

COVID-19: New Guidance Issued on Paid Leave as Schools Open

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Going into the beginning of the school year, one of the most frequently asked questions to our team was how virtual or part-time school would affect eligibility for paid leave under the Families First Coronavirus Response Act ("FFCRA"). Recall that the FFCRA requires employers with fewer than 500 employees to provide up to 12 weeks of job-protected paid leave to care for a child due to school or childcare closures unless telework is feasible. But if schools are taking a "hybrid" approach or giving parents options, it was unclear whether that constitutes a qualifying reason for FFCRA leave.

The Department of Labor has now amended its [Frequently Asked Questions](#) to address the uncertainty:

- Alternating days/hybrid learning: In FAQ #98, the DOL clarified that if the school district only permits students to attend school in-person part-time (with remote schooling on other days), FFCRA leave is available for caregivers if no other suitable person is available to provide childcare. Employers should obtain a certification to this effect from the employee seeking leave.
- Parental choice of virtual where in-person instruction is available: FAQ #99 confirms that FFCRA leave is not available if school is open and available for in-person instruction, even if parents choose a virtual option. The guidance notes, however, that if the child cannot attend school due to a quarantine order or advice from a health care provider, the employee caregiver may be FFCRA-eligible. Employers should obtain a certification from the employee with the name of the healthcare provider and, if possible, a medical note confirming the child's status.
- Schools changing approaches during the school year: FAQ #100 clarifies that leave eligibility may change as school district's approaches change. If a school starts virtually but then changes to in-person instruction, an employee is FFCRA-eligible only until the change, and presumably, vice versa.

If you have any questions regarding the Department's guidance on FFCRA, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).

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