As Schools Reopen, U.S. Department of Labor Issues FAQs on Childcare Leave Under the FFCRA

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The beginning of the school year has added to a mire of uncertainty of how to manage work and family in our current COVID-19 world. Some schools have reopened to full-time in-person classes, while others have adopted full-time remote learning; still others have opted a hybrid model that mixes the two, and some give parent the choice of whether to send their children to school or have them login. Added to this, decisions once made are subject to reversal, if new COVID-19 cases enter the picture. So now, on top of everything else that the COVID-19 crisis has affected, working parents must try to figure out how to manage their children’s education, while trying to maintain their financial security. And, as always, employers need to remain mindful of their compliance obligations.

In response to such concerns, on August 27, 2020, the U.S. Department of Labor added three Frequently Asked Questions ("FAQs") on the Families First
Coronavirus Response Act ("FFCRA") to its FAQs webpage, addressing some circumstances under which a working parent may—or may not—be entitled to paid leave under the FFCRA. In short, an otherwise eligible employee may be entitled to paid FFCRA leave due to a COVID-19-related school closing to care for a child only if (i) the child’s school is closed; (ii) the employee must “actually care” for the child “during that time,” and (iii) “no other suitable person is available” to care for the child. Although not stated in the new FAQs, eligibility for FFCRA also requires that the employee not be able to work onsite or through telework.

FAQ #98 states that when a child is on a school-mandated hybrid schedule, which designates certain days for in-school attendance and the other days for remote learning, the school is effectively “closed” to the child on the days the child is not permitted to attend school in-person. Accordingly, a parent who satisfies the second and third criteria listed above is entitled to paid FFCRA leave for the child’s remote-learning days. FAQ # 99 explains, however, that where a parent is given the choice between full-time, in-school instruction and remote learning, and elects remote learning for their child, the parent is ineligible for FFCRA “school closure” paid leave because the child’s school is open and remote attendance was the employee’s choice. The FAQ notes, however, that the parent of a child who is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, may be entitled to FFCRA child care benefits, regardless of whether the child’s school is open (as previously explained in the DOL’s FAQ 63).

FAQ #100 confirms that parents, whose children’s schools have not reopened to in-person instruction yet, may take FFCRA leave while the school remains closed.

Keep in mind that an employee’s entitlement to FFCRA leave has limits. As we previously reported, the FFCRA allows covered employees (i.e., employees who work for an employer with fewer than 500 employees, and, for purposes of expanded family leave benefits, have worked for the employer for at least 30 days ) to take paid emergency sick leave for a maximum of two weeks (80 hours), capped at $200 per day and $2,000 in the aggregate, and to receive expanded family leave benefits for a maximum of 12 weeks, with the first two weeks unpaid and the remainder paid at a rate of 2/3 of the employee’s regular rate of pay, capped at $200 per day and $10,000 in the aggregate. Considering the lengthy school closings for the last four months of the previous school year, many employees may have already exhausted their FFCRA benefits. Currently, there is no indication that the U.S. Congress is considering any expansion of these paid leave benefits.

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