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The Department of Labor’s Wage and Hour Division (“the Department”) added three new FAQs to clarify when benefits are available under the Families First Coronavirus Response Act (“FFCRA”) as the school year begins.

The FFCRA provides eligible employees of covered employers (less than 500 employees) up to 12 weeks of expanded family and medical leave when they are unable to work (or telework) because they are caring for a son or daughter whose school or “place of care” has been closed or whose childcare provider is unavailable due to COVID-19-related reasons. During the first two weeks of unpaid leave, the employee may use FFCRA paid sick leave at 2/3 of the employee’s regular rate of pay (up to \$200 per day per employee) when the employee is unable to work (or telework). After the first two weeks, up to an additional 10 weeks of paid expanded Family and Medical Leave Act (“FMLA”) leave at 2/3 of an employee’s regular rate of pay (up to \$200 per day per employee) is available for an employee who has been employed for at least 30 calendar days. Relief from these paid leave requirements may be available for certain small businesses (fewer than 50 employees) if providing the paid leave would jeopardize the business’ viability.

The new FAQs clarify that FFCRA paid leave benefits are available in the following two scenarios:

- School operates on an alternate day (or other hybrid-attendance) basis. For days when a child is not permitted to attend school in person and must instead engage in remote learning, as long as the need for the leave to actually care for the employee’s child during that time and only if no other suitable person is available to do so (FAQ 98).
- School begins with remote learning only. When a school is beginning under a remote learning program out of concern for COVID-19. (FAQ 100).

However, FAQ 99 states that FFCRA paid leave benefits are not available when a child’s school has the option of in-person attendance or remote learning, but the employee opts for remote learning. The Department takes the position that, in this scenario, the child’s school is not “closed” due to COVID-19-related reasons.

Employer Action

Employers should be aware of these new FAQs and work with employees to determine when FFCRA paid leave benefits may be available during the school year.