



Back-to-school considerations for employers during the COVID-19 pandemic

By Kimberly Harding, Franz Wright

Since the emergence of the novel coronavirus and the declaration of the COVID-19 pandemic, schooling and childcare routines have been significantly disrupted, leading to an unprecedented need for collaboration between employers and employees to accommodate working parents. Further, because school district reopening plans vary widely across the country (with some students returning to the classroom on a full-time or intermittent basis, other students attending classes virtually, and yet many others experiencing some combination of both), it is critical that employers proactively consider staffing adjustments, telework arrangements, and anticipated employee needs, and understand their leave management obligations under applicable federal, state, or local laws. In addition, employers may also consider creative alternatives to support employees with children whose schools or child care providers are closed or unavailable for reasons related to COVID-19. This alert suggests some best practices or options for employers to consider.

- **Proactively communicate with employees.** Communication is always important, but even more so during the COVID-19 pandemic. As employers continue to transition their workforces back to the workplace, providing as much notice as possible to employees will be key, particularly those who may need to make alternate childcare arrangements. Similarly, as school districts begin to reopen, employers should proactively engage their employees who are working parents to anticipate any necessary scheduling or job duty modifications. Such proactive engagement will not only help employers prepare for what to expect in the months to come, but will foster improved employee relations, and help ease burdens on employees who similarly continue to experience considerable uncertainty.
- **Be flexible, when and wherever possible.** Consider work-from-home arrangements, flex or staggered schedule alternatives, and intermittent leave options for employees having difficulty managing their workload and childcare responsibilities. Alternatively, if multiple employees are affected by the same school closure or school schedule, employers may consider having employees work collaboratively on their schedules to adjust for respective childcare responsibilities. For instance, some employers have considered informal “pods” of employees, wherein one employee might work in the morning while his or her coworker handles childcare

responsibilities for both of their children, and in the afternoon, the other employee works. Creative, grassroots solutions to meeting childcare needs may not only be necessary, but could be particularly effective in the current circumstances.

- **Review leave policies and obligations.** Employers should assess any applicable leave policies, including the potential increased use of accrued paid time off by employees seeking to accommodate unexpected childcare challenges. In addition, employers with fewer than 500 employees must comply with the additional obligations to provide leave imposed by the Families First Coronavirus Response Act (“FFCRA”).¹ Specifically, these employers must provide up to 80 hours of leave to employees at 2/3 pay (up to a maximum of \$200/day) for certain COVID-19-related reasons, including if the employee is “caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19-related reasons.” The FFCRA similarly expands the Family and Medical Leave Act (FMLA) to provide employees up to 12 weeks of emergency job-protected leave to care for a child as a result of school or child care closings due to the COVID-19 pandemic, 10 weeks of which is also paid at 2/3 of the employee’s regular wages (up to a maximum of \$200/day). Given that the FFCRA provides virtually no limitations on the number of employees that are permitted to take leave at the same time, employers should be assessing potential employee eligibility. To this end, some employees may have already exhausted their FFCRA leave earlier this year due to a school closure in the spring (or due to another FMLA-qualifying leave), while other employees may still have leave available for potential school closings this fall. Employers who are current with their documentation, leave balances, and policy updates will be best positioned to formulate plans to accommodate a potential surge of employee leave requests in the coming weeks.

In short, through collaboration and communication with employees, employers can successfully continue to navigate the uncertain COVID-19 terrain. Nixon Peabody’s Labor and Employment team has been regularly advising employers on FFCRA compliance and the implementation of creative staffing solutions. We stand ready to assist as appropriate.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Kimberly Harding at kharding@nixonpeabody.com or (585) 993-3296
- Franz Wright at fwright@nixonpeabody.com or (585) 284-0866

¹ <https://www.nixonpeabody.com/en/ideas/articles/2020/04/07/top-ten-faqs-about-implementing-ffcra-leave-coronavirus-covid-19>; <https://www.nixonpeabody.com/en/ideas/articles/2020/03/17/what-employers-need-to-know-about-the-impending-covid-19-paid-leave-bill>