

Camps are closed: Is your employee eligible for paid leave?



"No more pencils, no more books, no more teachers' dirty looks."

This has been an anthem for school kids long before the Alice Cooper memorialized it in the 1972 hit "School's Out."

But the fact that school's out this year, coupled with camps and other summer programs not opening, spells paid employee leave under the FFCRA (otherwise known as the [Families First Coronavirus Response Act](#))

The Department of Labor has issued a [Field Assistance Bulletin](#) to guide its investigators in determining whether employers improperly denied paid leave to qualified employees.

FFCRA Background

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 FMLA leave, of which up to 10 weeks may be paid. FFCRA leave may be taken if employees are unable to work or telecommute and they're the only individuals who can care for their children because their schools or places of care are closed due to covid-19 related reasons.

Places of care include summer camps.

Can a camp be closed if it never opened?

It's not a tautology. In fact, it's the key question in the DOL's analysis.

DOL: The covid-19 emergency began when most schools were still in session. So it was relatively easy to determine whether a school or daycare center closed for reasons related to covid-19.

But it's not the same with camps or other summer programs. *DOL:* Unlike schools and daycare centers, camps and summer programs closed in response to covid-19 before children began to attend and, in some cases, before they began to enroll. Therefore, the DOL reasoned, these camps and programs could never be places of care when they closed.

Determining whether a camp or other program that's closed is a place of care

If a camp or summer program is a place of care and it's not open due to covid-19, qualified employees will be eligible to take leave.

If the answer to the following questions is "yes," a camp or summer program will most likely be considered a place of care:

- Do employees have evidence showing they planned to send their children to the camp or summer program? Short of a plan, can employees show it's more likely than not their children would have attended the camp or program, had it not closed due to covid-19? *Note:* A parent's interest in a camp or program isn't enough.
- Were employees' children enrolled, or had employees taken affirmative steps to enroll their children (e.g., completing application forms, making down payments), in the camp or program prior to the camp or program closing?
- Did employees' children attend the same camp or program during 2018 or 2019?

Proceed with caution

While current enrollment or recent prior attendance at a camp or summer program is sufficient to show a camp or program would have been children's place of care had it not closed in response to covid-19, neither is necessary, says the DOL.

Consider these circumstances, which could still prove a camp or summer program would have been a place of care:

- A child only recently met the age requirement for a summer camp, so the child couldn't have attended the camp in prior years.
- A child recently moved from an area not serviced by a camp the child planned to attend.
- Parents had not yet made summer arrangements at the outset of the pandemic, then delayed doing so, due to uncertainty surrounding the camp's or program's operations.
- A child is waitlisted, pending the reopening of the camp or program or the reopening of the registration process.

Bottom line: You risk the wrath of employees and DOL investigators if you don't have a solid reason to deny employees paid leave this summer.