

Department of Labor Addresses “Back to School” Issues Regarding Leave Under the Families First Coronavirus Response Act

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ATTORNEYS

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The Department of Labor has issued “back to school” guidance regarding eligibility for childcare leave under the Families First Coronavirus Response Act (FFCRA). The FFCRA requires employers to provide employees with up to 12 weeks of partially paid leave to care for a son or daughter whose school or place of care is closed, or whose childcare provider is unavailable, for reasons related to COVID-19. The guidance issued August 27, 2020 includes the following:

- ▶ If a school operates on an alternate day, or other hybrid attendance, basis, an employee may take intermittent FFCRA leave on days when their child is not permitted to attend school in person. For purposes of the FFCRA, the school is considered “closed” on those days, even if remote learning is available.
- ▶ If a school offers in-person attendance and a parent decides to have their child learn remotely instead, the parent is not eligible for FFCRA leave.
- ▶ If a school is beginning the school year under a remote learning program but may open for in-person learning as it evaluates local circumstances, FFCRA leave is available only for the period of time that in-person learning is not available. In other words, if an employee is approved for 12 weeks of FFCRA leave during the remote learning period, and then the school opens an in-person attendance option, the employer must revoke its approval for FFCRA leave on days when the employee’s child is permitted to attend school.

There is no change to the requirements that FFCRA leave for childcare purposes must be taken only if the employee actually needs to care for the child, and only if no other suitable person is available to do so.

The full list of FAQ can be found [here](#).

If you have any questions, or would like more information about how the FFCRA may affect your agency or its employees, please contact **Rebecca Green** or any member of our Labor & Employment Department.