

Expanded Medical Leave Under the Families First Coronavirus Response Act Recognizes that it takes a Village to Raise a Child

By: Alison Smith, Partner in Kelley Kronenberg's Fort Lauderdale office. By now, most employers are familiar with, and have had to implement, aspects of the Families First Coronavirus Response Act ("FFCRA"), (i.e., paid and/or family medical leave). Pursuant to the Emergency Family and Medical Leave Expansion Act ("EFMLA"), which as the name suggests, expand the Family and Medical Leave Act ("FMLA"), most employers with fewer than 500 employees are required to provide any employee who has worked for their company for at least 30 days, up to 12 weeks of job-protected leave. The first 10 days are unpaid (unless the employee requests paid sick leave or uses accrued leave time), and the remainder is paid for up to another 10 weeks (assuming the employee has not already used or exhausted FMLA leave for other qualifying reasons). Pay provided must be no less than two-thirds of the employee's regular rate, capped at \$200 per day and \$10,000 in the aggregate. This leave is specifically permitted so that the employee (who must not be able to work or telecommute), can provide child care for a son or daughter under the age of 18 if that child's school or place of care is closed, or the childcare provider is unavailable due to a public health emergency (or, if the child is 18 years of age or older, has a mental or physical disability and is incapable of self-care because of that disability). But what if the child in question is not your child—meaning, the child is not your biological child, stepchild, or adoptive child? What if, for example, you are the grandparent? The reflexive response would be that grandparents are not eligible. But, not so fast. If that person, grandparent or otherwise, can show that he or she is standing in loco parentis (i.e., that he or she is someone who has assumed parental obligations such as the day-to-day responsibilities to care for or financially support the child), then that person is permitted to take leave pursuant to the EFMLA. It is important to note that, even if a biological parent is at home, the employee can stand in loco parentis for that same child. Take for example, a single parent who is a first responder who must work every day and leave his or her child at home, expecting the grandparent to assume the day-to-day responsibilities to care for the child. That grandparent could very well avail him or herself of leave pursuant to the EFMLA. So what do you need from the employee in this instance to grant leave pursuant to the EFMLA? It is advisable to obtain: the name of the son or daughter being cared for; the name of the school/childcare or childcare provider that has closed or become unavailable; and a representation that there is no one else to care for the child. In the case of a school or provider being closed, you may also want to obtain whatever documentation the employee was provided with about the school/child care closure. Morale of the story: the old adage "it takes a village to raise a child," has never been truer, and members of the village may be able to apply for EFMLA.