

DOL Guidance On FFCRA Benefits

Closed Summer Camps Count As “Place Of Care”

FFCRA Benefits Available Where Summer Camp Has Been Closed Due To COVID-19

The Department of Labor (“DOL”) issued a Field Assistance Bulletin on June 26, 2020, clarifying how leaves provided under the Families First Coronavirus Response Act (“FFCRA”) apply to employees when their child’s summer camp or summer enrichment program has been closed due to COVID-19 related reasons. The DOL’s Field Assistance Bulletins are issued to provide enforcement guidance to DOL investigators and provide useful insight into best practices for compliance.

The FFCRA permits employees to take emergency paid sick leave (“EPSL”) and emergency family medical leave (“EFML”) where they are unable to work or telework because their child’s school or place of care is closed due to COVID-19 related reasons. The DOL clarified that summer camps or summer enrichment programs can qualify as a place of care if they “would have been the place of care for the child had it not closed.” Further, employees may be eligible for EPSL and/or EFML if they cannot work or telework because they need to care for a child whose summer camp or summer enrichment program was cancelled for COVID-19 related reasons.

But unlike schools or other child care facilities, children were likely not attending the camps or enrichment programs when the pandemic emergency began. Consequently, employees may

find it more difficult to prove to their employers that their child would have attended the summer camp or enrichment program had they not closed.

The DOL identified two examples of ways that employees could establish that it was “more likely than not” that the child would have attended the camp or program. First, the child applied to or was enrolled in the summer camp or program before it closed. Second, the child attended the camp or program in the summers of 2018 or 2019 and was eligible to attend again in 2020. The DOL cautioned that there is a “multitude of possible circumstances” under which an employee can show that their child would have attended a summer camp or program, and so there is no one-size-fits-all approach.

The takeaway for employers is to be mindful about what documentation you require your employees to provide when requesting FFCRA leave. Even if an employee cannot show that their child was attending a child care program when the pandemic emergency was declared, the employee may be able to show that their child would have attended at some point.

The DOL’s Field Assistance Bulletin can be found here: https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab_2020_4.pdf

More information about documenting FFCRA benefits can be found here: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#16>

We are available to assist

Please feel free to reach out to us with any questions you have about any of the above issues or other concerns related to the COVID-19 pandemic, employment-related or otherwise. You can also access all COVID-19 related Client Alerts and other useful information at <http://www.sycr.com/COVID-19-Client-Service-Resource-Center/>

Labor and Employment Practice Group

Jeff Dinkin

805.730.6820

jdinkin@sycr.com

Sean Piers

805.730.6804

spiers@sycr.com

Steven Hanle

949.725.4126

shanle@sycr.com

Corporate and Securities Practice Group

Ryan Wilkins

949.725.4115

rwilkins@sycr.com

Intellectual Property Practice Group

Public Finance Practice Group

David Casnocha

415.283.2241

dcasnocha@sycr.com

Litigation Practice Group

Jason de Bretteville

949.725.4094

jdebretteville@sycr.com

Brian Forbath

949.725.4193

bforbath@sycr.com