

It's back-to-school time: employer considerations for working parents

Despite the recent heat wave, summer is nearing its end and before we know it, fall will be here. With fall comes a time that is both exciting and stressful for many people: a return to school.

For employers, back-to-school time means many of their employees who are working parents are trying to balance the obligations of work and home, and are now doing so with the added complications of shifting guidance and rules related to the COVID-19 pandemic.

According to the U.S. Bureau of Labor Statistics, in 2019, more than 33 million families had children under the age of 18, representing two-fifths of all families. Among those families, 91 percent had at least one parent working, and more than 80 percent of mothers with children ages 6-17 worked full time.

As the temperatures cool and summer transitions to fall, here are a few things that employers should keep in mind:

Uniformity in flexibility

With so many employees navigating the return to school at a time when the pandemic is causing schedules to shift and different schools are offering various degrees of in-person learning, employers should expect renewed requests for flexible work schedules and remote work opportunities.

As employers consider these requests, they should be cautious and ensure that they offer these opportunities or accept these requests in a consistent manner. Although scenarios may arise where an employer feels the need to offer flexibility in some cases and deny it in others, an employer exposes itself to discrimination claims by doing so. In order to minimize that exposure, employers must develop legitimate and well-described reasons for differ-



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entiating between requests. As a best practice, employers should consider requests in a consistent manner.

Should an employer decide to offer flexible work schedules or remote work on any regular basis, it should consider reducing these arrangements to written agreements that clearly explain the arrangements and expectations around how and when work will be completed and communication will occur.

COVID-19-related leave as applied to school closures

As the COVID-19 pandemic continues to evolve, employers should also expect to receive requests from parents seeking to take leave for reasons related to their children's education, particularly if schools partially or fully stop in-person learning again.

It is important to remember that employees may use accrued sick leave for reasons that may arise due to COVID-19, including care for a child's illness or health condition or closure of a child's school or place of care due to a public health emergency. Similarly, under FMLA and OFLA, employees can take leave to care for a child with a serious health condition, and can take continuous or intermittent leave to care for a child whose school or place of care is closed due to COVID-19.

Finally, although no longer mandatory, employers can voluntarily provide emergency paid sick leave and expanded paid FMLA leave (and claim

the associated tax credit) under the Families First Coronavirus Response Act to employees who are unable to work or telework due to having to care for a child whose school or place of care is closed or unavailable for reasons related to COVID-19. While this is voluntary, employers would do well to note that recently an anti-discrimination clause was added to FFCRA, meaning that employers must offer the leave in a consistent manner or risk discrimination claims. FFCRA is currently set to expire on Sept. 30, 2021, although it will likely be extended again.

FMLA leave for parent/teacher conferences

Additionally, it is worth noting that in 2019 the U.S. Department of Labor issued an opinion letter stating that parents are allowed to take protected FMLA leave for meetings with teachers or school staff to discuss a child's Individualized Education Program (IEP).

The letter explains that a required meeting for a child whose medical condition mandates an IEP qualifies as "care" for FMLA purposes. In the underlying situation, parents had sought the opinion for two children who had serious health conditions and had a health care provider's certification supporting the need for leave to take the children to medical appointments, as well as necessitating therapy being provided by the school. The IEP meeting was at least in part in order to discuss the children's progress and any areas of concern for the school. During the meeting, test results were reviewed and new doctor recommendations were considered.

The DOL concluded that the employee should have received protected leave, reasoning that FMLA provides leave to "make arrangements for changes in care" for the employee's family members, including children.

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The opinion letter does not extend leave to all student or academic meetings, as these do not usually require employees to make decisions related to a child's serious health condition. However, the opinion letter makes clear that a health care professional's presence at a meeting is not necessary to ensure FMLA coverage, making it potentially difficult for an employer to recognize FMLA applicability to these kinds of leave requests.

If an employee requests leave to attend an IEP meeting, an employer should consider the purpose of the meeting, whether it relates to a medical condition or decision, and require the employee to provide a certification by a health care provider supporting the request as medically supported leave. Employers should also be mindful of whether their state provides family medical leave that covers this situation.

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