

# PUBLICATION

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## DOL Releases New FFCRA Child Care Guidance

Authors: Jennifer L. Curry  
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Late last week, the Department of Labor (DOL) answered three questions related to being eligible for leave under the Families First Coronavirus Response Act (FFCRA) for child care needs. The new guidance addresses difficult questions facing employers and employees as we venture into the fall school semester and parents potentially face several more months of school closures and distance learning. You may recall that at the end of last month, the DOL issued updated guidance which made clear that parents with children at home due to the child's school or place of care "mov[ing] to online instruction or to another model in which children are expected or required to complete assignments at home" are eligible for FFCRA leave. The DOL explained that in the event the "physical location" where the child "received instruction or care is now closed," that school or place of care is considered "closed" under the definitions articulated by the FFCRA. The DOL made clear that this is the case regardless of whether some or all instruction provided to the child is through "distance learning" or a similar format.

The DOL issued three new answers to Frequently Asked Questions (FAQs) centered entirely on three school reopening (or lack of reopening) issues. First, the DOL addresses a common scenario for many parents in which a child's school implements a "hybrid-attendance" or alternating schedule that allows the child to attend school in person on limited or scheduled days and engage in "distance learning" other days. In that case, the DOL indicates that the parent will be eligible for FFCRA leave on the days that the school is "effectively 'closed'" to the child. In other words, the parent is eligible for leave on the days the child is home and engaged in "distance learning" but is not eligible for leave on the days that the child physically attends school.

Second, for children in a school that begins the semester under a "remote learning program" but announces plans to reevaluate the circumstances going forward with a possibility of physically reopening, parents are eligible for FFCRA leave during the time the school is physically closed. But if the school reopens later in the semester and the child must physically attend school, the parent is no longer eligible for FFCRA leave. Of course, in both scenarios, a parent is eligible for FFCRA only to the extent they actually provide care for the child during the leave and only if no other suitable person is available to provide that care.

The third scenario addressed by the DOL is perhaps the most noteworthy and falls in line with the DOL's position on eligibility for leave due to "fear." Specifically, the DOL addressed the situation in which a parent is given the choice to send the child to school in person or to have the child participate in "distance learning" at home, and chooses to keep the child at home. In that case, the DOL stated that the parent is not eligible for FFCRA leave because the child's school remains open for the child's in-person attendance, negating the parent's need to remain home and provide care for the child. The DOL states specifically that "[i]f 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." This provides a bright-line rule for employers but will likely also prevent parents with medically high-risk children from qualifying for leave under the FFCRA.

Of course, even with this new guidance, the best policy is to remain flexible. Even if not legally required, employers should try to accommodate parents dealing with these difficult decisions as much as possible, including provided telework and flex-hour options. Doing so will decrease attrition and increase loyalty.

If you have any questions, please contact one of the authors or review our [Coronavirus \(COVID-19\): Navigating the Path Ahead](#) resource page.