical disability.

- Employees who are *subject to a government-mandated quarantine or isolation order* related to COVID-19 are eligible for up to 80 hours of emergency paid sick leave.
  - DOL has interpreted “*subject to a quarantine or isolation order*” broadly to include: quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any federal, state, or local government authority that cause the employee to be unable to work when a federal, state, or local government authority has advised categories of citizens (e.g., people of certain age ranges or with certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of employees to be unable to work even though their employers have work for them.

- All covered employers, including small businesses, and employers of health care providers and emergency responders, *must post a Notice of Rights*, even if they claim an exemption (as described below).
Problematic Guidance for Employees

- **Requirement that there be available work**
  - DOL has required that **an employer have work** for the employee as a precondition to taking paid sick or emergency family leave. This will significantly limit workers’ ability to benefit from the FFCRA, as government orders that close businesses will be the same orders that result in employees needing leave.

- **Intermittent leave requires employer consent**
  - DOL has allowed **intermittent leave only with the employer’s consent**.
  - The failure to require even good faith on the part of the employer in granting or denying intermittent leave could particularly harm workers. For example, a single mother who shares custody of a young child whose school is closed will likely require intermittent leave to care for that child. If her employer refuses her intermittent leave, even for illegitimate reasons, she may be unable to care for her child during the periods when she has custody.

- **Emergency family leave provides a new reason for leave under the FMLA, but not an additional amount of leave**
  - DOL has specified that the 12 weeks of emergency family leave for employees who need to care for a child whose school or child care provider is closed or unavailable will be **limited** by any FMLA leave an employee has already taken during the year. For employees who have already exhausted their FMLA leave, such as new parents, that means they may not be able to access this new benefit Congress created to respond to the pandemic, even though their employers will be reimbursed for providing the benefit, unlike regular FMLA, which is unpaid.
  - Additionally, employees who take 12 weeks to care for a child whose school is closed will not have access to any FMLA leave for the rest of the year.

- **Extensive employee documentation requirements**
  - DOL has subjected employees to numerous and extensive **documentation requirements** before employers must approve their leave (compared, for example, with allowing small employers to “self-certify” that they are not subject to the law’s mandate). In fact, under the DOL rules, employers can deny paid leave to an employee just because the employer has not yet collected information to obtain its tax credit for the leave.
  - The documentation requirements for workers include, for example, requiring an employee requesting paid sick leave for quarantines or isolation orders to provide the name of the government entity that issued the order, creating unnecessary barriers to workers’ ability to take leave.

Broad Exemptions and Opt-Outs will Deny Employees Access to Benefits

- **Small Business exemption** process will result in confusion and abuse
  - The FFCRA allowed DOL to exempt small businesses with less than 50 employees from providing leave to an employee to care for a child whose school is closed or whose child care provider is unavailable, when doing so would jeopardize the viability of the business.
  - DOL initiated a process where small businesses will “self-certify” that they are entitled to this exemption, without requiring them to certify they meet the standard for exemption or report any information to the government, meaning there will be no way to track how many employers are lawfully or unlawfully claiming the exemption.
DOL estimates that 96 percent of covered employers have less than 50 employees, so the impact of this decision will be far-reaching, potentially affecting up to 33 million workers.iii

- Overly broad definition of “health care provider” will exclude large groups of otherwise eligible workers
  - Recognizing the exigencies of the current public health emergency, Congress created a narrow exception in the FFCRA allowing employers of “health care providers” to opt out of providing their employees with paid sick days and emergency family leave. The DOL rules significantly broadened this exception, far beyond existing FMLA regulations, essentially allowing any health-care-related employer to opt out of providing leave for its employees, even those employees who don’t provide medical care. This means that paid leave, for example, can be denied to the cashier in a hospital gift shop or the financial staffer who processes payroll for a medical school.
  - DOL also included any individual employed by an entity that contracts with a health-care-related employer. This means that a person working for a janitorial service at a hospital could be excluded.
  - By DOL’s own estimates, this could take protections away from an estimated 9 million health care workers.

CLASP continues to advocate for Congress to fill the gaps in FFCRA that left out millions of working people and to pass permanent, national, comprehensive paid sick days and paid family and medical leave.

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