

School is Out For Summer - Is FFCRA Leave Out Too?

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School is out for the summer for many elementary-high school students in the Carolinas. In past years, the end of the school year marked the start of vacations, summer camps, and full-day childcare. This year, however, the end of school has triggered unique questions for employers and employees covered by the Families First Coronavirus Response Act (FFCRA).

Under the FFCRA, most employers (with fewer than 500 employees) must provide up to two weeks of paid sick leave and up to 10 weeks of a new type of FMLA (Emergency Family Medical Leave Expansion Act – “EFMLEA”) for several specific reasons. One such reason is when the “employee is unable to work due to caring for his or her Son or Daughter whose School or Place of Care has been closed for a period of time or is unavailable for reasons related to COVID-19.” Accordingly, since April 1, employees covered by the FFCRA can qualify for paid sick leave or EFMLEA if they are unable to work because they have to care for their school-aged children whose school or place of care closed due to COVID-19.

New FFCRA Questions

Virtually all schools in the Carolinas closed their buildings due to COVID-19, but they continued educating children through other ways. Summer marks the annual end of the academic year, so schools have begun closing for the summer due to normal reasons, instead of COVID-19. This normal summer transition impacts paid leave available through the FFCRA. The following are some related questions and answers.

Q: Does the end of school mean the end, at least temporarily, to paid sick leave or EFMLEA triggered by school closure due to COVID-19?

A: Yes, according to the Department of Labor: “Paid sick leave and emergency family leave are not available if the school is closed for summer vacation.”

Q: Is paid sick leave or EFMLEA for childcare still available this summer?

A: Yes, if the summer childcare is “closed or unavailable for a COVID-19 related reason.”

Q: Would that include the closure of a child’s summer camp?

A: Yes, according to the Department of Labor, if “a camp or other programs in which the employee’s child is enrolled is closed or unavailable for a COVID-19 related reason,” the employee could qualify for paid sick leave or EFMLEA. The DOL’s explanation suggests that steps should have been already taken for the child’s attendance at that summer camp or program before its closure or unavailability.

Q: Would the end of school for the summer terminate an employee’s paid sick leave or EFMLEA that had been triggered by the closure of the school building due to COVID-19?

A: Yes, the closure of schools due to non-COVID-19 reasons, such as the end of the academic year, means that qualifying reason is no longer applicable, at least until the resumption of the academic year after the summer.

Conclusion

The end of the school year marks the end of paid sick leave and EFMLEA for employees whose children could not attend school due to COVID-19. If that was the only reason triggering paid sick leave or EFMLEA, an employer may discontinue that leave. On the other hand, an employee’s childcare plans for the summer, including camps, could trigger paid sick leave or EFMLEA again if that summer childcare is not available due to COVID-19, assuming that the maximum amount of leave has not been exhausted.

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