

## COVID-19 Update: DOL's New Guidance on FFCRA School Closure Leaves



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By [James Venable](#)

### **New DOL Guidance for FFCRA Leaves On Re-Opening Schools**

With schools reopening across the country, the U.S. Department of Labor (DOL) recently issued three new FAQs that clarify certain school closure scenarios under the Families First Coronavirus Response Act (FFCRA). The new FAQs, [numbered 98-100](#), specifically limit FFCRA benefits to those instances when a child's school is not open for in-classroom learning. Since many schools are opening in a hybrid fashion, with combinations of in-person and virtual learning, these guidelines clarify how FFCRA coverage will apply. As a reminder, the FFCRA leaves apply only to private employers with fewer than 500 employees as well as certain public employers.

### **Key Question: Is the Child Permitted to Attend School in Person?**

The three new FAQs address whether partial school closures and voluntary remote learning qualify for FFCRA benefits. The key question to determine whether the FFCRA may be used is whether the child is permitted to attend school in person. If yes, then FFCRA benefits are not available. If no, then an eligible employee may take FFCRA-protected leave to care for his or her child whose school has been closed for a period of time for reasons related to Covid-19. Let's look at the details.

## **Hybrid Attendance Leads to Partial FFCRA Coverage**

Many schools are opening on a hybrid basis, *i.e.*, alternating days between in-person learning and remote learning. In these situations, the DOL takes the position that an employee is eligible to take paid leave under the FFCRA only on the days when the employee's child is not permitted to attend school in person and must instead participate in remote learning. According to the DOL, a school is effectively "closed" for FFCRA purposes on the days a child cannot attend class in person, even if the child can participate in remote learning. If the employee must care for his or her child on the days of remote learning and if no other suitable person is available to do so, the employee would be able to utilize FFCRA leave benefits, if otherwise eligible.

## **Parent's Choice of Remote Learning Not Covered**

Some schools are allowing parents to choose whether to send their child to school for in-person learning or to participate via remote learning. If an employee chooses the remote-learning alternative because they are concerned about their child's potential exposure to COVID-19, the employee would not be eligible to take paid leave under the FFCRA. The DOL states that because the child's school is not "closed" due to COVID related reasons, FFCRA leave is not available to an employee to take care of a child who is learning remotely.

Despite not being entitled to FFCRA leave for a school closure reason, there are other scenarios when an employee may be entitled to paid sick leave (but not emergency FMLA) under the FFCRA. For example, if 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 sick leave under the FFCRA to care of their child.

## **Uncertain School Re-Opening Schedule Will Require FFCRA Reevaluations**

Some schools have begun the school year with remote learning but will continue to evaluate whether they will reopen for in-person attendance later in the school year. In this situation, an eligible employee would be entitled to take paid sick leave and/or emergency FMLA leave under the FFCRA while the employee's child's school remains closed and the employee is unable to work due to caring for the child during remote learning. If/when the child's school reopens, the availability of paid leave under the FFCRA ends, unless the school reopens on a hybrid basis during which the employee will be able to continue to use FFCRA leave on days that the child is not permitted to attend in-person school.

## **What Employers Need to Do**

Employers covered by the FFCRA should educate their employees about these school closure scenarios so that it is clear when employees may be entitled to FFCRA paid sick and/or emergency FMLA leave due to a Covid-19 related school closure. If the FFCRA leaves are incorporated into any employment policies, handbooks, or training materials, covered employers should review those policies and materials to ensure they reflect the latest guidance.

## **What ReedGroup is Doing**

ReedGroup administers FFCRA emergency FMLA for certain covered employers. We offer this update on the DOL's guidance to help educate our clients.

## **Additional COVID-19 Resources**

As a best practice, employers should continue to monitor the DOL's COVID-19 related guidance. In addition, employers may seek additional answers to frequently asked questions regarding the use of leave under the FFCRA on the DOL's [FFCRA website](#). Be sure to follow our [blog](#) and review our ReedGroup [Coronavirus Resource Center](#) which includes FAQs, links to compliance webinars, and other COVID-19 related materials.

If you are looking for assistance managing leave claims or to ensure leave compliance across your organization, ReedGroup has solutions for you. Check out our offerings [here](#).

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