



U.S. Department of Labor Releases FAQs Concerning Paid Leave and the Reopening of Schools

On August 27, 2020, The U.S. Department of Labor (“DOL”) published an updated list of frequently asked questions concerning employees’ eligibility for paid leave under the Families First Coronavirus Reponses Act (“FFCRA”) in conjunction with the reopening of schools and the various formats for learning in the midst of the COVID-19 pandemic.

The FAQs contain clarification regarding an employee’s eligibility to take paid leave under the FFCRA in instances when an employee’s child attends school on an alternate day basis, when the employee opts for his or her child’s remote learning even though an in-person learning option is available, and when a school year begins with remote learning with a contingency that it may shift to in-person instruction if conditions improve.

1. Alternate Day or Other Hybrid-Attendance Basis

Where a child’s school is operating on an alternate day schedule or other hybrid attendance basis, the FAQs clarify that an employee is eligible to take paid leave under the FFCRA on days when the employee’s child is not attending school in person and must participate in remote learning. For purposes of the FFCRA, the school is considered “closed” to the child on days that he or she cannot attend in person and must instead attend remotely. A parent will be able to take paid leave under the FFCRA as long as he or she requires leave to actually care for his or her child during the time the child is required to attend school remotely and only if there is no other suitable person available to care for the child. Assuming that these requirements are met, the employee is eligible to take paid leave under the FFCRA for each day the child is required to attend school remotely.

2. Parent’s Choice Between In-Person and Remote Learning

Where a school has given the option for a child to attend in person or participate in a remote learning program and the employee has chosen to have his or her child attend school remotely, the employee is not eligible to take paid leave under FFCRA. In this scenario, the child’s school is not considered “closed” due to COVID-19 related reasons because the child could have attended in person. Since the child’s participation in remote learning is based on the employee’s choice for his or her child to remain at home, the employee is not entitled to paid leave to take care of his or her child. However, if the employee’s child is home under a quarantine order or has been advised to self-isolate or self-quarantine by a health care provider, the employee may be eligible to take paid leave under FFCRA to care for his or her child.

3. Remote Learning With a Contingency for Returning to In-Person Learning

Where a school has opted to begin the academic year by requiring remote learning for all students but has a contingency that it may reopen for in-person learning if the COVID-19 situation improves, the employee is eligible to take paid leave under FFCRA for the time his or her child's school remains closed. However, if the school later reopens, an employee's eligibility for paid leave under FFCRA will depend on the school's operation model.

For further information on the FFCRA, the implications of COVID-19 on labor and employment law, or other employment related questions, please contact [Christopher L. Brigham](mailto:cbrigham@uks.com), Chair of the Employment Law Practice Group at Updike, Kelly & Spellacy, P.C. at (203) 786-8310 or cbrigham@uks.com, [Andrew L. Houlding](mailto:ahoulding@uks.com), Principal in the Employment Law Practice Group at (203) 786-8315 or ahoulding@uks.com, [Valerie M. Ferdon](mailto:vferdon@uks.com), Associate Attorney in the Employment Law Practice Group at (860) 548-2607 or vferdon@uks.com; or [Jeffrey Renaud](mailto:jrenaud@uks.com), Associate in the Employment Law Practice Group at (860) 548-2629 or jrenaud@uks.com.

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