

New FFCRA FAQs address child care leave and documentation issues



Miriam L. Rosen | Wednesday, May 13, 2020

As employers across the country focus on getting back to work, the U.S. Department of Labor (DOL) continues its focus on the Families First Coronavirus Response Act (FFCRA). On May 7, 2020, the DOL updated its FAQs resource page with additional FFCRA guidance in Questions 89 - 93.

FFCRA child care guidance

Two of the new questions address practical issues associated with FFCRA leave for child care.

Telework and child care leave - In Question 91, the DOL covers whether an employer can ask employees who have been teleworking, but later request FFCRA leave for child care why they are now unable to work or if they have pursued alternative child care arrangements.

The DOL indicates that an employer may ask an employee to note any changed circumstances explaining why the employee is now unable to telework. The DOL notes, however, that just because an employee has been teleworking with children home does not mean that the employee may not later need a leave to care for children whose schools are closed for a COVID-19 related reason. Further, the DOL cautions employers not to discourage FFCRA requests in asking such questions.

Child care leave and summer vacation -In Question 93, the DOL touches on an issue that is on many employers' minds: school's out in the summer anyway, so is child care leave available under the FFCRA when school is closed for summer vacation?

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The DOL notes that FFCRA leave is not available simply due to summer vacation that is not COVID-19 related. However, the significant aspect of the DOL's response for employers planning their summer staffing is that FFCRA child care leave may be available if the child's summer care provider — such as a camp or other summer program — is closed or unavailable for a COVID-19 related reason. So, employers will need to continue to provide FFCRA leaves over the coming months as camps and other programs make the decision not to operate this summer.

FFCRA supporting documentation

Documentation of COVID-19 diagnosis - In Question 92, the DOL addresses the documentation that an employer can require from employees seeking FFCRA leave to obtain a COVID-19 diagnosis.

According to the DOL, an employer may require an employee in need of time off for a diagnosis to identify his or her symptoms, and a date for a test or doctor's appointment.

However, in what seems to be a departure from previous guidance, the DOL states that when an employee is seeking a diagnosis the employer may not require further documentation indicating that the employee has, in fact, sought that diagnosis or treatment from a health care provider in order for the employee to use paid sick leave for COVID-19 related symptoms.

The DOL specifically notes that “the minimal documentation required to take this leave is intentional so that employees with COVID-19 symptoms may take leave and slow the spread of COVID-19.” While lowering barriers to testing is important, the DOL's guidance does not seem to take into account the potential for abuse of FFCRA time without reasonable follow up documentation requirements.

As practical FFCRA compliance issues emerge in the coming months, employers should expect that the DOL will continue to issue updates to the FAQs.

[Click here for McDonald Hopkins' previous posts on the FFCRA.](#)

The McDonald Hopkins Labor and Employment Response Team will continue to monitor developments and provide updates on the FFCRA and other employment issues impacted by the COVID-19 crisis.



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