School’s Back (Or Is It)! When Can Your Employees Take FFCRA Leave?

For many, the start of school looks different this year: from all virtual, to hybrid, to parent’s choice. Employers required to provide leave under the Federal Families First Coronavirus Act (“FFCRA”) may be wondering how to administer FFCRA leave under this new regime.

Not to be out-classed, the U.S. Department of Labor (“DOL”) issued new FAQs regarding use of FFCRA leave in these new school opening arrangements and clarified when FFCRA leave is not available.

The new FAQs – numbers 98, 99, and 100, respectively, provide guidance. Specifically:

* **An employee *may* take FFCRA leave on a child’s remote learning days in a hybrid learning method:** Some schools are using a “hybrid” or “alternate day” attendance method. Generally, this is when a school is open every day, but students are only on-site some days and remote learning on other days. According to the DOL, an employee is eligible to take paid leave under the FFCRA on days when the employee’s child is not permitted to attend school in person and must instead engage in remote learning. The DOL clarifies that this leave can be taken as long as the employee is actually caring for the child during that time and only if no other suitable person is available to do so.
* **FFCRA leave is *not* available to take care of a child whose school is open for in-person attendance, but the employee chose a remote learning option for the child:**Some schools provided parents with a choice between having their child attend school in-person or participate in a remote learning program. If a remote learning program was chosen, FFCRA leave is not available because the school is not “closed” due to COVID-19 reasons. Rather, the child is home because the employee chose to have the child remain home. However, the DOL provides the caveat that if, because of COVID-19, an employee’s child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, the employee may be eligible to take paid leave to care for the child.
* **If the school year is beginning solely under a remote learning program due to COVID-19 concerns, employees *may* take FFCRA leave:**An employee may take paid FFCRA leave while the child’s school remains closed and only remote learning is available, because the school is closed in this scenario. However, if the school reopens, whether FFCRA leave is available will depend on the type of reopening, as discussed above.

*The full DOL FFCRA FAQs can be found*[*here*](https://www.dol.gov/agencies/whd/pandemic/ffcra-questions)*. The DOL periodically updates these FAQs, so this link should be checked often.*