More uncertainty ahead for employers after New York District Court strikes down parts of FFCRA regulations

August 5, 2020

On August 3, 2020, a federal district judge in New York struck down parts of the U.S. Department of Labor (DOL) regulations implementing the Families First Coronavirus Response Act (FFCRA), creating new uncertainties for numerous employers that have relied on those regulations over the past four months.

Generally, the FFCRA requires covered employers (those with fewer than 500 employees) to provide paid leave to employees who are unable to work or telework for reasons related to COVID-19. The FFCRA went into effect on April 1, 2020, and that same day, the DOL issued regulations seeking to interpret various requirements in the law. Countless employers have followed those regulations as they've attempted to navigate the FFCRA. Now, with five months remaining until the FFCRA sunsets on December 31, 2020, a federal court in New York has struck down four significant provisions of those regulations.

What did the court strike down?
The court struck down the following provisions of the DOL's regulations:

1. The work-availability rule explaining that leave is not available if an employer does not have work for the employee (e.g., the employee has been

Elizabeth C. Stock
Of Counsel
Cincinnati
513.870.6698
estock@bricker.com

furloughed or laid off).

2. The broad definition of "healthcare providers" whom employers may choose to exempt from the FFCRA's requirements.
3. The requirement that employees obtain employer consent to take leave on an intermittent basis when applicable.
4. The temporal requirement that documentation be provided before taking leave.

The decision did not impact any remaining parts of the DOL's regulations.

Why did the court strike down these provisions?
The State of New York, which filed the lawsuit against the DOL, argued that the DOL exceeded its rulemaking authority with these four provisions. According to the state, these provisions unlawfully block workers, who should otherwise be entitled to take leave under the FFCRA, from being able to do so.

What does this mean for employers?
It is not clear at this time whether the decision applies only to New York or whether it impacts employers nationwide. It is also unknown what, if any, action the DOL will take in response to the decision, such as issuing new rules or guidance, appealing the decision or seeking a stay. Employers should stay tuned for further developments and, in the meantime, consult with legal counsel before denying paid leave to an employee based on one of these provisions.