**Brian P. Kemp**

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# FAMILIES FIRST CORONAVIRUS RESPONSE ACT FFRCA LEAVE EXCLUSION PROCESS

In accordance with the Families First Coronavirus Response Act (FFCRA), designated healthcare providers and/or emergency responders may be excluded from the leave provisions of the Families First Coronavirus Response Act (FFCRA). The U.S. Department of Labor has developed definitions that describe what is a healthcare provider and emergency responder (Appendix A). These definitions also provide examples of common position titles which may be eligible for exclusion from the leave provisions of the FFCRA.

# EXCLUSION PLAN REVIEW PROCESS

Agency heads have been granted the authority to exclude applicable healthcare provider and/or emergency responder positions from the leave provisions of the FFCRA. If your agency is considering applying exclusions, a FFCRA Leave Exclusion Plan must be submitted to the Department of Administrative Services, Human Resources Administration (HRA) **prior** to implementing the plan. Below is a brief outline of the FFCRA Leave Exclusion Process:

1. The plan must indicate the total number of positions that will be affected by the exclusion by Job Family and Job Code. HRA has developed a template that Agencies can use to develop their plan. It is available on the HRA COVID-19 webpage. **NOTE:** *In order to minimize the spread of COVID-19, agencies should be judicious and selective when identifying positions for exclusion*.
2. Agencies must email the plan to HRAPolicy@doas.ga.gov for review and comment.
3. HRA will review the plan and supporting documentation and consult with the respective agency in order to provide comments and recommendations about the plan.
4. The plan and HRA comments will be forwarded to the Office of Planning and Budget (OPB) for further review and comment.
5. As part of the plan implementation, agencies must provide notification to all active incumbents in affected positions of the position’s exclusion from the leave provisions of the FFCRA.

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# APPENDIX A

**“Healthcare Provider”** For the purposes of defining the set of employees who may be excluded from taking paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider includes two groups. This first group is anyone who is a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA. The second group is any other person who is employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care. This group includes employees who provide direct diagnostic, preventive, treatment, or other patient care services, such as nurses, nurse assistants, and medical technicians. It also includes employees who directly assist or are supervised by a direct provider of diagnostic, preventive, treatment, or other patient care services. Finally, employees who do not provide direct heath care services to a patient but are otherwise integrated into and necessary to the provision those services—for example, a laboratory technician who processes medical test results to aid in the diagnosis and treatment of a health condition—are health care providers.

A person is not a health care provider merely because his or her employer provides health care services or because he or she provides a service that affects the provision of health care services. For example, IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers are not health care providers, even if they work at a hospital of a similar health care facility.

“**Emergency Responder”** For purposes of what employees may be exempted from being eligible to take emergency paid sick leave or emergency family and medical leave, emergency responder means an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.