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DOL Provides Guidance on FFCRA Paid Leave and School Fall Reopenings

As some schools reopen for the 2020-2021 school year, the U.S. Department of Labor released several additional FAQs addressing entitlement to leave under the Families First Coronavirus Relief Act.

As background, the FFCRA provides employees with two types of leave where an employee cannot work because they must care for a child due to a school or childcare closure: Emergency Paid Sick Leave (EPSL—up to two weeks) and Emergency Paid Family Leave (EPFL—up to an additional 10 weeks). An employee's eligibility for leave is clear when the child's school is completely closed. However, schools are utilizing a variety of methods for the Fall 2020 semester. Some schools are closed for in-person attendance and are utilizing 100% remote learning. Other schools have moved to either a hybrid model where students attend in-person on alternate days and are remote on other days or offer both in-person or remote learning tracks. In response, the DOL issued the following guidance:

- **Completely remote:** If a child's school has moved to 100% remote instruction, the school is considered closed for purposes of FFCRA. Thus, the employee can take paid leave under FFCRA if they cannot work or telework because the child is home engaging in remote learning.
- **Hybrid model:** If a child's school is operating on an alternate day or hybrid model, the employee can take available paid leave under FFCRA on those days if employee cannot work or telework and must be home because the child is at home learning remotely.

- **Optional approach:** If the school has given parents a choice between having the child attend in-person or remotely, an employee will not qualify for FFCRA paid leave if they choose the remote option. The DOL FAQ notes that since the parent had the option to send his or her child to school but instead chose the remote learning option, the school is "open" and the parent's absence to be at home with the child was not caused by the school closure.

In addition to application of the above principles, the employee must meet FFCRA's general requirements, i.e., the employee cannot work or telework due to a need to care for a child and no other suitable person is available to care for the child. Also, the DOL's recent FAQs assume the parent has not already exhausted his/her available FFCRA leave. However, an employee may have partially or completely exhausted his/her FFCRA leave allowance before the new school year began.

You can access the DOL's FFCRA FAQs here:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#98>

See FAQs 98-100.

Please visit www.moreton.com/news-events/ for more information and to view other client alerts. This Client Alert was written by Carolyn Cox, Moreton & Company's in-house corporate counsel who provides our clients with compliance services. For additional questions, please contact Carolyn at 801-715-7110 or ccox@moreton.com.

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