

Employment Law Update: A Guide for Employers and Parents Regarding School and Childcare Center Closures

New Jersey Governor Phil Murphy recently announced that New Jersey primary and secondary schools (kindergarten through 12th grade) will be closed through at least May 15, 2020. New York, Connecticut, Delaware, and Massachusetts have issued similar extensions, and Pennsylvania and Virginia have closed schools through the end of the current school year.

On March 25, 2020, Governor Murphy signed Executive Order No. 110 ordering the closure of all New Jersey childcare centers by April 1. Exempt from these closures are childcare centers that certified by March 27, 2020 that they will only serve as emergency childcare centers for the children of essential workers as defined in the Order.

As both a parent of elementary school children and a full-time employment lawyer, I recognize that these closures, and the effects of COVID-19 in general, have many of us in a tailspin. Indeed, in addition to school closures, parents may also be facing the closure of summer camps and similar recreational programs.

The employment lawyer side of me recognizes that recent legislative changes are complicated and can be confusing but breaking them down for employers and employees is critical to everyone moving forward through this pandemic. As such, this Alert is intended to assist both employers *and* employees who are the parents of school-age children in understanding their rights under the current sick/family leave and unemployment benefits laws.

There are four laws that may apply in a school/childcare closure employment law situation, as follows:

An employee can avail themselves of one or more of these laws, although with certain limitations, and the New Jersey Department of Labor and Workforce Development has suggested the use of the available laws in the following order:

A new wrinkle to the available laws for parents with children out of school is the recent amendment to New Jersey's Family Leave Act passed on April 14, 2020. The Act now provides for up to 12 weeks within a 24-month period of unpaid "family leave" for an employee to provide care to a family member necessitated by the COVID-19 pandemic. Childcare issues are included in these covered scenarios. It is unclear whether the New Jersey Family Leave Act's 12 weeks of unpaid leave would run concurrently with the FFCRA leave, but additional guidance on this issue is expected from the New Jersey Department of Labor and Workforce Development.

Finally, an employer with fewer than 50 employees can seek an exemption from the FFCRA's paid sick and family leave provisions in certain instances. Specifically, a small business may be exempt if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if (1) the employer employs less than 50 employees; (2) leave is requested because the child's school or place

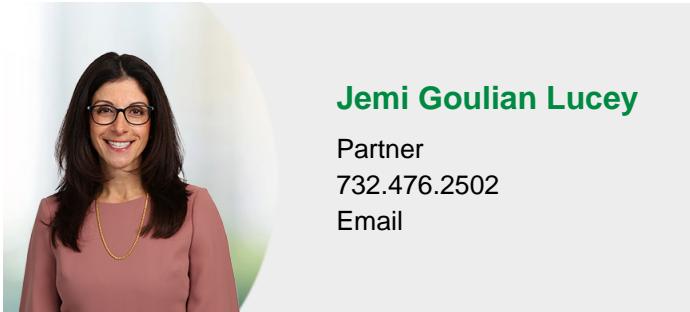
of care is closed, or a childcare provider is unavailable, due to COVID-19 related reasons; and (3) an authorized officer of the business has determined that at least one of the following three conditions is satisfied:

The duration of COVID-19-related school closures is still uncertain, and the laws available to parents to care for children out of school are still evolving. However, the state and federal laws that are available to assist parents in these situations are considerable. On the other hand, the cost to employers to cover these periods of leave is also significant.

Employers should look to offset these expenditures 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.

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