

# NEW DOL GUIDANCE ON PAID LEAVE FOR SCHOOL-RELATED ABSENCES

The U.S. Department of Labor (DOL) recently [issued new guidance](#) clarifying the limits of an employer's obligation to provide paid sick leave and expanded family and medical leave under the Families First Coronavirus Response Act (FFCRA). This new guidance provides important takeaways for employers seeking to understand how local school closings as well as remote and hybrid learning programs may impact their workforce as their employees face decisions regarding the instruction and care of their children for the fall semester.

## BACKGROUND

The FFCRA took effect April 1, 2020, requiring covered employers to provide eligible employees with paid sick leave or expanded family and medical leave for certain qualifying reasons. Covered employers include employers with fewer than 500 employees, measured on the date of a leave request and all non-federal public sector employers of any size. With few exceptions, generally all employees of a covered employer are eligible for FFCRA's emergency paid sick leave benefits, and generally all employees who have been employed with a covered employer for at least 30 days are eligible for FFCRA's expanded family and medical leave. Paid leave is available to covered employees for use through Dec. 31, 2020.

Among the [reasons that a covered employee may be eligible](#) for paid sick leave or expanded family and medical leave is for the "bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider) or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19...." A covered employee who can demonstrate such need may be entitled to up to 80 hours of paid EPSLA leave for this qualifying reason and for up to 10 weeks of paid expanded FMLA leave for this reason.

## NEW GUIDANCE

In three new FAQs issued on Aug. 27, 2020, the DOL clarified what will be deemed a "school closing" for purposes of determining when an employee may

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be eligible for paid leave under FFCRA to care for the employee's child due to a school closing or the unavailability of the school. The following key takeaways emerge from the DOL's new guidance:

1. An employer need not provide FFCRA paid leave to an employee whose child's school has offered in-person and remote learning as options if the employee has selected the remote learning option for their child in lieu of in-person instruction.

**Explanation:** The DOL clarifies that an employer has no obligation to provide FFCRA leave when an employee voluntarily selects remote learning rather than in-person instruction for their child. The DOL explains that "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."

2. An employer must provide FFCRA paid leave to eligible employees who request leave in response to their child's school operating in a hybrid model that alternates between in-person and remote learning through the school week.

**Explanation:** The DOL explains that if the school is operating with a hybrid learning model such that an employee's child attends in person some days and remote on alternate days, the employee is eligible to take paid leave under FFCRA on the dates that the child is learning remotely. In this scenario, the school is deemed "closed" during the dates of remote learning.

3. An employer may be required to provide paid leave to an eligible employee requesting leave where the school of the employee's child has announced its intent to start with remote learning and to continue to evaluate the circumstances and make a decision about reopening for in-person attendance later in the school year.

**Explanation:** The DOL explains that so long as the school maintains a fully remote learning program, an employee is eligible to take paid leave under FFCRA. If the school later reopens, the availability of paid leave under FFCRA would depend on the details of the school's operations upon reopening.

## KEY TAKEAWAYS

In light of this guidance, employers should seek sufficient information from an employee requesting leave due to a school "closure" to understand if the school is (1) fully closed to the employee's child, (2) operating in a hybrid model and if so on which days, or (3) operating with a fully remote learning program. If the employee's child is in a fully remote learning program, the employer



should also seek to understand if an in-person learning program was an option at the child's school so that the employer can properly determine whether or not the employee has a right to paid leave under FFCRA.

Further, notwithstanding whether an employee has a right to paid leave under FFCRA, now is a good time for employers that offer remote working options to consider recomunicating the parameters and expectations for remote work. As national and local guidance in the pandemic continues to evolve, the parameters and expectations set for remote work should also anticipate that employees may at different times this fall be faced with no other option but to have children at home in remote learning programs while they themselves are working remotely. Planning for such circumstances now will help employers prevent issues in the future.

Armstrong Teasdale attorneys are actively monitoring and providing updates regarding the impact of COVID-19. In March, we wrote about the U.S. Department of Labor's initial guidance interpreting the Emergency Family and Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA).