

Classes Resuming Have Ripple Effect on Businesses and Working Parents

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For many working parents, Labor Day typically marks the end of the footloose and fancy-free days of summer. Kids return to school, extracurricular activities and sports practices commence, and we resume our hectic, yet predictable, lives. But not this year. As school districts take different approaches to reopening, and individual children and classes unexpectedly are quarantined, working parents face more uncertainty than ever as they try to juggle parenting (and in many cases virtual schooling or homeschooling) with their professional responsibilities.

Employers necessarily will feel the impact of that uncertainty and should plan for some amount of disruption. For example, employers should have back up staffing plans in place, employees should be trained to perform additional job duties so that they can fill in for one another, and employers should consider the possibility of flexible schedule arrangements. It also is critical that employers remain aware of the various leave laws that will provide for job-protected time off to parents who need to care for their children.

In particular, the Families First Coronavirus Response Act (FFCRA) requires certain employers to provide expanded family and medical leave to covered employees who are unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19. But what does that mean in the context of remote learning? The Department of Labor recently clarified that employers *do not* have to provide paid leave to parents under the FFCRA when they *choose* to enroll their children in remote learning rather than having them attend school in person. On the contrary, the FFCRA does grant paid leave to parents if their child's school only offers remote learning, or on days when children are not scheduled to attend school under a hybrid (remote/in-person) plan. Working parents also may be entitled to FFCRA leave if their child potentially is exposed to COVID-19 and, therefore, is *required* to study remotely. The FFCRA also is triggered if an in-person learning program ultimately transitions to a mandatory remote program. But the FFCRA is not the only law that matters here, and the FFCRA itself appears to be subject to revision as the U.S. Labor Department recently sent an updated rule to the White House for final review.

Various states also have implemented their own emergency leave laws while others have such laws pending. Massachusetts' proposed version goes so far as to prohibit an employer from terminating an employee who cannot physically report to work due to a lack of childcare. Massachusetts employers also would be required to provide those employees with reasonable accommodations, including remote work and flexible work arrangements. And employees who lack childcare and have exhausted paid time off benefits would be eligible to collect unemployment and thereafter enjoy reinstatement rights to their position.

Given this constantly shifting landscape, we encourage employers to consult with counsel as they work to balance operational needs with the needs of employees who are working parents. School-related accommodation requests are inevitable. Legal action does not have to be.