

Department of Labor Issues Bulletin on FFCRA Leave in Light of Summer Camp and Program Closures

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On June 26, 2020, the U.S. Department of Labor's Wage and Hour Division ("WHD") issued [Field Assistance Bulletin \("FAB"\) No. 2020-4](#), providing guidance on when an employee may take leave pursuant to the Families First Coronavirus Response Act ("FFCRA") to care for their child whose summer camp, summer enrichment program, or other summer program is closed for COVID-19 related reasons.

We first wrote about the FFCRA, which includes the Emergency Paid Sick Leave Act ("EPSLA") and the Emergency Family and Medical Leave Expansion Act ("EFMLEA"), [here](#), and we have followed the WHD's [question and answer guidance](#) ("FAQ") on the FFCRA [here](#), [here](#), and [here](#). You can also find detailed posts about the FFCRA regulations implementing the EPSLA and the EFMLEA [here](#) and [here](#). The FFCRA applies only to employers with fewer than 500 employees, and employees are only eligible for FFCRA leave if the reason for leave renders them unable to work (whether in-person or remotely) during the requested leave period.

Under the FFCRA, a covered employee may take up to two (2) weeks of EPSLA leave and up to twelve (12) weeks of EFMLEA leave (which may be inclusive of the EPSLA leave), to care for a child whose school or place of care is closed due to COVID-19 related reasons. The FAB first states that "summer school" or other academic work during the summer required and provided by the school attended by the child during the academic year is treated as the child's "school" for purposes of the FFCRA.

The FAB further states that summer camps and summer enrichment programs are considered "places of care" under the FFCRA because they are physical locations in which care is provided for the employee's child while the employee works. The FAB also notes that a summer camp or program may be "closed" for FFCRA purposes if it is operating at a reduced capacity due to COVID-19, such that some children that would have attended the camp or program this summer may no longer do so.

The FAB goes on to note that, unlike schools and day care centers, many summer camps and programs closed in response to COVID-19 before any children began to attend and, in some cases, before they began to enroll. However, the regulations specifically recognize that summer camps and programs may qualify as places of care of employees' children for purposes of FFCRA leave, even though they would have not been operating at the time those regulations were issued in April 2020. As such, the FAB provides guidance on how to determine whether the camp or program *would have been* the place of care for an employee's child.

A closed summer camp or program may be considered to be the place of care if the child was enrolled in the camp or program before the closure was announced. Affirmative steps toward enrollment may also be sufficient evidence—*e.g.*, submission of an application and/or a deposit pre-closure or signing up for a waitlist pending reopening of the camp or program or its registration process. A parent's mere interest in a camp or program is generally not enough. However, evidence of a plan for the child to attend or that it is more likely than not that the child would have attended had the camp or program not closed due to COVID-19 may be sufficient.

To that end, a child's attendance of a summer camp or program in previous years may indicate that it would have been the child's place of care during the summer of 2020. This is only true, however, if the child continues to satisfy any qualifications for camp or program attendance—*i.e.*, a 13 year old cannot attend a camp that only accepts 10 to 12 year olds. Additionally, employers may consider the consistency of attendance in a camp or program in determining whether it would have been the place of care this summer. For example, if a child participated in a camp or program in 2017 but not 2018 or 2019, the 2017 attendance would not be sufficient on its own (that is, without further evidence of intent to attend this year) to meet the place of care standard.

The FAB also emphasizes that, in all cases, an employee requesting FFCRA leave must provide the employer with information, either orally or in writing, to support the need for leave and why the stated reason for leave will prevent the employee from working. If the reason for leave is related to the closure of a summer camp, summer enrichment program, or other summer program, the employee must also provide the name of his or her child, the name of the specific camp or program that would have been the place of care for the child had it not closed, and a statement that no other suitable person is available to care for the child.

As the WHD notes in the FAB, there is not a one-size-fits-all rule for employees to establish an inability to work and need for FFCRA leave due to the closure of their child's summer camp or program. For this reason, employers should consider all applicable evidence that a particular camp or program would have been the child's place of care this summer if not for COVID-19 related circumstances.

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