

Employees Entitled to Leave Because Camp is Closed? Yes.

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After schools and day cares closed in the spring due to the pandemic, employers and parents alike were hopeful that summer would bring a return to normalcy – especially in the form of camp for kids. Alas, that hope has not become a reality as many states have either delayed or prohibited the opening of camps. What are employers and working parents to do?

On June 26, the federal Department of Labor issued guidance stating that, under certain circumstances, an employee whose child's day camp is closed as a result of COVID-19 may take leave under the Families First Coronavirus Response Act (FFCRA).

As a reminder, the FFCRA requires employers with fewer than 500 employees to provide eligible employees with up to twelve weeks of expanded family and medical leave if the employee is unable to work or telework due to a need to care for his or her child whose place of care is closed due to COVID-19 related reasons. A "place of care" includes summer camps and summer enrichment programs. 29 C.F.R. § 826.10(a). Therefore, an employee may request emergency FFCRA family leave to care for his or her child based on the closure of a summer camp or other summer program.

An employee who requests leave on this basis is subject to the general requirements for requesting emergency family leave under the FFCRA and should provide the name of the specific summer camp or program that would have been the place of care for the child had it not closed. 29 C.F.R. § 826.100(e) (2). The 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 attended the camp or program in prior summers and was eligible to attend again.

The request for leave due to the closure of a camp or summer program must be based on *planned* enrollment and is not appropriate if the child has never attended the camp/program in question or any other camp/program, unless there were some indication that the child would have attended had the camp/program not closed in response to COVID-19. Actual enrollment in the camp/program is not required to qualify for leave. Factors to consider include: submission of an application or deposit before the camp's closure; prior

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attendance in the camp/program; current eligibility for the camp/program; and being accepted to a waitlist pending the reopening of the camp/program.

Employers should also consider that a child who met the age requirement for a summer camp for the first time in 2020 could not have attended the camp in prior years. Similarly, a child who recently moved to a new area may have to attend a different camp/program from prior years. Finally, parents may have delayed making arrangements for summer due to the pandemic.

The status of summer camps is yet another area employers should monitor as their states re-open.

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