

DOL Clarifies Application of FFCRA Leave to Various Return to School Models

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The [Families First Coronavirus Response Act \(FFCRA\)](#) provides 12 weeks of leave for eligible employees of employers with fewer than 500 employees in the event an employee needs to care for children because of school or childcare closures due to COVID-19. On August 27, 2020, the U.S. Department of Labor (DOL) confirmed in its [FFCRA Questions and Answers](#) that leave under the FFCRA is available on days when a child must participate in virtual learning, even if that is on a part-time schedule. Many schools are providing in-person learning on alternating days or weeks. Because the FFCRA requires schools to be “closed,” leave would not be available on the days a child goes to school in-person. However, leave would be available “on each of [the] child’s remote-learning days because the school is effectively ‘closed’ to [the] child on those days.” This is true even if the school is open to some students every day on a rotating schedule.

Similarly, if a school starts the new school year virtually (i.e., offering only remote learning), an eligible employee could use leave under the FFCRA until the school resumes in-person learning.

Note, however, that if a school offers parents a choice between in-person or remote learning, and a parent elects remote learning, the parent would not be eligible for EFMLA leave, because the school is not closed. If the parent chooses remote learning because the 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 for two weeks of emergency paid sick leave.

As school schedules evolve this fall, employers with fewer than 500 employees may need to continue to consider FFCRA leave for their employees in connection with school closures.

Ogletree Deakins will continue to monitor and report on developments with respect to the COVID-19 pandemic and will post updates in the firm’s [Coronavirus \(COVID-19\) Resource Center](#) as additional information becomes available. Important information for employers is also available via the firm’s [webinar programs](#).

TOPICS