



State Association Executives

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Important: Health Care Provider Exemption

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[Barbara Merrill](#)

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Dear ANCOR members,

As Shannon McCracken, VP of Government Relations, shared with our membership last week, we have been lobbying the nation's governors and the U.S. Department of Labor (US DOL) to include I/DD provider employees as "necessary" and/or "essential", and as "health care providers" who may be exempt from the paid sick leave provisions of the Families First Coronavirus Response Act. On 3/19 we wrote to Governor Hogan (MD), chair of the National Governor's Association, and engaged the services of a national labor and employment law firm to advocate with the Department of Labor on our behalf. We can re-post these letters if that would be helpful.

On Saturday evening, the U.S. Department of Labor updated their website to provide guidance to employers and employees on provisions of the paid leave provisions included in the Act. The [Frequently Asked Questions](#) included the following question (the bolded emphasis is mine):

56: Who is a "health care provider" who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?"

*For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, 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 includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.*

*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. This also includes 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. **This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19.***

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

As we have been analyzing this guidance, we have obviously been following the conversation on the ANCOR Forum with great interest. Some members have questioned whether the guidance is explicit enough to rely upon. We are informed that the Secretary's intent was to ensure the guidance/definition was written broadly to include our sector and others, as evidenced by the inclusion of "any similar institution, employer, or entity". DOL's FAQ also appear to capture employees in those states where our providers have been deemed essential or necessary for a state's response to COVID-19.

But I must be very clear at this juncture: ANCOR does not, and cannot, provide legal advice specific to any particular set of circumstances. For a determination of whether your employees are exempt, you should consult with your own legal counsel.

Secondly, please be fully assured that we continue to engage with the Department of Labor on this topic.

Last, but not least, that's where the inclusion of the second highlighted sentence is also important. It grants broad authority to the nation's governors/highest officials to determine individuals that are health care providers. This provides ANCOR at the national level, but most importantly, ANCOR members at the state, district and territory level, an important opportunity to obtain even more explicit guidance. State associations are leading on this work; if you have questions, please contact your state trade association. Our membership includes 47 state associations, and this group of state association executives, supported by Donna Martin, Director of State Partnerships and Special projects, has been robustly sharing with each other the best examples of state level emergency waivers/Appendix Ks, gubernatorial orders that designate DSPs and other staff as essential for the purposes of travel – and now this specific issue.

Please stay tuned, we are working diligently to provide you with reliable information. Sometimes that's why we refrain from immediately posting information until we have a chance to digest or clarify. Guidance from multiple sources is finally coming fast and furiously – not a moment too soon. ANCOR staff updates our COVID-19 resources page daily, and we are currently working to organize it by sections to be more reader friendly. I recommend you visit it daily, but specific to this topic, if you haven't already, please [bookmark the USDOL website](#) for the answers to many, if not most, of the paid leave questions that members have been posing on this ANCOR Forum.

With enormous gratitude for entrusting ANCOR to represent you,

Barbara

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