



School's out... Now what? U.S. DOL Issues Guidance on Summertime Paid Leave For Childcare Reasons

06.30.2020

By **Stuart M. Katz**

When the Families First Coronavirus Response Act (FFCRA) took effect on April 1st, it provided paid leave to employees with childcare responsibilities when the employee's child's "school" or "place of care" was closed for reasons related to COVID-19. Now that most schools have recessed for the summer, many people are asking whether or not paid leave under the FFCRA is still available to parents whose kids are home for the summer. The answer is a resounding "maybe."

On June 26, 2020, the U.S. Department of Labor issued guidance about whether or not paid leave is available to parents when their child's summer camp or other summer care program is closed for COVID-19 reasons. The guidance confirms that summer camps and similar enrichment programs qualify as "places of care" under the FFCRA. The DOL further clarified that even a camp or program that is open, but operating at a reduced capacity, may be considered "closed" if some children who would otherwise attend are unable to do so.

As with a school or daycare closure, an employee seeking paid leave must provide:

1. The name of the camp or program that is closed and therefore unavailable as a place of care.
2. The name of the child;
3. A statement that no other suitable person is available to provide care;
4. An explanation of the need for leave and a statement that the employee is unable to work because of that need.

School's out... Now what? U.S. DOL Issues Guidance on Summertime Paid Leave For Childcare Reasons

The requirement that an employee name a “*specific summer camp or program that would have been the place of care for the child had it not closed*” for COVID-19 related reasons raises many questions. For example, must an employee prove that the child was registered for the camp or program before it closed in order to satisfy this requirement? The DOL says there is no “*one-size-fits-all*” rule for meeting this burden. A parent can certainly support a request for paid leave by showing that the child had applied for or was enrolled in the camp or program, but may also support the request by demonstrating that the child had attended the camp or program in prior summers and was eligible to attend again. While the DOL notes that “*mere interest*” in a camp or program “*is generally not enough*” to satisfy this requirement, it also notes that the employee need not prove conclusively that the child would have attended; enrollment must only be proven by “*a preponderance of the evidence.*”

When considering a request for paid leave under the FFCRA, employers should be careful to gather the required information and to properly document all requests. Employers should also bear in mind the DOL guidance, recognizing that the employee may not be able to “*prove*” that the child was going to attend a particular camp or program, and that the DOL doesn’t necessarily require that they do so.

Other Covid-19 Client Alerts are available on the home page of our firm’s website: www.cohenandwolf.com

With additional clarifications and information emerging frequently, it can be difficult to keep track of the many moving pieces that are in play. Please feel free to contact us with any questions.

ATTORNEYS

Stuart M. Katz

PRACTICE AREAS

Employment & Labor

