



As we say good-bye to June and put the 2019-2020 fiscal year behind us, we have been hearing from a number of clients who are facing a new set of issues: how to handle employee vacations and an increase in employees requesting leave related to a lack of child care. If you have been focused on these issues as well, you are not alone. On June 26, 2020, the U.S. Department of Labor's Wage and Hour Division released a Field Assistance Bulletin providing guidance on when an employee qualifies to take paid leave under the FFCRA to care for a child due to the closure of a summer camp, summer enrichment program or other summer programming due to COVID-19. On June 30, Governor Baker updated his travel advisory relaxing the 14-day quarantine period for travel to and from some neighboring states but leaving it in place for the others. Also this past week, we got a sneak peek at what next school year may look like.

In This Issue:

<u>Subject</u>	<u>Page</u>
A. USDOL Guidance on FFCRA Leave Related to Summer Camp Closures	1
B. Employee Vacation and Quarantine Issues During Summer Months	2
C. Reopening Schools for the 2020-2021 School Year	4
1. DESE Announces Detailed Guidance on Reopening Schools for the 2020-2021 School Year	
D. COVID-19 Postings on NMP Website	7

A. USDOL Guidance on FFCRA Leave Related to Summer Camp Closures

The U.S. Department of Labor (USDOL) released a bulletin on June 26, 2020 regarding employee leave rights under the Families First Coronavirus Response Act (FFCRA) that specifically addresses leave requests from parents because their child's summer camp or program has closed. Previously, the FFCRA mandated leave for parents who were unable to work and/or telework because their son or daughter's school or childcare program has closed due to COVID-19 related reasons. Now that the school year has ended, many employees continue to experience childcare issues related to summer camps and summer enrichment programs that have closed or never opened due to COVID-19.

While USDOL's existing guidance (FAQ# 93) provides that a child's "place of care" includes summer camps and summer enrichment programs for purposes of qualifying for FFCRA leave if the child was enrolled in the summer camp or program at the time it closed, the bulletin goes a step further and outlines other programs or situations that would qualify a parent for leave. For instance, an employee may be eligible for leave under the FFCRA where the employee's child attended the camp in prior summers and would have been eligible to participate again this summer, however the parent never actually enrolled the child because he or she was waiting to see what was going to happen. However, if the child is no longer eligible for the program a parent could

not rely on the fact that the child has attended in the past to qualify for leave. For example, the parent of a child who attended a summer camp for children ages 10-12 in 2018 and 2019 but has since turned 13 will not be able to claim that the camp would have been the child's place of care for this summer.

Parents who have submitted an application to or a deposit for their child's participation in a camp or program will likely be able to establish that such camp or program would have served as the child's place of care during the summer and as such would remain eligible for FFCRA leave. The guidance acknowledges that there is no "one-size-fits-all rule" for determining whether a summer camp would have been a child's place of care had it not closed for COVID-19 related reasons, but makes clear that mere interest in enrolling a child in a summer camp or program will not suffice for FFCRA leave purposes.

When requesting leave because of the closure of a summer camp or program, the employee must follow the same procedure used for school and child care closures by providing the name of the specific summer camp program that the child would have attended but for the COVID-19 related closure. The employee must also again certify that no other suitable individual is available to care for the child when requesting leave for this reason.

Employers should also recognize that employees may be reluctant to send their children to another summer camp or program, especially if their usual or preferred childcare provider or camp is closed or unavailable. As such, we encourage employers to be flexible with employees who are dealing with their children's summer camp closures and communicate with their employees regularly to explore other options regarding childcare.

The updated guidance can be located on our website. Please feel free to contact our office to assist with any questions regarding FFCRA leave requests from employees.

B. Employee Vacation and Quarantine Issues During Summer Months

As summer begins and businesses continue to re-open, it is expected that many employees will take vacation time that involves domestic travel in the coming months. Consequently, employers have inquired whether the 14-day self-quarantine advisory still applies to employees who are returning from vacations involving domestic travel to other states.

This week, Governor Baker announced, effective July 1, that all people (including Massachusetts residents) who arrive in the Commonwealth are advised to self-quarantine for 14 days, except when traveling from Rhode Island, Connecticut, Vermont, Maine, New Hampshire, New York, and New Jersey. Previously, Governor Baker issued an advisory in March recommending that all individuals traveling to or returning home to the Commonwealth should self-quarantine for 14 days upon arrival. Public health workers, public safety workers, and other designated essential workers remain exempt from this travel advisory and there are no enforcement mechanisms in place for this self-quarantine advisory.

Other states across the U.S. have enacted similar self-quarantine requirements for individuals traveling to or returning to their respective states. For example, New York recently issued an executive order requiring all individuals to self-quarantine for 14-days when arriving from an

“impacted state,” which is measured by a 10% or higher positive test rate over a seven-day rolling average. Unlike the Massachusetts travel advisory, failure to comply with New York’s self-quarantine order is punishable with a civil fine, beginning at \$2,000 for a first violation.

Employers are likely within their right to require an employee returning to Massachusetts from another state (except those identified in Governor Baker’s recent advisory) to self-quarantine for a period of 14-days. Ultimately, employers have an obligation to take steps to protect the safety of employees in the workplace, especially when an employee may pose a direct threat to other employees by returning to work too soon after traveling to a COVID-19 impacted state or other high risk area.

There are other precautions an employer can take as well, such as monitoring an employee for symptoms and requiring employees who can work from home to work from home during the quarantine period. Although the EEOC permits employers to test employees for COVID-19 prior to reporting to the workplace, an employee who initially tests negative upon returning from out-of-state travel could still have the virus based on the virus’ incubation period. As always, employees should not report to work if they are experiencing COVID-19 symptoms.

An employer may still require an employee to self-quarantine for 14 days, if they have traveled to a level 3 or 4 risk area as identified by the CDC. According to the EEOC, employers may also ask employees if they will travel or have traveled to an area where state or local public health officials recommend that visitors quarantine after visiting. While the Baker Administration’s announcement provides some clarity for employers regarding quarantines and an employee’s out-of-state personal travel, employers should consider if the employee’s plans include travel to an “impacted state” or a state that is otherwise currently experiencing or has recently experienced a marked increase in COVID-19 cases demonstrated by public health metrics.

The self-quarantine advisory for traveling employees may also have implications with leave requests under the FFCRA. Generally, employees may request Emergency Paid Sick Leave (EPSL) under the FFCRA if they are subject to a Federal, state, or local quarantine or isolation order that prevents them from working. Employees likely would not be eligible for FFCRA leave for this reason because the Massachusetts self-quarantine advisory, while strongly recommended, is voluntary and not legally enforceable, and therefore likely would not qualify as a “state self-quarantine order” for the purposes of the FFCRA. By comparison, employees in New York likely qualify for EPSL for that reason. Additionally, an employee would arguably not be subject to the state quarantine order or advisory, but for the employee’s voluntary travel, which seems to run contrary to the purpose of EPSL. In other words, the self-quarantine order, standing alone, does not prevent the employee from working.

While employers may not prevent an employee from traveling during their personal time, we recommend that employers should clearly communicate their policy on quarantines so that employees have enough advance notice of the consequences prior to taking vacation or travelling out-of-state. For example, if employees will be required to self-quarantine on their own accrued time (or in a no-pay status) that should be spelled out in a policy or directive. Furthermore, it is important that such polices are applied consistently to all employees to avoid inviting discrimination claims.

C. Reopening Schools for the 2020-2021 School Year

1. DESE Announces Detailed Guidance on Reopening Schools for the 2020-2021 School Year

On June 25, 2020, Commissioner Riley issued a memorandum outlining the steps for schools and districts in the Commonwealth to safely reopen schools in the fall, with the goal of returning as many students as possible to in-person learning environments. According to the memorandum, all schools and districts will be required to submit a comprehensive plan to DESE by August that addresses: an in-person learning model with safety and health requirements, a hybrid in-person and remote learning model, and a continuing remote learning model. The highlights of Commissioner Riley's memorandum are summarized below.

Health and safety requirements for in-person learning

- Face coverings and masks
 - Students in grades 2 and above will be required to wear face coverings/masks. Kindergarten and grade 1 students are encouraged to wear face coverings/masks.
 - All adults, including teachers, administrators, and staff, will be required to wear face coverings/masks.
 - Students will be required to provide their own face coverings/masks, but the school will make extra disposable face masks available for students who require them.
 - Schools should build in “mask breaks” for students throughout the day in situations when students are outside. (DESE is expected to issue additional guidance regarding mask breaks).
 - Students are required to wear face coverings and/or masks during transportation to and from school.
 - Exceptions for face coverings/masks will be made for certain medical conditions, disabilities, or other health or safety reasons.

- Physical Distancing
 - Schools and districts must maintain a minimum physical distance of **three feet** between individuals but are encouraged to keep distances of six feet wherever feasible.
 - Schools should ensure that desks are spaced six feet apart and face the same direction.
 - Schools should consider using alternative spaces such as cafeterias, libraries, and auditoriums as classrooms.

- COVID-19 Isolation Space
 - Schools must ensure that they have a designated space (separate from the school nurse's office) to isolate students who exhibit COVID-19 symptoms during the school day. Students must be isolated in this designated area until picked up by a parent or guardian.

- Screening Procedures
 - Districts and schools are not required to screen students as they enter school and temperature checks are not recommended given the high likelihood of false positive results.
 - Schools should communicate to families to check their children for symptoms each morning prior to coming to school and that families should not send their children to school if they are exhibiting COVID-19 symptoms.
 - In-school testing for students is not currently recommended at this time.
- Student groups and cohorts
 - Schools should divide students into smaller groups (cohorts) that remain with each other during the day to minimize the number of students that could potentially be exposed. While there are no limits on cohort or group sizes, smaller groups are preferred, and physical distancing requirements must be maintained.
 - Students should be kept within their cohort group and schools should attempt to find way to isolate cohort groups.

In-person and hybrid learning models

- In-person learning model
 - Districts and schools should plan for in-person learning five days a week if feasible.
 - Districts and schools should consider using other spaces within the school such as cafeterias, libraries, and auditoriums for additional learning space.
 - Districts and schools should consider enlisting services of specialist teachers, coaches, and others who have the appropriate certifications to serve as teachers of core subjects to assist with further reducing class sizes.
 - Districts and schools should consider engaging other community organizations to utilize spaces outside the school for learning in order to accommodate more students and reduce class sizes.
 - Schools should implement assigned seating for elementary students and students should be kept in their grade level class to the greatest extent possible. At the middle school level, students should remain with their cohort group throughout the day. High school students should also be grouped into cohorts to limit interaction with other groups in between classes.
- Hybrid learning model
 - Students would alternate between in-person and remote learning on alternating weeks or days of the week.
 - Schools are encouraged to use a model that isolates students into two different cohort groups so that the groups will attend school on alternating days or weeks. For example, group A would attend school in person on week 1, while group B learns remotely. In week 2, group A would participate in remote learning and students from group B learn in-person.

- Students with special needs should be given priority for full-time in-person learning to the greatest extent possible. Schools may set up small groups or cohorts of special or high needs students that meet on a daily basis.

Other initial planning steps

- COVID-19 Response Leaders and planning and implementation teams
 - Districts and schools must name a COVID-19 Response Leader for each school who will coordinate with other district personnel on planning during the summer months and assist with implementation once school reopens.
 - Districts and schools must establish planning and implementation teams at both levels. These teams should include the COVID-19 Response Leaders, district leaders, school administrators, special education teaching staff, school nurses, custodial staff, and parents and other local officials. These planning and implementation teams should cover the following areas:
 - Teaching and learning;
 - Transportation;
 - Special education, English learners (ELs), and other special student populations;
 - Facilities and operations;
 - Personnel and staffing.
- Communication, family surveys, and training
 - Districts and schools should begin communicating with staff, students, and parents over the summer, and any information disseminated by the school should be translated into the primary language spoken by the student's parent/guardian and translators should be made available so parent/guardians can communicate with the school, if necessary.
 - Districts and schools should develop a process to work with local boards of health to ensure that they are current on all statewide and local health and safety guidance.
 - Districts and schools should consider sending out surveys to families to determine: children who will return to school in the fall, children who will need to continue remote learning, children who will need internet/technology access, and children who will need bus transportation.
 - Districts and schools should set aside time for teachers, staff, students, and families for training on health and safety topics, including the use of PPE, how to visually screen children for symptoms, best practices for hygiene, etc.

In addition to the topics outlined above, DESE stated that they intend to issue additional specific guidance in the coming months on following topics:

- Fall reopening checklist
- Additional guidance on special education and programs
- Handling positive COVID-19 cases in the school

- Transportation (e.g., bus capacity and alternative modes of transportation)
- Athletics, extracurricular activities, and electives.

Should you have any questions regarding the implications of the reopening plan as it relates to your district or school, please do not hesitate to contact one of our attorneys.

D. COVID-19 Postings on NMP Website

NMP continues to post COVID-19 orders, advisories, guidelines and legislation on its website (www.nmplabor.com). The following is a list of the new materials added since our last Advisor:

- U.S. DEPARTMENT OF LABOR ISSUES GUIDANCE ON CHILD LABOR; PAID SICK AND EXPANDED FAMILY AND MEDICAL LEAVE AMID SCHOOL AND CAMP CLOSURES
- Initial Fall Reopening Guidance (update June 30, 2020)

If you have any questions or would like to discuss the above in more detail, please contact:

Leo Peloquin

lpeloquin@nmplabor.com

Melissa Murray

mmurray@nmplabor.com

Brett Sabbag

bsabbag@nmplabor.com



<https://nmplabor.com/covid-19-resources/>

Tim Norris

tnorris@nmplabor.com

Philip Collins

pcollins@nmplabor.com

Antoine Fares

afares@nmplabor.com