

Federal Law Alert

DOL Releases New Back-to-School FFCRA Guidance

Ever since it became clear that not all schools would be fully reopening for the new school year, employers and employees alike have been wondering how the federal Families First Coronavirus Response Act (FFCRA) would apply in the variety of new schooling scenarios. Yesterday, the Department of Labor released several new Questions and Answers that address those issues, quoted below:

Question 98: 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.

Question 99: 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.

Question 100: 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.

Providing Non-FFCRA Leave and Flexibility

Although employees aren't entitled to FFCRA leave if their child's school is technically open and they choose remote learning, we encourage employers to work with employees who have chosen to keep kids home (as in Question 99), working out a flexible or reduced schedule as needed. If an employee has chosen to have their children attend school online only, it is likely because they feel the school is not safe or the risk of the child bringing the virus home and infecting a more vulnerable person is too high. If required to choose between working and keeping their family safe, many parents will choose safety, thus leaving their employer with a position to fill. Given the cost of replacing an employee (generally from 20 to 200 percent of their yearly salary), working out a flexible or reduced schedule with employees in this situation is likely the best choice for the company's bottom line as well as its reputation.

The full 100-question Department of Labor FAQ is available [here](#).