



COVID-19, RETURNING TO SCHOOL

Frequently Asked Questions

Please Note: The federal Families First Coronavirus Response Act (FFCRA) and corresponding Division of Personnel (DOP) policy are set to expire December 31, 2020. Any reference to the Act or policy in the material below will not be applicable to events occurring on or after January 1, 2021. However, employees may still be entitled to leave under the federal Family and Medical Leave Act, West Virginia Parental Leave Act, and/or the DOP *Administrative Rule* (143CSR1).

INTRODUCTION

The purpose of this document is to provide technical assistance to West Virginia State agencies and employees regarding COVID-19 human resources (HR) management policies and practices that impact agencies, workers, and their families related to the return of the school year. This and additional resources may be found at [Division of Personnel Families First Coronavirus Response Act Guidance and Resources](#).

- 1. My employees have been teleworking productively since mid-March without any issues. Now, several employees claim they need to take Families First Coronavirus Response Act (FFCRA) paid sick leave and expanded family and medical leave (EFMLA) to care for their children whose school is closed because of COVID-19, even though these employees have been teleworking with their children at home for four weeks. Can I ask my employees why they are now unable to telework or if they have pursued alternative childcare arrangements?**

The [DOP-L4A](#) application is required. An agency may request the employee note any changed circumstances in his or her statement as part of explaining why the employee is unable to work, however, exercise caution in doing so, lest it increase the likelihood that any decision denying leave based on that information is a prohibited act. The fact that the employee has been teleworking despite having his or her children at home does not mean that the employee cannot now take leave to care for his or her children whose schools are closed for a COVID-19 related reason. For example, the employee may not have been able to care effectively for the children while teleworking or, perhaps, may have made the decision to take paid sick leave or EFMLA to care for the children so that the employee's spouse, who is not eligible for any type of paid leave, could work or telework. These (and other) reasons are legitimate and do not afford a basis for denying paid sick leave or EFMLA to care for a child whose school is closed for a COVID-19 related reason.

This does not prohibit an agency from disciplining employees who unlawfully take FFCRA leave based on misrepresentations, including, for example, to care for the employee's children when, in fact, the child is attending day care or care is being provided by another provider.

2. Who is a "child care provider"?

A "child care provider" is someone who cares for a child. This includes individuals paid to provide child care, like nannies, au pairs, and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.

The Temporary Rule issued by the United States Department of Labor (U.S.DOL) provides that an eligible employee has need to take EFMLA only if no other "suitable person" is available to care for his or her child/children during the period of such leave. It does not however provide any guidance about who may be considered suitable. Employers and employees should consider an interactive approach similar to the interactive process used with Americans with Disabilities Act (ADA) accommodation process when determining an employee's leave eligibility. The ADA allows employers flexibility in determining when an employee becomes eligible and requires the employee to provide written representation that no other suitable person is available to provide care for the child. If the need to provide care is for a child older than eighteen, a statement that special circumstances exist requiring the employee to provide the care is required.

3. What is a "place of care"?

A "place of care" is a physical location in which care is provided for a child. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

4. Can more than one guardian take paid sick leave or EFMLA simultaneously to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons?

FFCRA paid sick leave and EFMLA eligibility is limited to periods an employee is unable to work or telework as a result of providing care to a child whose school or place of care has closed due to a COVID-19 related reason. Generally, if a co-parent, co-guardian, or regular child care provider is available to provide care for the child, the employee would not be eligible for leave under FFCRA.

However, to fulfill work or other commitments, co-parents, co-guardians may choose to split child care responsibilities. Under these circumstances both care givers may qualify for FFCRA leave.

Intermittent leave may only be taken in 15-minute increments in accordance with the Administrative Rule.

- 5. Some schools are operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. The students are permitted to attend school only on their allotted in-person attendance days. May an employee take paid leave under the FFCRA in these circumstances?**

Yes, paid leave under the FFCRA may be taken on days when a child is not permitted to attend school in person and must instead engage in remote learning, as long as the leave is necessary to care for the child and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively “closed” to your child on days that he or she cannot attend in person. You may take paid leave under the FFCRA on each of your child’s remote-learning days.

- 6. Many school districts are giving parents and caretakers a choice between having their child attend in person or participate in a remote learning program. Are employees eligible for FFCRA leave if they elect to enroll students in remote learning full or part-time?**

No. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. FFCRA leave applies only when an employee is on leave to care for their child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons. To be eligible for FFCRA leave the school must be physically closed to in-person learning. Parents who elect for a blended style of in-person and virtual learning are eligible for leave under FFCRA only on days in which the school is not open to their child for in-person learning. Parents electing full-time virtual learning would normally not be eligible for leave under the provisions of the FFCRA. If, however, the school the child would normally attend switches to full-time virtual learning for a period of time due to a school closure related to COVID-19, eligible parents or guardians may be entitled to leave because the in-person option is no longer available during the closure.

- 7. Due to local conditions related to the spread of COVID-19, the school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home. Is the school or place of care considered to be “closed”?**

Yes. If the physical location where the child receives instruction or care is now closed, the school or place of care is “closed” for purposes of FFCRA. This is true even if some or all instruction is being provided online or whether, through another format such as “remote, virtual learning,” your child is still expected or required to complete assignments.

- 8. Can FFCRA leave be taken intermittently when schools are closed to in-person learning?**

Like FMLA, leave provisions of FFCRA require a “triggering event” establishing the need for leave. An employee becomes eligible for leave upon a triggering event and is no longer eligible for leave when the qualifying event changes. Example: The employee's child attends a school operating on a hybrid attendance schedule.

The child attends in-person learning on Monday, Wednesday, and Friday. The child is expected to attend remote/virtual learning on Tuesday and Thursday. Upon approval of the agency, the employee is eligible for FFCRA leave on Tuesday and Thursday. The employee's eligibility for leave ends when the triggering event ends each day the school is open. Eligible employees are entitled to leave each day the school or place of care is closed due to reasons related to COVID-19. Eligibility continues until the allotted FFCRA leave balances are exhausted.

9. How much leave does the FFCRA provide to care for a child/children whose school or place of care is closed due to reasons related to COVID-19?

The FFCRA provides eligible employees two leave benefits; Paid Sick Leave and emergency FMLA. Employees who are unable to work or telework are eligible for up to eighty (80) hours of Paid Sick Leave at not less than 2/3 of the employee's regular rate of pay or minimum wage, whichever is greater for the number of hours the employee would otherwise be scheduled to work.

Under the FFCRA emergency FMLA, eligible employees are entitled to take up to twelve (12) weeks of emergency FMLA leave where an employee is unable to work or telework to care for a minor child if the child's school or place of child care has been closed or is unavailable due to a public health emergency.

Leave under emergency FMLA is unpaid during the first ten (10) days of leave. Employees may choose to take unpaid leave, use the eighty (80) hours of FFCRA Paid Sick Leave or may take available accrued sick or annual leave during the first ten days. The remaining ten (10) weeks are paid at not less than 2/3 of the employee's regular rate of pay or minimum wage, whichever is greater for the number of hours the employee would otherwise be scheduled to work. The maximum payment is \$200 a day and a \$10,000 total.

More information regarding the FFCRA is available on the DOP website, [Families First Coronavirus Response Act Guidance and Resources](#) or by calling Employee Relations at (304) 414-1853.