

INDIANA LAWSUIT SEEKS TO PREVENT EMPLOYER FROM DENYING PAID LEAVE UNDER FFCRA

As expected COVID-19 related litigation steadily increases, a lawsuit recently filed in the Northern District of Indiana presents a novel approach regarding the potential applicability of the Families First Coronavirus Response Act (the "FFCRA") to large employers who are otherwise *not* covered under the FFCRA.

The employer, with more than 500 employees, was not a covered employer under the FFCRA. However, it chose to amend its "Emergency Leave Guidelines" to permit employees affected by COVID-19 to be eligible for up to 14 paid days off. The employer also voluntarily chose to amend its attendance policy, temporarily suspending attendance points for COVID-19 related absences so long as employees provide appropriate medical documentation that absences were for COVID-19 related reasons.

The employee plaintiff alleged she was advised by a physician to self-isolate for 14 days due to COVID-19 related symptoms. The employee plaintiff's live-in boyfriend, who also worked for the employer, was allegedly advised to self-isolate due to the plaintiff's symptoms as well. The employee and her boyfriend contacted HR after noticing that their paychecks were lower than normal.

It's difficult to determine from the complaint, but there appears to be a question of whether the plaintiff provided appropriate medical documentation. Judging by the defendant's actions, it's possible plaintiff and her boyfriend never provided the documentation and were instead allowed to use accrued PTO and, since Plaintiff didn't have any PTO she was terminated. Regardless, the factual allegation in the Complaint was that they noticed their checks were lower than normal so they contacted HR.

HR eventually permitted the plaintiff's boyfriend to utilize accrued vacation time to avoid accumulating attendance points for his absences. Plaintiff, however, did not have any accrued vacation time to cover her absences and was therefore terminated.

The terminated employee plaintiff filed a lawsuit alleging, among other things, that her large employer defendant could not deny its employees paid sick leave for COVID-19 related issues under the FFCRA because it previously *represented* to employees that they were entitled to the same protections afforded by the FFCRA. This lawsuit highlights the uncertainties and potential pitfalls employers face with navigating and implementing new policies and procedures in response to the COVID-19 pandemic to ensure employee safety.

PRACTICAL TAKEAWAYS

This lawsuit illustrates an unfortunate consequence for employers attempting to proactively broaden employee protections that in some cases, clearly backfire despite good underlying intentions. Employers must be cognizant of (1) attempting to uniformly enforce policies that are new but not mandated by law; (2) alternate attendance point system applications during times of policy amendment; and (3) trying to err on the side of granting leave to prevent the spread of COVID-19 and prevent costly and burdensome litigation.

If you have any questions, please contact:

- **Larry Jensen** at (248) 457-7850 or ljensen@hallrender.com;
- **Jake Kolisek** at (317) 977-1428 or jkolisek@hallrender.com; or
- Your regular Hall Render attorney.

Hall Render's attorneys and professionals continue to maintain the most up-to-date information and resources at our [COVID-19 Resource page](#), through our 24/7 COVID-19 Hotline at (317) 429-3900 or by contacting your regular Hall Render attorney.

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