



UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington, DC 20210



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FIELD ASSISTANCE BULLETIN No. 2020-4

MEMORANDUM FOR: Regional Administrators
Deputy Regional Administrators
Directors of Enforcement
District Directors

FROM: Cheryl M. Stanton
Administrator

SUBJECT: FFCRA leave based on the closure of summer camps, summer enrichment programs, or other summer programs.

This Field Assistance Bulletin (FAB) provides guidance for Wage and Hour Division (WHD) investigators regarding when an employee may take leave under the Family First Coronavirus Response Act (FFCRA) to care for his or her child based on the closure of a summer camp, summer enrichment program, or other summer program for COVID-19 related reasons.¹

The FFCRA requires covered employers to provide eligible employees with up to two weeks of paid sick leave and up to twelve weeks of expanded family and medical leave, of which up to 10 weeks may be paid (collectively “FFCRA leave”). FFCRA leave may be taken 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. 29 C.F.R. § 826.20(a)(v), (b).² 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. *Id.* § 826.10(a). An employee who requests FFCRA leave must provide the employer information in support of the need for leave either orally or in writing, including an explanation of the reason for leave and a statement that the employee is unable to work because of that reason. Additionally, in the case of leave to care for the employee’s child whose school or place of care is closed, the employee must provide the

¹ “Summer school” or other academic work during the summer required and provided by the school attended by the child during the academic year is treated as the child’s school for purposes of the FFCRA.

² FFCRA leave may also be taken if an employee is unable to work (or telework) because of the need to care for his or her child whose school or child care provider is closed or unavailable for reasons related to COVID-19. *Id.* § 826.20(a)(v), (b). This FAB focuses on the closure of camps, which are a subset of places of care.

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. *Id.* § 826.100(e).

An employee who requests leave to care for his or her child based on the closure of a summer camp, summer enrichment program, or other summer program is subject to the same requirements described above 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). This requirement to name a specific summer camp or program may be satisfied if the child, for example, applied to or was enrolled in the summer camp or program before it closed, or if the child attended the camp or program in prior summers and was eligible to attend again. There may be other circumstances that show an employee's child's enrollment or planned enrollment in a camp or program.

The expectation that employees take FFCRA leave based on planned summer enrollments is not different from the closing of other places of care, such as a day care center. An employee generally could not take FFCRA leave to care for his or her child based on the closing of a day care center that the child has never attended, unless there were some indication that the child would have attended had the day care center not closed in response to COVID-19.³

Background

FFCRA leave may be taken if an employee is unable to work (or telework) because of the need to care for his or her child whose school or place of care is closed due to COVID-19 related reasons. 29 C.F.R. § 826.20(a)(v), (b). Importantly, the school or place of care that closes must be the school or place of care of the employee's child. *Id.*; *see also* FFCRA section 5102(a)(5) (providing paid sick leave "if the school or place of care of the son or daughter has been closed").

The COVID-19 emergency began during the 2020 spring academic semester, when most schools were in session. It is therefore relatively simple to determine whether a school that closed for COVID-19 related reasons is the school an employee's child would, under most circumstances, have been attending. Similarly, a day care center that closed in response to COVID-19 while an employee's child was attending it would clearly be the place of care of that child (and day care centers, unlike most schools, normally remain operational during the summer months).

However, unlike schools and day care centers, many summer camps and programs closed in response to COVID-19 before any children began to attend and, in some cases, before they began to enroll. Such camps and programs therefore would not have been places of care of any child at the time they closed. Accordingly, determining whether a camp or program is the place of care of an employee's child may be confusing and requires clarification.

³ A summer camp or program may also be "closed" for the purposes of FFCRA leave if it is partially closed for reasons related to COVID-19, *i.e.*, operating at a reduced capacity, such that some children that would have attended that camp or program this summer may no longer do so. In such instances, the same analysis as to whether the child would have attended that specific summer camp or program but for its partial closure due to COVID-19 is applicable.

Whether a summer camp or program qualifies as the place of care of an employee's child

The Department's regulations specifically recognize that summer camps and programs may qualify as places of care of employees' children for the purposes of FFCRA leave, even though they would have not been operating at the time those regulations were issued in April 2020. 29 C.F.R. § 826.10(a). The question is whether a specific summer camp or program would have been the place of care of an employee's child had it not closed for COVID-19 related reasons, which must be established by a preponderance of evidence in any enforcement action (*i.e.*, more likely than not). WHD investigators evaluating whether an employer improperly denied FFCRA leave to an employee based on the closure of a summer camp or program should consider whether there is evidence of a plan for the child to attend the camp or program or, short of a "plan," whether it is still more likely than not that the child would have attended the camp or program had it not closed due to COVID-19. But a parent's mere interest in a camp or program is generally not enough.

The Department's existing guidance provides that a closed summer camp or program may be considered to be the place of care for an employee's child if the child was enrolled in the camp or program before the summer camp or other summer program announced closure. FAQ 93, available at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#93>. Affirmative steps short of actual enrollment may also be sufficient. For example, if the summer camp or program has an application process, submission of an application before the camp's closure may establish the camp or program as the child's planned place of care during the summer; submission of a deposit may also establish intent to enroll.

Prior attendance and current eligibility may also establish a summer camp or program as the child's planned place of care. A child's attendance of a camp or program during the summer of 2018 or 2019 may indicate that the camp or program would have been the child's place of care during summer 2020, as long as the child continues to satisfy qualifications for attendance. For example, a 13 year-old child who attended a summer camp for children age 10 to 12 in 2018 and 2019 would no longer qualify to attend the same camp in 2020. That camp therefore could not be the place of care of that 13 year-old child in summer 2020. Also, a child's attendance of a camp or program during the summer of 2017 or earlier, but not during 2018 or 2019, could not by itself establish that the camp or program would have been the place of care of an employee's child during the summer of 2020.

The multitude of possible circumstances under which an employee may establish (1) a plan to send his or her child to a summer camp or program, or (2) that even though the employee had no such plan at the time the summer camp or program closed due to COVID-19, his or her child would have nevertheless attended the camp or program had it not closed, prevents a one-size-fits-all rule here. Current enrollment or recent prior attendance are certainly sufficient to indicate that a camp or program would have been a child's place of care had it not closed in response to COVID-19. But neither are necessary. A child who, for example, only recently met the age requirement for a summer camp could not have attended the camp in prior years. The same would be true of a child who recently moved from an area not serviced by the summer camp that the child planned to attend this summer or of a child whose parents had not yet made summer arrangements at the outset of the COVID-19 pandemic and delayed doing so due to uncertainty

surrounding summer camps' and programs' operations. In such circumstances, there may nonetheless be indicators that a particular camp or program would have been the child's place of care this summer, for example, by being accepted to a waitlist pending the reopening of the camp or program or the reopening of its registration process.

Please direct any questions regarding this FAB to the National Office, Office of Policy, Division of FMLA and Section 14(c) via regular channels.