



COMPLIANCE CONSULTING  
GROUP, LLC

# Memorandum

March 31, 2020

*Please see below for Compliance Consulting Group's latest update as we continue to deal with the upheaval and uncertainty related to COVID-19.*

**Today's update is related to Families First Coronavirus Response Act requirements for nursing homes.**

As part of its objective to provide protections for those affected by the coronavirus, Congress passed the FFCRA on March 18, 2020. The President signed the FFCRA into law that very same day. The FFCRA requirements go into effect on or by April 2, 2020 and address paid sick leave and expanded family and medical leave for certain reasons related to COVID-19.

The FFCRA requires most employers with fewer than 500 employees to provide paid sick leave for those affected by COVID-19. It also requires most employers to provide family and medical leave for certain coronavirus-related situations, such as caring for a sick family member or caring for a child whose school or daycare was closed for reasons related to COVID-19.

Given the range of employers and industries affected by the COVID-19 pandemic, the FFCRA did identify certain situations in which the provisions of leave do not apply. Specifically, the regulation excludes "Healthcare Providers" from the paid sick leave and expanded family medical leave requirements. The text of the FFCRA, however, does not define who qualifies as a Healthcare Provider. Furthermore, the FFCRA does not address employees who are contracted to work for certain healthcare providers.

To address this ambiguity, the U.S. Department of Labor (DOL) issued a third round of Q&As aimed at clarifying the provisions of the FFCRA. In FAQ #56, the DOL explains that all individuals employed at a nursing home or nursing facility are considered to be Healthcare Providers and are therefore excluded from the FFCRA-mandated sick, family and medical leave. The DOL also explained that the definition of Healthcare Provider includes anyone employed at an entity that contracts with a nursing home or nursing facility to provide services or to maintain the operation of the facility.

The text of the DOL FAQ is as follows:

*"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. This definition includes **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.**" [emphasis added].*

That said, the DOL asks employers to be mindful of the dangers of COVID-19 and to help minimize the spread through judicious application of the Healthcare Provider exclusion from FFCRA requirements.