

Exclusion of Dentists and Dental Practices Under the Families First Coronavirus Response Act

The Families First Coronavirus Response Act (the “Act”) generally requires all employers with less than 500 employees to provide paid leave to eligible employees for various reasons related to the coronavirus (the “virus”).

The Act provides two basic exclusions or exemptions to employers from coverage of the Act, therefore relieving a non-covered employer of the obligation to provide the paid leave. However, it is unclear from the statute and the accompanying regulations whether dentists and dental practices are covered by the exclusions.

First, the Act itself provides that “an employer of an employee who is a health care provider ... may elect to exclude such employee from the application...” of the paid leave provisions. The Act does not define “health care provider.”

The United States Department of Labor (the “DOL”), the agency charged with enforcing the Act, has issued regulations intended to provide guidance and explanation to employers on complying with the Act. The DOL provided a definition of “health care provider” in its regulations, but dentists and employees of dental practices were not included in the definition. Neither the Act nor the accompanying regulations expressly include dentists and other dental practices and employees in the definition of “health care provider.”

Instead, the regulation states that for purposes of determining which employees may be exempted from Paid Sick Leave or Expanded Family and Medical Leave by their Employer under the Act, 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.**” (Emphasis added)

So, while the definitions nowhere discuss dentists or dental practices, under the definition above, such practice might be considered a “similar employer or entity.”

The DOL has issued no other written guidance specifically addressing dentists or dental practices. Therefore, there is no definitive legal written guidance regarding the question of whether dentists and dental practices are considered “health care providers” for purposes of exempting them from the requirements of providing paid leave.

However, a manager with the DOL has expressed his opinion verbally that based upon the language above, he believes that DOL would take the position **at this time** that dental practices and their employees would be considered to be “health care providers” within the meaning of the Act. Therefore, he said he does not believe the practices would be required to provide paid leave to their employees. Other employees of DOL have made similar statements. The manager stated that it would not be within DOL policy to provide this opinion in writing. Further, he stated that

other investigators may have differing opinions and that his opinion may change in the future, depending upon additional guidance from DOL.

As dental practices determine whether they want to assert this exemption, it is important to remember that while the one or more representatives of DOL may currently consider dental practices to be excluded from coverage, denial of leave may still result in an employee complaint to DOL or a lawsuit, wherein a judge, not the DOL, will determine coverage.

Practices may also want to determine whether they meet the eligibility criteria for the small business exemption of the Act, which is described in the Updated FAQs.

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