



September 3, 2020

U.S. Department of Labor Issues FAQ Addressing FFCRA Leave as Schools Reopen

On March 18, 2020, the Families First Coronavirus Response Act (“FFCRA”) was signed into law, entitling certain employees to take up to two weeks of paid sick leave and up to 12 weeks of expanded family and medical leave, 10 of which are paid, if unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19. See [Client Alert – Responding to the Coronavirus – Paid Sick Leave](#). The FFCRA applies to employers with fewer than 500 employees, while employers with fewer than 50 employees and health care providers may be exempted from the leave provisions.

On August 27, 2020, the U.S. Department of Labor’s Wage and Hour Division published guidance related to the reopening of schools, and released answers to Frequently Asked Questions (“FAQ”) concerning qualification for paid leave under the FFCRA. The new FAQ explain eligibility for paid leave when a child attends a school operating on an alternate day basis, or when parents choose remote learning despite the availability of in-person instruction, or when a school begins the year with remote learning but may shift to in-person instruction if conditions change.

Alternate Day School Attendance Scenario

Where a school is open each day, but students must alternate between days attending in person and days participating in remote learning, and students are only permitted to attend school on their allotted days, employees may be eligible for FFCRA leave on days when their child is not permitted to attend school in person. However, leave is only available if actually needed to care for the child, and no

other suitable person is available to do so. For purposes of the FFCRA, the school is effectively “closed” to the child on days the child cannot attend in person.

Optional In-Person School Attendance Scenario

Where parents are provided a choice between allowing their children to attend school in person or participate remotely, employees who choose remote learning for fear of contracting the virus are not eligible for FFCRA leave. Under the circumstances, for purposes of the FFCRA, the child’s school would not be considered “closed” due to COVID-19 related reasons. However, if the child is home due to an order of quarantine or has been advised by a health care provider to self-isolate or self-quarantine, the employee may be eligible for paid sick leave under the FFCRA.

Remote-Learning Only Scenario

Where a school is beginning the school year under a remote learning program due to concerns of COVID-19, but has announced it will continue to re-evaluate whether in-person attendance can be implemented, employees may be eligible for FFCRA leave while the school remains closed for in-person instruction, **provided** leave is actually needed to care for the child, and no other suitable person is available to do so. However, if the school reopens, the availability of FFCRA leave will depend on the school’s particular operations.

Takeaway

Despite schools reopening this fall, employees may nevertheless be eligible for FFCRA leave to care for their child due to school closure, depending on the availability of in-person instruction.

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If you have any questions regarding this alert, please do not hesitate to contact us.

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