

Update on State Travel Order

The Department of Health has announced additions to the list of lower-risk states: Colorado, Delaware, Oregon, Pennsylvania, Washington, West Virginia and Wyoming have been added as of September 5, 2020.

Travelers from COVID-19 lower-risk states are not required to fill out the Mass Travel Form.



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Back to School and FFCRA Leave

As schools start the year either fully remote or with a hybrid learning model that includes a mix of in-person and remote learning, employers are certain to face questions about the applicability of Families First Coronavirus Response Act (FFCRA) leave to employees struggling to find care for children learning remotely full or part time. On August 27, 2020, the DOL updated its guidance to clarify eligibility for FFCRA leave in different situations related to school reopening.

What if the school is closed for physical in-person instruction and only offers a remote learning schedule? The employee is eligible for FFCRA leave as schools are considered “closed” when the physical location for in-person instruction is not open and some or all instruction is being provided remotely.



Can FFCRA leave be granted on remote learning days as part of a hybrid learning model where the school alternates in-person and remote learning? Yes, an employee is eligible for FFCRA leave on days where the employee needs to care for his or her child because the child is learning remotely even though school is open for other students as part of the hybrid model. While the physical school location is open on all or some days of the week, the school (or place of care) is effectively closed to the employee’s child on remote learning days. An employee would also be eligible to take FFCRA leave in an in-person learning model where the child’s school is closed for one or more days a week for disinfecting or other COVID-19 related reasons.

For example, an employee’s child attends a school with a hybrid-learning model. The employee’s child is part of a cohort that attends school in-person on Monday and Tuesday, and learns remotely for the remainder of the week. The employee would be eligible to take FFCRA leave to care for his or her child on Wednesday, Thursday, and/or Friday.

What about an employee who chooses to have their child engage in full-time remote learning even though the child’s school is open for in-person learning? An employee who voluntarily chooses to have their child learn remotely full-time where the child’s school is otherwise open for in-person instruction is generally not eligible for FFCRA leave because the child’s school is not “closed.”

What if the child’s school begins the school year under remote learning model but switches to a hybrid or in-person learning model later in the year? An employee is eligible to take FFCRA leave while the child’s school remains closed. The DOL guidance notes that if the child’s school changes its learning model, the employee’s eligibility will depend on the school’s operations.

Back to School and FFCRA Leave (continued)

Can Districts grant intermittent use of leave for this reason? According to DOL regulations, FFCRA leave may be permitted to care for a child whose school or place of care is closed, or whose child care provider is unavailable on an intermittent basis only with employer consent. It should be noted however, that a recent Federal Court decision from the Southern District of New York and the new FAQs from the DOL call into question whether employer consent is actually required before employees can take intermittent leave. It appears that DOL is preparing to issue updated regulations for the FFCRA, which may clarify this issue. Until then, given the practical considerations surrounding such leave requests, especially with most schools in Massachusetts adopting some sort of hybrid learning model, we encourage employers to be flexible when possible and allow use of intermittent leave for school closure and child care issues.

Do I still need to allow FFCRA leave for child care issues when an employee is teleworking? Yes, an employer may grant FFCRA leave on an intermittent basis to employees working remotely as it is possible that an employee is prevented from working his or her normal schedule (or full day) because the employee must care for his or her child during all or part of the day.

What about employees who now want to take FFCRA leave even though they have been able to telework previously with children at home without any issues? The fact that an employee has not needed to take FFCRA leave in the past to care for his or her child while working or teleworking is not a legitimate reason to deny an employee leave.

Finally, remember where the qualifying reason for FFCRA leave is to care for a child, the employee must submit documentation that includes: (1) the name of the child or children being cared for; (2) the name of the school, place of care or childcare provider that is closed or unavailable; and (3) a statement that no other suitable person is available to care for the child or children during the requested leave. Contact your NMP attorney with any questions.

Influenza Vaccinations Required for All Massachusetts Students

Last month, the Department of Public Health (DPH) announced that all Massachusetts students will be required to get a flu vaccine by December 31, 2020. The mandatory immunization requirement aims to reduce the overall impact of respiratory illness among students as an added precaution during the COVID-19 pandemic.

The requirement applies to all children 6 months of age or older who are attending child care, pre-school, kindergarten–grade 12, and post-secondary institutions in Massachusetts. The flu immunization requirement is in addition to the existing vaccination requirements for students, unless the student has a medical or religious exemption. There is also an exemption for K-12 students who are home-schooled and post-secondary students who are completely off-campus and engaged in remote learning only. At the K-12 level, the immunization requirement applies to students regardless of whether the school provides an in-person, hybrid, or fully remote learning model. Enforcement of the immunization requirements will be handled by the local school district.

Massachusetts is reportedly the first state in the U.S. to require flu shots for children over the age of 5.

