

# MSF CLIENT ALERT

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## Employee Leave for School “Closures” Under the FFCRA

*With the new school year upon us and the wide range of approaches schools are taking to address COVID-19 concerns, the Department of Labor (“DOL”) provided additional guidance as to when a school is considered “closed” for purposes of taking leave under the Families First Coronavirus Response Act (“FFCRA”).*

*September 1, 2020*

On August 27, 2020, the DOL issued three new FAQs addressing when employees can take leave under the FFCRA due to the need to care for a child whose school is closed. Under the FFCRA, eligible employees can take up to 12 weeks of job-protected leave if they need to care for a child whose school or place of care is closed. The new FAQs address whether schools are considered closed in situations where schools offer hybrid approaches to learning in-person and at-home, as well as where schools have tentative plans to reopen.

### **Mandatory Hybrid Learning**

Where a child’s school is open but students are required to alternate between in-person learning on some days and remote learning on other days, parent employees *may* take leave on the days their child is required to attend school remotely as the school is considered closed on those days under the FFCRA. The DOL clarified that leave is available only for the days a child is not permitted to attend school in-person so long as the employee needs the leave to care for a child on those days and there is no other suitable person available to do so.

### **Parental Election of Fully Remote Learning**

Where a child’s school offers the choice for the student to either attend classes fully in-person or fully remotely, parent employees *may not* take leave under the FFCRA if they chose to keep their child home. The distinction between this situation and the situation addressed above is that the employee here has the option to send the child to school in-person, but elected remote learning.<sup>1</sup>

### **Remote Learning with Plans to Reopen**

Where a child’s school begins the school year with remote learning but has tentative plans to reopen as the school year progresses, parent employees may take leave on the days their child is required to participate in school remotely. If the child’s school reopens with mandatory in-person attendance, parent employees will no longer be eligible for leave under the FFCRA. If the child’s school reopens, the ability to take paid leave under the FFCRA will depend upon the particulars of how the school reopens in line with the above guidance.

<sup>1</sup> The parent employee may be entitled to leave under the FFCRA if the child is subject to a quarantine order or if the child has been advised by a health care provider to self-isolate or self-quarantine.

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Please contact an attorney on MSF's Employment team if you need assistance with respect to this information.



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