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Last Fridays “Lunch and Learn” Webinar

Back to School During COVID-19

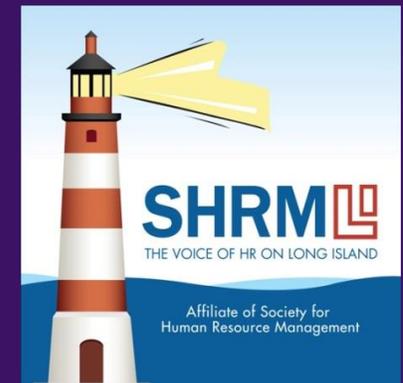
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Introductory Statement

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Background

- As the Fall season approaches and children get set to return to school, parents are left with a decision to make. All factors need to be considered and an employer must be cognizant of the individual circumstances when reviewing an employee's request(s).
 - What is my child's school district doing? Remote? Hybrid? In-person?
 - What is my employer offering for my job? Telework? In-person?
 - What benefits, if any, are available to me if I cannot work? What if I cannot telework?
 - Is this forever? What about in 2021? What if something changes in the next 4 months?

Families First Coronavirus Response Act (“FFCRA”)

- On April 1, the federal government passed the FFCRA, providing Emergency Paid Sick Leave (“EPSL”) and Emergency Family and Medical Leave under the FMLA (“EFMLEA”).
- Provides leave and paid benefits for eligible employees. Eligibility is not difficult – immediately upon hire for EPSL, after 30 days of employment for EFMLEA.
- Several qualifying reasons exist for EPSL; only one qualifying reason for EFMLEA.
- How does an employee get EFMLEA? If the employee needs to care for their child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

FFCRA and the Reopening of Schools

- **What is a “place of care”?**

- A “place of care” is a physical location in which care is provided for your child. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

- **Who is my “child care provider”?**

- A “child care provider” is someone who cares for your child. This includes individuals paid to provide child care, like nannies, au pairs, and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.

FFCRA and the Reopening of Schools

- **Can more than one guardian take paid sick leave or expanded family and medical leave simultaneously to care for my child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons?**
 - You may take paid sick leave or expanded family and medical leave to care for your child only when you need to, and actually are, caring for your child if you are unable to work or telework as a result of providing care. Generally, you do not need to take such leave if a co-parent, co-guardian, or your usual child care provider is available to provide the care your child needs.

What Can I Ask For?

- Documentation requirements?
- Per the IRS:
 1. The employee's name;
 2. The date or dates for which leave is requested;
 3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason;
 4. A statement that the employee is unable to work, including by means of telework, for such reason; and
 5. In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

My Child's School is . . .

- **My child's school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home. Is it "closed"?**
 - Yes. If the physical location where your child received instruction or care is now closed, the school or place of care is "closed" for purposes of paid sick leave and expanded family and medical leave. This is true even if some or all instruction is being provided online or whether, through another format such as "distance learning," your child is still expected or required to complete assignments.

My Child's School is . . .

- **My child's school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. They are permitted to attend school only on their allotted in-person attendance days. May I take paid leave under the FFCRA in these circumstances?**
 - Yes, you are eligible to take paid leave under the FFCRA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively “closed” to your child on days that he or she cannot attend in person. You may take paid leave under the FFCRA on each of your child's remote-learning days.

My Child's School is . . .

- **My child's school is giving me a choice between having my child attend in person or participate in a remote learning program for the fall. I signed up for the remote learning alternative because, for example, I worry that my child might contract COVID-19 and bring it home to the family. Since my child will be at home, may I take paid leave under the FFCRA in these circumstances?**
 - No, you are not eligible to take paid leave under the FFCRA because your child's school is not "closed" due to COVID-19 related reasons; it is open for your child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If your child is home not because his or her school is closed, but because you have chosen for the child to remain home, you are not entitled to FFCRA paid leave. However, if, because of COVID-19, your child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, you may be eligible to take paid leave to care for him or her.

My Child's School is . . .

- **My child's school is beginning the school year under a remote learning program out of concern for COVID-19, but has announced it will continue to evaluate local circumstances and make a decision about reopening for in-person attendance later in the school year. May I take paid leave under the FFCRA in these circumstances?**
 - Yes, you are eligible to take paid leave under the FFCRA while your child's school remains closed. If your child's school reopens, the availability of paid leave under the FFCRA will depend on the particulars of the school's operations.

Does NY Quarantine Leave Law Apply?

- In short, no.
- **My child's school is closed due to Coronavirus/COVID-19. Can I take Paid Family Leave/disability benefits quarantine leave to stay home with them?**
 - No. On May 1, 2020, Governor Cuomo announced schools will remain closed for the rest of the academic year. This is not a qualifying reason for PFL/disability benefits, as these benefits are only available when you or your minor dependent child are subject to a mandatory or precautionary order of quarantine or isolation issued by the State, department of health, local board of health, or government entity.

Takeaways

- Prepare for potential staffing shortages, hybrid work arrangements and remain open to telework. Keep an eye on productivity and performance as you would for employees in the office!
- FFCRA sunsets on December 31, 2020. 2021 – new year, new rule?
- State of New York v. U.S. Department of Labor, et al., No. 1:20-cv-03020 (S.D. N.Y. Aug. 3, 2020). Changes to:
 - The definition of who qualifies for the healthcare provider exemption;
 - The exclusion from benefits of employees whose employers do not have work for them;
 - The requirement that employees secure consent for intermittent leave for certain qualifying reasons; and
 - The requirement that documentation be provided before taking leave.

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Thank **you.**