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DOL Guidance Regarding FFCRA Leave Based on Summer Camp Closures

As many employers begin re-opening, many child care facilities still have not. On June 26, 2020, the Department of Labor (DOL) issued guidance focusing on summer camp and summer enrichment program closures as a basis for paid leave under the Families First Coronavirus Response Act (FFCRA).

The FFCRA requires covered employers to provide eligible employees with up to two weeks of paid sick leave and up to 12 weeks of expanded family and medical leave, of which up to 10 weeks may be paid (collectively "FFCRA leave"). Among the qualifying reasons for FFCRA leave is the employee's inability to work or telework due to a need to care for their child whose place of care is closed for reasons related to COVID-19. 29 C.F.R. § 826.20(a)(b)(v). Summer enrichment programs and summer camps are among the places of care anticipated by the FFCRA.

An employee who requests FFCRA leave for this particular reason must provide the employer information in support of the need for leave, either orally or in writing, including:

- ✓ an explanation of the reason for leave;
- ✓ a statement that the employee is unable to work because of that reason;
- ✓ the name of the child;
- ✓ the name of the school or place of care; and
- ✓ a statement that no other suitable person is available to care for the child.

As many children were in school, but not yet enrolled in summer camps, when the COVID-19 emergency began, the DOL recognizes it may have been relatively straightforward to identify the child care facilities (namely schools and day cares) that closed in response to COVID-19 while students were still attending. However, a summer camp may not have been a child's place of care at the time. Thus, it may be more confusing for employers to determine when a day camp or summer enrichment program becomes an employee's child's place of care.

This requirement to name a specific summer camp or program may be satisfied if the child applied to or was enrolled in the summer camp or program before it closed, or if the child attended the camp or program during prior summers (specifically 2018 or 2019) and was eligible to attend again. An employee generally cannot take FFCRA leave to care for their child based on the closing of a day care center or summer program the child has never attended, unless there was some indication the child would have attended had the day care center or summer program not closed in response to COVID-19. Submission of an application or deposit may establish the child would have enrolled. Mere interest in a camp or program is generally not enough.

A summer camp or program may also be "closed" for the purposes of FFCRA leave if it is partially closed for reasons related to COVID-19, i.e., operating at a reduced capacity, such that some children who would have attended that camp or program this summer may no longer do so.

Employers may discipline and potentially terminate any employee who makes false statements in order to obtain paid leave under the FFCRA. However, employers would be well advised to review the DOL's guidance here before making a decision when a request for paid leave under the FFCRA is made.

If you wish to further discuss this guidance or have any questions, please contact Swift Currie attorneys:

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