

# ANDERSON KILL EMPLOYMENT LAW INSIDER

# ALERT

## The COVID-19 Conundrum: Parents' Rights and Obligations When Children 'Return' To School

By Bennett Pine and John P. Lacey Jr.

**O**n March 11, 2020, COVID-19 was declared a worldwide pandemic by the World Health Organization, shuttering places of employment and schools across the country in favor of virtual learning for the remainder of the school year.

Now, as schools begin to “reopen” for another school year, many school districts across the country are opting to continue virtual learning entirely, or, in some cases, are implementing a hybrid approach, combining virtual learning with in-person learning a few times per week.

Therefore, employers must be cognizant that many working parents otherwise able to return to the workplace are not able to do so, given the need to care for their school-aged children during the work week. As a result, the number of parents seeking leave this Fall to care for their school-aged children is expected to increase significantly, impacting employers in virtually every sector.

As schools begin to reopen, it is critical for both employers and employees to be aware of their respective rights and obligations under current legislation regarding COVID-19–related parental leave, so that both employers and employees can plan accordingly.

### ***The Families First Coronavirus Response Act – Leave Benefits for Working Parents***

One of the most important pieces of legislation with respect to parental leave is the Families First Coronavirus Response Act (FFCRA), which was signed into law on March 18, 2020. The FFCRA’s paid sick leave and expanded family and medical leave provisions apply to eligible employees seeking leave at any point between now and December 31, 2020, and apply to certain public and private employers with less than 500 employees.

In order to qualify for sick leave under the FFCRA, an employee must be unable to work (or telework) for specified reasons, including if an employee needs to care for a child (under the age of 18) whose school

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or child care facility is closed for reasons related to COVID-19. However, to the extent employees are actually able to care for their children while working, those employees would not be eligible for paid sick leave and expanded family and medical leave.

Generally, full-time employees, who have been employed for at least 30 days, are eligible for up to 12 weeks of paid leave. However, there are certain limitations. For example, a full-time employee is entitled to paid leave for up to 12 weeks, but only at two-thirds of their regular pay, and the mandatory payment is capped at \$200 per day, or \$12,000 in total.

Part-time employees are similarly entitled to apply for leave to care for children due to COVID-19-related reasons, but only for the number of hours the employee is scheduled to work over that period.

### *Intermittent Leave Is Generally Permitted*

Generally, intermittent leave under the FFCRA is permitted, but only if an employer agrees, and an employee is unable to work their normal hours remotely because of having to care for children whose school or child care is closed for COVID-19-related reasons. The Department of Labor has issued guidance on this subject, encouraging employers and employees to work collaboratively and remain flexible to meet the mutual needs of both employers and employees under the circumstances.

If an employee is not working remotely, but rather is working at their usual workplace, the employee is generally not permitted to take intermittent leave, and must take leave in full-day increments until either: (1) the full amount of paid sick leave is used, or (2) the employee no longer has a qualifying reason for taking paid sick leave. Again, though, the Department of Labor encourages employers and employees to work collaboratively to meet the needs of both employers and employees under the circumstances. Thus, if an employer agrees, an employee may be permitted to take intermittent leave, whether working remotely or in-person.

Employees are also eligible to take leave for COVID-19-related reasons if: (1) they are subject to a federal, state, or local quarantine or isolation mandate; (2) they have been advised by a health care professional to self-quarantine; (3) they are experiencing COVID-19 symptoms; or (4) they are caring for an individual subject to a quarantine or isolation mandate. In all cases, however, qualifying employees are only entitled to a maximum total of 12 weeks paid leave whether that leave is taken consecutively or intermittently.

### *In Sum*

For many working parents, the realities of a new school year have led to increased stress and anxiety, particularly as parents are faced with having to manage their work responsibilities while caring for their school-aged children. The FFCRA, however,



provides eligible employees viable options in the event leave is necessary this Fall as school aged children “return” to school. We strongly encourage employers to carefully track the amount of time an employee has taken since March 2020 because of their own illness or to care for their school-aged children who are required to stay home, as qualifying employees are only entitled to 12 weeks of paid leave. Employers and employees should continue to keep open lines of communication, and work in collaboration to address these issues. ▲

This publication was prepared by Anderson Kill P.C. to provide information of interest to readers. Distribution of this publication does not establish an attorney-client relationship or provide legal advice. Prior results do not guarantee a similar outcome. Future developments may supersede this information. We invite you to contact the editor, Bennett Pine, at [bpine@andersonkill.com](mailto:bpine@andersonkill.com) or (212) 278-1288, with any questions.

