

HR COMPLIANCE BULLETIN

DOL Issues New FAQs on FFCRA Leave and Return to School

The U.S. Department of Labor (DOL) has published new frequently asked questions (FAQs) about whether employees qualify for paid leave under the Families First Coronavirus Response Act (FFCRA) in different school reopening situations, including those that blend in-person with distance learning.

A new “Return to School” section was added to the DOL’s existing FFCRA FAQs on Aug. 27, 2020. The new section’s three FAQs address employee eligibility for expanded family and medical leave and paid sick leave when:

- A child attends a school operating on an alternate-day basis;
- A parent chooses remote learning when in-person instruction is available; and
- A school begins the year with remote learning but may shift to in-person instruction if conditions change.

In general, according to the FAQs, parents qualify for FFCRA leave only on days when in-person learning is not offered as an option by the school.

The FFCRA allows 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, for specified reasons related to COVID-19. An eligible employee can take both types of paid leave because of a need to care for the employee’s son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19-related reasons.

This Compliance Bulletin contains the DOL’s new FFCRA FAQs.

Action Steps

Employers should review the new FAQs to ensure their employee leave policies comply with the FFCRA.

Highlights

Leave Allowed on Child’s Alternate At-home Days

In a hybrid learning situation, a parent may take FFCRA leave on days when the child is not permitted to attend school in person and must engage in remote learning.

No Leave Where Parents Choose Remote Learning

FFCRA leave is not permitted for parents who choose remote learning when in-person school attendance is an option. FFCRA leave may be allowed if the child has been advised to quarantine or isolate.

Important Dates

April 1, 2020

Effective date of FFCRA leave provisions.

Aug. 27, 2020

DOL added new FAQs about FFCRA leave availability in various back-to-school situations.



JP Griffin Group



New DOL FAQs Addressing FFCRA Leave and Return to School

My child's school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. They are permitted to attend school only on their allotted in-person attendance days. May I take paid leave under the FFCRA in these circumstances?

Yes, you are eligible to take paid leave under the FFCRA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively “closed” to your child on days that he or she cannot attend in person. You may take paid leave under the FFCRA on each of your child’s remote-learning days.

My child's school is giving me a choice between having my child attend in person or participate in a remote learning program for the fall. I signed up for the remote learning alternative because, for example, I worry that my child might contract COVID-19 and bring it home to the family. Since my child will be at home, may I take paid leave under the FFCRA in these circumstances?

No, you are not eligible to take paid leave under the FFCRA because your child’s school is not “closed” due to COVID–19 related reasons; it is open for your child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If your child is home not because his or her school is closed, but because you have chosen for the child to remain home, you are not entitled to FFCRA paid leave. However, if, because of COVID-19, your child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, you may be eligible to take paid leave to care for him or her. See FAQ 63.

Also, as explained more fully in FAQ 98, if your child’s school is operating on an alternate day (or other hybrid-attendance) basis, you may be eligible to take paid leave under the FFCRA on each of your child’s remote-learning days because the school is effectively “closed” to your child on those days.

My child's school is beginning the school year under a remote learning program out of concern for COVID-19, but has announced it will continue to evaluate local circumstances and make a decision about reopening for in-person attendance later in the school year. May I take paid leave under the FFCRA in these circumstances?

Yes, you are eligible to take paid leave under the FFCRA while your child’s school remains closed. If your child's school reopens, the availability of paid leave under the FFCRA will depend on the particulars of the school’s operations. See FAQ 98 and 99.

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