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FFCRA Benefit Eligibility Updates for Summer Program Closures

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With the summer season officially upon us, the Department of Labor's Wage and Hour Division ("the Department") has issued Field Assistance Bulletin ("FAB") 2020-4 to clarify when benefits under the Families First Coronavirus Response Act ("FFCRA") may be available due to a summer camp or enrichment program being closed due to coronavirus-related reasons.

The FAB builds on earlier FFCRA guidance (FAQ 93) affirming that an employee may be entitled to leave when a summer camp or program is closed or unavailable due to COVID-19 including when the employee can demonstrate:

- taking affirmative steps such as submitting an application or paying a deposit to enroll the child in the summer camp or program prior to the announced closing of the camp or program,
- the child had previously attended the summer camp or program and remains eligible for the 2020 summer season, or
- other means showing the child's enrollment or planned enrollment in a camp or program.

Background

The FFCRA provides eligible employees of covered employers (less than 500 employees) up to 12 weeks of expanded family and medical leave who are unable to work (or telework) because the employee is caring for his or her son or daughter whose school or "place of care" has been closed or whose childcare provider is unavailable due to COVID-19 related reasons.

During the first two weeks of unpaid leave, the employee may use FFCRA paid sick leave, at 2/3 of the employee's regular rate of pay (up to \$200 per day per employee), when the employee is unable to work (or telework). After the first two weeks, up to an additional 10 weeks of paid expanded Family and Medical Leave Act ("FMLA") leave at 2/3 of an employee's regular rate of pay (up to \$200 per day per employee), for an employee who has been employed for at least 30 calendar days. Relief from these paid leave requirements may be available for certain small businesses (fewer than 50 employees), if providing the paid leave would jeopardize the business' viability.

Field Assistance Bulletin 2020-4

FAB 2020-4 helps determine whether a summer camp or program would have qualified as a child's "place of care" for the summer had it not closed for COVID-19 reasons which would entitle an employee to paid sick or expanded family and medical leave benefits under the FFCRA.

A "place of care" is a physical location in which care is provided for the employee's child while the employee works and includes summer camps and summer enrichment programs.

To qualify for FFCRA childcare benefits, an employee must provide the employer verbally or in writing with information supporting the need for leave, a statement that the employee is unable to work and documentation showing the need to care for a child whose school or summer program is closed that includes:

- 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.

An employee can document the summer camp or program would have qualified as the child's "place of care" for summer 2020 by demonstrating:

- the employee took affirmative steps such as submitting an application or paying a deposit to enroll the child in the summer camp or program prior to the announced closing of the camp or program, or

- the child's past attendance and current eligibility in 2020 at the summer camp or program.
 - For example, a child age 13 who attended a summer enrichment program in 2019 would not be eligible for the same program in 2020 because the program is offered to children up to age 12.

The Department recognizes there may be other circumstances that employers may need to consider such as when a young child would have first been eligible for a camp or program in 2020 and therefore, cannot demonstrate prior enrollment. A parent's mere interest in a camp or program is generally not sufficient to qualify for FFCRA benefits.

Employer Action

The Department acknowledges in the FAB that there is no "one-size-fits-all" rule. Employers should work with employees to determine if evidence exists that an employee may be entitled to leave when a summer camp or program is closed or unavailable due to COVID-19 related reason before denying a leave request.