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Question of the Day: School-Related FFCRA Leave Requests

Legal Update

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Question

How should employers handle requests for FFCRA leave related to schools starting with online, hybrid and optional online programs?

Answer

The Families First Coronavirus Response Act (FFCRA) became law during the early days of the pandemic. Employees were scrambling to react to sudden school and childcare closures, and the FFCRA provided some of those employees a lifeline in the form of 12 weeks of leave at partial pay.

Schools are now opening or planning to open in formats not predicted in March and April, and there are no guarantees as to how long any in-person learning will continue. Employees who have relied on childcare for the hours before and after school may find those options unavailable. Another complicating factor is that some employees may have already used all or most of their FFCRA leave during the spring and summer. Employers can expect a surge of leave requests and tough choices as leave is exhausted.

When handling FFCRA leave requests related to the unavailability of school and childcare, employers should remember the following:

A school's "return-to-learn" plan will affect entitlement to leave.

- Some schools are offering families a choice between online and in-person learning, but FFCRA leave is only available when there is no in-person option available to the child. The Department of Labor recently confirmed this in its FAQ #99 published this week.
- Many schools are offering or considering a hybrid option that alternates in-person and remote learning. And, as the DOL clarified in FAQ #98, on the days not designated for in-person learning, the school is effectively "closed" to students for purposes of the FFCRA. An intermittent leave schedule may be the best

option in this situation so employees can continue to work as much as possible and put off the date when leave will be exhausted.

- Be aware that a school district's plan may prescribe different approaches depending on a child's grade-level, further complicating administration of the FFCRA for employers and for families with multiple children.
- Finally, each school may have a different plan as to how it will handle decisions to quarantine school buildings and classrooms as individuals are exposed to, or diagnosed with, COVID-19.

Gather information to collect the tax credit.

Funding for FFCRA leave is available only when the employee cannot work or work remotely due to childcare demands and no other caregiver is available. Employers must substantiate the need for leave to obtain the refundable tax credits, and employees must provide the child's name; the name of the school, place of care or childcare provider that has closed or become unavailable; and a statement that no other suitable person is available to care for the employee's child.

Some flexibility is allowed.

We have learned over the past several months that situations change quickly, and employers have to be flexible as they decide how to react. Employers can comply with the FFCRA and still meet an employee's individual needs by granting leave intermittently and allowing employees to work remotely and on flexible schedules when childcare and online education responsibilities allow. Employers may find that employees with a co-parent want to alternate work and caregiving days. This flexibility may be key to employee retention and business continuity as the pandemic continues.

Consider options for employees who will exhaust leave.

Some employees who cannot work remotely will likely exhaust their FFCRA leave at some point before the FFCRA expires on December 31. Start preparing for this. Are there remote work opportunities that have not been considered before? Would additional unpaid leave be best, or would flexible scheduling be enough to address the employee's need? Creative options may be necessary to maintain your workforce.

If you have questions regarding these obligations or others related to COVID-19, contact your Fredrikson & Byron Employment & Labor attorney.

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