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DOL Releases New Guidance Regarding the FFCRA and Remote Learning

The U.S. Department of Labor (“DOL”) has released new FAQs relating to the use of paid leave under the Federal Families First Coronavirus Act (“FFCRA”). This new guidance clarifies the leave for which employees are eligible when their children are operating under an alternate day or hybrid attendance schedule. Under these schedules, the school is open each day, but the students alternate the days they attend in person and the days they participate in school remotely. Under these conditions, the employee may take leave under the FFCRA only if (1) the leave is actually needed to care for the child, and (2) no other suitable person is available to care for the child. For purposes of the FFCRA, the school is treated as “closed” on days the child is not allowed to attend in person.

The DOL’s new guidance also addresses circumstances in which schools allow parents to choose to allow their child to attend in-person classes or to participate in school remotely. If this choice is offered and the employee opts for remote learning, the employee is not entitled to paid leave under the FFCRA because, for purposes of the FFCRA, the child’s school is not considered “closed.” However, FFCRA leave may be available due to COVID-19 if the child has been ordered to quarantine, or if the child has been advised to self-isolate or self-quarantine.

Finally, the DOL has clarified how FFCRA leave applies to schools that have started the school year with remote learning but have announced the school will make a decision regarding in-person attendance based on local circumstances later in the year. Under these circumstances, the employee is eligible for FFCRA leave while the school is requiring remote learning. If the school later reopens, the availability of paid leave will depend on whether the school opens on an alternate day schedule, or the school allows parents the choice between remote learning and in-person attendance.

If you have questions about FFCRA paid leave, please contact your Kutak Rock attorney or any of the attorneys in the [Employment Law Group](#), and we would be happy to discuss this with you. You may also visit us at www.KutakRock.com.

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