

Back to School: U.S. Department of Labor Guidance for Leave Requests Under the Families First Coronavirus Relief Act (FFCRA)

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With many schools reopening this week across the country, both in person and virtually, employees caring for children may be entitled to leave based on the learning program available to the child and/or the status of the school that the child attends.

As discussed in greater detail in our prior email blast titled *The U.S. Department of Labor Publishes Helpful FAQ's for Employers and Families First Coronavirus Response Act*, an employee is entitled to compensation at 2/3 of the greater of the amount of his/her regular rate of pay, federal minimum wage in effect under the FLSA, or the applicable state or local minimum wage if he/she is taking paid sick leave because he/she is: (1) caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (2) caring for his/her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or (3) experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services. These protections – which are temporary – are specifically derived from the Emergency Paid Leave Act and Emergency Family and Medical Leave Expansion Act, both part of the FFCRA.

To assist employer awareness of when employees caring for children may be entitled to paid leave, the U.S. Department of Labor guidance is summarized below. This summary provides an overview of the three most common school scenarios, with an explanation of whether an employee is eligible for paid leave under the FFCRA:

Status of School

Employee Eligibility for Paid Leave Under the FFCRA*

The school is starting the school year under a remote learning program, but announced that it may decide to reopen for in-person learning as the school year progresses.

An employee is eligible to take paid leave under the FFCRA while the school remains closed.

The school is giving attendees a choice between in-person learning and remote learning and the employee makes the choice for their child to participate in the remote learning program.

An employee is not eligible to take paid leave under the FFCRA because the school is not technically closed due to COVID-19 related reasons.

The school is operating on an alternate day (or other hybrid attendance) basis. In this scenario, the school is technically open each day, but students are required to alternate between participating in-person and the remote learning program.

An employee is eligible for paid leave under the FFCRA on the days that their child is required to participate in the remote learning program, as long as the employee needs the leave to care for their child during that time and only if there is no other suitable person available to do so.

** Individuals will only be entitled to leave under the FFCRA if their employer is a covered entity under the regulation. As a reminder, the FFCRA applies to all private employers with fewer than 500 employees in a U.S. State, the District of Columbia, or a territory or possession of the United States at the time an employee would take leave.*

Employers should ensure that staff assigned to handle employee leave are familiar with this new guidance and understand how to correctly respond to questions about paid leave under the FFCRA. For more information about this issue, please contact Keith Gutstein or Erika Rosenblum by email at KGutstein@kaufmandolowich.com, ERosenblum@kaufmandolowich.com, or by phone at (516) 681-1100, or any member of Kaufman Dolowich & Voluck's Labor & Employment Law Practice Group.