



KROKIDAS & BLUESTEIN LLP

**CLIENT ALERT**

**RESPONDING TO EMPLOYEE LEAVE REQUESTS UNDER THE FAMILIES FIRST  
CORONAVIRUS RESPONSE ACT (“FFCRA”) RESULTING FROM CLOSED  
SUMMER CAMPS AND SUMMER PROGRAMS**

Massachusetts continues to move forward with its reopening plans. Summer day camps and summer programs were allowed to reopen with restrictions as part of Phase 2 in June, and overnight camps and programs were expected to be allowed to reopen last week as part of Phase 3. However, the announcement regarding the launch of Phase 3 on July 6 included the unexpected news that the reopening of overnight camps had been delayed to Phase 4 – with the likely result that overnight summer camps will not be permitted to reopen until Summer 2021. In addition, some summer day camps or programs that expected to open later in the summer also may ultimately remain closed until the Summer of 2021.

These last minute changes may leave parents without access to the child care they expected for the remainder of the summer. Employers will need to prepare to respond to requests for leave from parents who expected their children to be away at overnight camp or to participate in day programs that remain closed.

As detailed in prior client alerts dated [March 20, 2020](#) and [March 25, 2020](#), the FFCRA provides for two new categories of paid leave for employees affected by the COVID-19 public health emergency. Taken together, the paid sick leave benefit and the expanded family and medical leave benefit allow qualifying employees to take up to twelve weeks of paid leave to care for a child whose school or regular care provider is unavailable due to COVID-19. These benefits expire on December 31, 2020.

The Department of Labor (“DOL”) recently issued new guidance, available [here](#), regarding whether an employee may take paid leave under the FFCRA based on the closure of summer camps and other summer programs. The guidance provides that an employee is eligible to take FFCRA leave due to the closure of a summer camp or other program upon the provision of specific information including the name of the closed program and a statement that no other suitable person is available to care for the child.

The DOL guidance recognizes that, unlike schools or day care centers, many summer camps and programs were closed before children began to attend or, in some cases, prior to a child’s enrollment in a program. To guide the determination of whether an employee qualifies for FFCRA leave due to the closure of a specific camp or program, the DOL has declared that:

1. A closed summer camp or program may be considered the place of care for an employee’s child if the child was enrolled before the camp or program announced that it was closing (or not re-opening).

2. An employee may be eligible for FFCRA leave if the employee took affirmative steps to enroll the child in the program. For example, submitting an application or a deposit may establish the intent to enroll a child.
3. Intent to enroll a child may be established based on prior attendance and current eligibility. For example, intent to enroll a child may be established when the child has attended a specific program for the past two years and is eligible to re-enroll.

However, the DOL has cautioned that "[t]he 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."

If you have questions about employers' obligations and best practices in light of COVID-19 or how to respond to an employee's request for leave pursuant to the Families First Coronavirus Response Act, please contact Attorneys Paul Holtzman ([pholtzman@kb-law.com](mailto:pholtzman@kb-law.com)), Jill Brenner Meixel ([jmeixel@kb-law.com](mailto:jmeixel@kb-law.com)), Allison Belanger ([abelanger@kb-law.com](mailto:abelanger@kb-law.com)) or Brian Richichi ([brichichi@kb-law.com](mailto:brichichi@kb-law.com)).