



COVID-19 Leave and Summer Camp Closures

The Department of Labor (“DOL”) has issued Field Assistance Bulletin No. 2020-4 (“FAB 2020-4”) to provide guidance on when an employee may take paid leave under the Families First Coronavirus Response Act (“FFCRA”) to care for his or her child due to the closure of a summer camp, or other summer program for COVID-19 related reasons.

Background

The FFCRA requires covered employers to provide eligible employees with up to two weeks of paid sick leave and up to twelve weeks of expanded family and medical leave under certain, specified circumstances. (Please see our Alert of April 1, 2020, and subsequent Alerts, for further details.) Among other things, FFCRA leave may be taken if the employee is unable to work or telework due to a need to care for his or her child when their school or “place of care” is closed due to COVID-19 related reasons.

FAB 2020-4

DOL recognizes that summer camps and programs may qualify as “places of care” for the purposes of FFCRA leave. “However, 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. Such camps and programs therefore would not have been places of care of any child at the time they closed. Accordingly, determining whether a camp or program is the place of care of an employee’s child may be confusing and requires clarification.”

The DOL explains (in FAB 2020-4) that affirmative steps short of actual enrollment may be sufficient for employees to demonstrate eligibility for qualifying FFCRA leave. For example, if the summer camp or program has an application process, an employee’s submission of an application before the camp’s closure may establish the camp or program as the child’s planned place of care during the summer. Similarly, an employee’s submission of a deposit may also establish intent to enroll.


Prior attendance and current eligibility may also establish a summer camp or program as the child’s planned place of care. For example, a child’s attendance at a camp or program during the summer of 2018 or 2019 may indicate that the camp or program would have been the child’s place of care during the summer of 2020, as long as the child continued to satisfy qualifications for attendance.


However, the FAB notes that, “The multitude of possible circumstances under which an employee may establish (1) a plan to send his or her child to a summer camp or program, or (2) that even though the employee had no such plan at the time the summer camp or program closed due to COVID-19, his or her

child would have nevertheless attended the camp or program had it not closed, prevents a one-size-fits-all rule here.” Therefore, employers will have to look at all available facts and circumstances to determine if an employee is eligible for FFCRA leave due to a camp closing.

FAB 2020-4 is available for review at: https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab_2020_4.pdf


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