

Client Alert: FFCRA and Back to School
August 28, 2020

We have been fielding many questions from clients on FFCRA and back to school issues. Yesterday, the U.S. Department of Labor updated their FFCRA Q&A page with back to school information. For those of you who read the lengthy Q&A (accessible [here](#)) the new questions are numbered 98-100. We recognize that there are many gray areas and tricky situations, so please don't hesitate to reach out with questions. The DOL's guidance is summarized below.

- **Hybrid schedules:** the DOL states that for parents whose children are attending school in-person on some days of the week, parents may be eligible for FFCRA leave when their child is home for remote learning, as the school is effectively "closed" to the child on those remote learning days. Parents may take FFCRA leave on each of their child's remote learning days, so long as no other suitable person is available to care for the child, and the parent meets all other requirements.

B&I Note: The guidance is silent on the issue whether the employee needs consent from the employer for this type of intermittent leave. We discussed this consent issue in our August 14 alert, available [here](#).

- **Optional remote learning:** some school districts have given parents the option to either send their children back to school or continue remote learning from home. The DOL advises that in this context, parents who choose remote learning only are not eligible for FFCRA leave because their child's school is not "closed" due to COVID-19 related reasons.

B&I Note: The guidance does not address the situation where a parent opts for remote learning over a hybrid schedule (versus full time at school). It seems logical that the employee would not get FFCRA leave for those days that their child is home because of their choice of remote learning, but would get FFCRA leave on the days that there is no in-school option for instruction. However, there is no guidance to this effect.

- **FFCRA and schools changing plans:** some schools are beginning the fall with remote learning, but are hoping to reopen for in-person learning later in the year. In this circumstance, the DOL states that parents may be eligible for FFCRA leave while their child's school remains closed.