



FFCRA Obligations Now that Schools are (Kind Of) Opening

Businesses with fewer than 500 employees are required to provide up to 12 weeks of paid leave to employees who are unable to work or telework because of a need to care for a child whose school or place of care is closed or unavailable for reasons related to COVID-19 under the Families First Coronavirus Response Act (FFCRA). This leave is paid as two-thirds the employee's regular rate (up to \$200 per day and \$12,000 in the aggregate).

As schools begin to reopen—with some remote instruction, some in-person, and some mixed—the U.S. Department of Labor has answered questions that many employers and employees have been asking.

- **Is an employee eligible for FFCRA leave if his or her child's school is only providing remote learning?** Yes, as long as the employee needs the leave to actually care for his or her child during that time and only if no other suitable person is available to do so.
- **What if the school is only operating on an alternate day (or other hybrid-attendance) basis?** The school is effectively "closed" to the employee's child on days that he or she is not permitted to attend in person, so the employee will generally be eligible for FFCRA leave on those days.
- **What if the school gives the employee the option of either sending the child to school or doing remote learning?** FFCRA leave is *not* available to an employee who chooses to do remote learning instead of sending the child to a school that is open for in-person learning. However, if an employee's child is under a quarantine order, or has been advised by a health care provider to self-isolate or self-quarantine because of COVID-19, an employee may be eligible to take up to 80 hours of paid leave to take care of the child.

In order to substantiate eligibility for tax credits for providing child-care related leave, employers should document the following (and otherwise maintain records that the IRS has set out [here](#)):

- The employee's name;
- The date(s) for which leave is requested;
- A statement from the employee, stating (i) that leave is requested because of a school closing or child care provider unavailability, (ii) the name and age of the child (or children) to be cared for, (iii) the name of the school that has closed or place of care that is unavailable, and (iv) a representation that the employee is unable to work, including by means of telework, for such reason and that no other person will be providing care for the child during the period for which the employee is receiving leave; and
- If a child older than fourteen needs care during daylight hours, an employee statement that special circumstances exist requiring the employee to provide care.

For more information please contact [Elaine Howard](#) and [Andy Clark](#).