

Department of Labor Issues Additional Guidance on COVID-19-Related Leave Based on School Reopening

With many students heading back to school, the U.S. Department of Labor (“DOL”) has issued [additional guidance](#) on when employees are eligible for leave under the Families First Coronavirus Response Act (“FFCRA”) based on the need to care for a child whose school is closed for COVID-19-related reasons. As described in our [earlier updates](#), the FFCRA requires qualifying employers to provide employees with up to two weeks of emergency paid sick leave and up to twelve weeks of expanded family and medical leave to care for a child whose school is “closed” due to COVID-19 precautions, among other reasons.

The guidance addresses the availability of FFCRA leave for employees in three of the most common school reopening scenarios:

- **Schools Opening with Hybrid In-Person Learning:** Many schools—including the New York City public school system—have announced plans to reopen with a hybrid learning model, where students will be attending school in person some days and will be taking part in remote learning on other days, for example on alternating days or weeks. In these circumstances, an employee is eligible to take FFCRA leave on the days when their child is not permitted to attend school in person and is instead engaged in remote learning, because the school is considered “closed” for COVID-19-related reasons on the days when the child is required to participate remotely.
- **Schools Opening In-Person with the Option for Remote Learning:** Some schools are opening in-person on a full-time basis but providing families with an option to participate in remote learning instead. If an employee’s child is engaging in remote learning because the family has *chosen* to do so, then the employee is not eligible for FFCRA leave, because the child’s school is not “closed” for COVID-19-related reasons. However, if an employee’s child is studying remotely because, for example, the child is subject to a mandatory quarantine order, then the employee may be eligible for FFCRA leave under one of the other qualifying reasons.
- **Schools Opening with Fully Remote Learning:** Many schools are beginning the school year under a remote learning model in light of COVID-19 concerns, but have announced plans to reopen for in-person attendance at some point later in the school year. If a child’s school is reopening with mandatory remote learning, an employee is eligible to take FFCRA leave while the school remains closed and is conducting classes remotely. If and when the school reopens for in-person learning, the availability of FFCRA leave should be determined based on the particulars of the reopening plan the school adopts.

As noted above, even if an employee is not eligible for FFCRA leave based on the need to care for a child whose school is closed due to COVID-19 precautions, that employee may be eligible for FFCRA leave based on another qualifying reason, including if their child is subject to a mandatory quarantine order or has been advised by a health-care provider to self-isolate.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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