



# EMPLOYMENT LAW ALERT

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By: Kimberly Malerba, Esq.  
Nicole E. Della Ragione, Esq.

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## NEW SCHOOL YEAR, NEW QUESTIONS: EMPLOYEE LEAVE RIGHTS UNDER THE FFCRA

The U.S. Department of Labor’s Wage and Hour Division has issued new guidance regarding leave eligibility under the Families First Coronavirus Response Act (the “FFCRA”) as schools begin to reopen. The new guidance explains eligibility for paid leave under the various formats and schedules that many schools have announced for beginning the 2020-2021 school year, including in-person, hybrid, or online only learning.

The FFCRA allows eligible employees to take up to twelve weeks of paid leave (to a capped amount) when they are unable to work (or telework) because of a need to care for a child due to the child’s school being closed or childcare provider being unavailable due to the COVID-19 pandemic. This new guidance promulgated by the Department of Labor clarifies what it means when a school is “closed.”

### *In- Person Education*

If a school district provides parents with the choice of in-person education or remote education for their student, and an employee elects remote learning, the employee would not be eligible for paid leave under the FFCRA. Here, the employee’s child’s school is not “closed” under the FFCRA, as in-person education is available for the child to attend.

### *Hybrid Model*

If a school is operating on an alternate day (or other hybrid-attendance) basis, then an employee would be eligible for FFCRA leave on days when an employee’s child is not permitted to attend school in person and must engage in online education. For purposes of the FFCRA, the school is effectively “closed” to the employee’s child on days that the child cannot attend in person. An employee would only be eligible for FFCRA leave on those days that the child is not permitted to attend school in person.

### *Online Only*

If a child’s school has moved to a model of fully online instruction, then the school is “closed” for FFCRA purposes. Therefore, an employee would be eligible for leave benefits under the FFCRA.

As the Department of Labor and other federal and state agencies continue to publish new guidance regarding COVID-19, it is important that employers stay up-to-date on the latest rules and regulations surrounding their workforce to ensure ongoing compliance with the law.

**For additional information, please contact**

**Kimberly B. Malerba**  
**(516) 663-6679**  
**kmalerba@rmfpc.com**

**Nicole E. Della Ragione**  
**(516) 663-6687**  
**ndellaragione@rmfpc.com**

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