Employment Law Update: Schools in NJ Are Now Closed for the School Year: Next Up, What Parents and Employers Need to Know About Potential Summer Childcare Closures

Client Alert

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With New Jersey Governor Phil Murphy's announcement yesterday (May 4, 2020) that the state's primary and secondary schools will remain closed through the end of the current school year, employers and employees who are the parents of school-age children will soon be faced with yet another significant challenge - childcare issues over the summer.

Our **April 23 Client Alert** provided information to assist both employers and employees with understanding their rights under four current sick/family leave and unemployment benefits laws: the federal Families First Coronavirus Response Act (FFCRA); the New Jersey Earned Sick Leave Law; the New Jersey Family Leave Act; and the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

This follow-up Alert will address how these laws may be applied to summer camp closures and other summer recreation programs impacted by COVID-19.

The U.S. Department of Labor (DOL) has issued guidance as to how potential COVID-19 related camp and summer recreation program closures will be handled under both the FFCRA, and for purposes of qualifying for unemployment insurance benefits.

As to the FFCRA, the inquiry centers around what constitutes a "place of care" such that its closure triggers FFCRA leave. The DOL recently defined a "place of care" to include:

> "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."

For employers with fewer than 50 employees who are seeking to obtain an FFCRA exemption, we refer them to our **earlier Alert**. We also encourage employers who are not exempt and looking to offset these expenditures to do so through tax credits, small business loans under the CARES Act, and, when necessary, weigh the additional unemployment insurance benefits available to furloughed employees if an employer cannot continue to maintain their workforce.

As to unemployment insurance relief made available during the COVID-19 pandemic and its applicability to summer/camp closures, the DOL advises that under Section 2102 of the CARES Act, if an individual self-certifies that they need their children to be at school in order for them to be able to work, they do qualify for Pandemic Unemployment Assistance (PUA), but the DOL cautions that:

> "PUA only [applies] when a child is home because of a school closure that is a direct result of the COVID-19 public health emergency. A school is not closed as a direct result of the COVID-19 public health emergency, for purposes of 2102(a)(3)(A)(ii)(I)(dd), after the date the school year was originally scheduled to end. That means that, once the school year is over, parents should rely on their customary summer arrangements for caring for their children, and will not, absent some other qualifying circumstances, be eligible to receive PUA. If, however, the facility that they rely on to provide summer care for the child is also closed as a direct result of the COVID-19 public health emergency, they may continue to qualify for PUA. Similarly, if there is some other reason under which they qualify for PUA, they will continue to be eligible to receive benefits."

We expect to see more guidance from both the federal and New Jersey Departments of Labor on these evolving issues of summer childcare closures. It also remains to be seen if the federal government will extend the additional $600 weekly unemployment payment provided under Section 2104 of the CARES Act beyond its July 31, 2020 scheduled end date. We will keep you advised of additional developments on a timely basis.

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