

Update on COVID-related Paid Leave for School Reopenings

The paid leave requirements that Congress created this spring in response to COVID-19 remain in place until December 31, 2020 unless Congress acts again to extend them into 2021. The U.S. Department of Labor has provided periodic updates to their guidance FAQ document on the paid leave requirements under the Families First Coronavirus Response Act (FFCRA) over the spring and summer, with new questions added on August 27 to address different school reopening scenarios. This will summarize employers' responsibilities, depending on the reopening model chosen by the school districts attended by your employees' children. There are no new days added to the available paid-leave periods (10 days for sick leave; 10 weeks for closed schools), so if employees have exhausted their available leave already this year, no additional paid leave needs to be provided under this new DOL guidance.

Alternate-Day or Hybrid Attendance

If the school is open, but students alternate between days attending school in person and days of online or remote learning, then employees ***are eligible*** for to take paid leave under FFCRA on days when the child is not permitted to be in school in-person and must engage in remote learning, provided that: (1) the employee was scheduled to work on those days; (2) the employee needs the leave to actually care for their child during that time; and (3) no other suitable person is available to care for the child. For purposes of FFCRA paid leave, the school is considered "closed" to their child on days that he or she is not allowed to attend in person.

Parent's-Choice Attendance

Another model involves the school district giving parents the choice between having their child or children attend school in-person at least part of the week or to participate entirely remotely. If a parent chooses remote learning – even if they do so because they are worried that the child will contract COVID-19 or bring it home to a family member – then that employee ***does not qualify*** for the extended FFCRA paid leave because the school is not "closed" due to COVID-19. If the child is under a quarantine order or directed by a doctor or nurse-practitioner to self-isolate or self-quarantine, then the employee may be separately eligible for sick leave under different FFCRA provisions unrelated to school closings. If the in-person option offered by the school district is a hybrid or alternate-day schedule, even if the parent chooses at-home-only learning, they may be eligible for intermittent leave as described above.

Temporarily Remote Model

Many school districts have announced that they will begin the school year under a remote-only learning program, but will evaluate local circumstances and make a decision about in-person school attendance later in the school year. In that situation, the employee's child's school is "closed" for the time being, so the employee ***would be eligible*** for paid leave under FFCRA if they still have leave remaining up to the 10-week limit. If the school reopens later, the eligibility to receive paid leave will depend on which of the models described above is implemented. [end]