

## DOL GUIDANCE ON THE "HEALTH CARE PROVIDER" EXEMPTION

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Both the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act permit private employers with fewer than 500 employees to exclude employees who are health care providers from eligibility for paid sick time and expanded FMLA. However, neither Act provided any indication as to the employees who may fall within the scope of this exclusion. This weekend, the DOL published guidance on this issue, answering the question: "Who is a 'health care provider' who may be excluded by their employer from paid sick leave and/or expanded family and medical leave.

"Under the DOL guidance, the definition of "health care providers" for purposes of the exclusion is very broad, and it does not only include employees who are actually providing health care services.

As it relates to this exclusion, the DOL guidance states that "a health care provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity." The guidance states that health care provider also includes: (1) "any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions;" (2) any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility;" (3) "anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments;" and (4) "any individual that the highest official of a state . . . determines is a health care provider necessary for that state's . . . response to COVID-19."

The exemption is optional – employers may decide not to exercise it and provide paid sick time and/or expanded FMLA to their employees who fall within the definition of health care provider. Further, despite the broad definition, in order to minimize the spread of COVID-19, the DOL encourages employers to be judicious in applying the health care provider definition to exclude employees from the paid sick time and expanded FMLA.

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