DOL Answers Three Lingering FFCRA Back-to-School Questions

As so many of our children are returning to schools employing distance learning or hybrid schedules, questions have lingered as to when a school is actually “closed” for purposes of the FFCRA’s Expanded FMLA leave. The Department of Labor (DOL) has finally stepped forward by issuing three new FAQ’s addressing the issue.

Hybrid Schedules
A large number of schools around the country are opening with what is routinely termed “hybrid schedules” where the students spend some days attending in person and other days using distance learning. This facilitates social distancing by ensuring that only 50 percent of the students will be in the class room at any one time.

In FAQ #98, the DOL confirms that on a day when the hybrid schedule calls for the child to be home for distance learning, the school is considered “closed” for that student on that day. As such, the child’s parent would be eligible for Expanded FMLA leave under the FFCRA, provided of course that the parent is actually needed to care for the child and there is no other suitable person to do so.

What if the Parent Chooses Distance Learning?
Many schools returning to the traditional in-person teaching model are allowing parents to opt out and elect to pursue distance learning for their child. These schools typically use technology to allow these students to “attend” virtually, and teachers are finding new and creative ways to ensure an effective, interactive learning environment for them.

The DOL’s FAQ #99 makes it clear that under these circumstances, the parent is not eligible for Expanded FMLA leave under the FFCRA. Per the FAQ, because the school is not “closed,” the parent does not need to be home to care for the child. Instead, the parent is making a choice and the FFCRA does not provide leave for voluntary absences.

What if School is Closed Now but Opens Later On?
Many schools have taken a “wait-and-see” approach. They opened with distance learning only, but they also announced that they will consider moving to hybrid schedules or in-person instruction if it becomes safe to do so. DOL’s FAQ #100, not surprisingly, says that under those circumstances, the school will be considered “closed” (and the parents are eligible for Expanded FMLA) until a different teaching model is implemented. When that happens, the rules announced in FAQ’s #98-99 will govern.

Bottom Line
The DOL’s positions on these issues are not at all surprising, but it still is good to see written confirmation of them.