

FYI[®]

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DOL issues FFCRA guidance on camp closures

Among other things, the Families First Coronavirus Response Act requires covered employers to provide emergency paid leave to employees who are unable to work due to the closure of their child's school or place of care for COVID-19 related reasons. Recent DOL guidance confirms that such leave is available when summer camps or enrichment programs are closed or cancelled for those reasons.

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Background

On March 18, the president signed into law [H.R. 6201](#), the Families First Coronavirus Response Act (FFCRA). (See our [March 19, 2020 FYI Alert](#).) Among other things, the FFCRA requires private employers with fewer than 500 employees and governmental employers of any size to provide emergency paid family and medical leave and paid sick leave to employees for reasons related to the coronavirus outbreak and establishes employer tax credits to help cover the cost of paid leave. (See our [March 18, 2020 FYI](#).)

Since March, the DOL's Wage & Hour Division (WHD) has issued FFCRA guidance on a rolling basis in the form of questions and answers (Q&As) that address critical questions for employers including employee eligibility for paid leave under the new law. (See our [March 26, 2020 FYI](#).) WHD guidance has made clear that an employee who is unable to work — in person or remotely — because their child's school or "place of care" is closed or unavailable due to COVID-19 related reasons would be eligible under the FFCRA for paid sick leave and expanded family and medical leave unless the employer qualifies for a small business exemption. On April 1, WHD issued temporary regulations implementing the leave provisions, and subsequent corrections on April 10.

Summer camp and other program closures

On June 26, the WHD expressly addressed whether and when the FFCRA entitles an employee to take leave to care for their children who are unexpectedly at home for the summer due to the closure

of a summer camp, summer enrichment program, or other summer program for COVID-19 related reasons. In Field Assistance Bulletin No. 2020-4 (FAB), the WHD makes clear that summer camps and summer enrichment programs are considered “places of care” for purposes of the FFCRA since they are physical locations that provide child care while the employee works. The FAB further clarifies that, under the FFCRA, a summer camp or program may be “closed” if some children who otherwise would have attended the camp or program cannot because it is operating at a reduced capacity due to COVID-19.

Determining place of care

Unlike schools and day care centers, many summer camps and programs closed in response to COVID-19 before children began to attend and/or enroll. Even though these camps and programs would not have been operating in April, the regulations expressly provide that they still may qualify as places of child care for FFCRA leave purposes. The FAB recognizes several ways in which an employee can establish eligibility for such leave.

Enrollment

A closed summer camp or program may qualify as a place of care if the child was enrolled in the camp or program before the closure was announced. Affirmative, pre-closure steps toward enrollment — such as submitting an application, providing a deposit, or signing up for a waitlist pending reopening — or other evidence of a plan for the child to attend the camp or program had it not closed or cancelled programming due to COVID-19 may also be sufficient. However, a parent’s interest in a camp or program alone will generally not suffice.

Prior attendance

A child’s attendance at a summer camp or program in prior summers may also indicate that it would have been the child’s place of care this summer had it not closed, but only if the child continues to satisfy any age or other applicable qualifications to attend. In determining whether a camp or program would have been the place of care this summer but for COVID-19, employers may consider the child’s attendance history. For example, a child’s participation in the same camp or program year after year may satisfy the place of care standard. However, participation years ago would not be sufficient without further evidence that the child intended to attend this year.

Supporting the need for leave

The FAB emphasizes that all employees who request FFCRA leave must provide information, either orally or in writing, to support the need for leave and the reason why the employee is unable to work. If the reason is related to the closure of a summer camp, summer enrichment program, or other summer program, the employee must also provide the child’s name, the name of the camp or program that would have been the place of child care had it not closed, and a statement that no other suitable person is available to care for the child.

In closing

As the FAB acknowledges, there is no one-size-fits-all rule establishing employee eligibility for FFCRA leave in light of summer camp and program closures this summer. Rather, employers will be left to determine in each case whether the camp or program would have been the child's place of care but for COVID-19 related reasons.

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