



# How Dealerships Can Balance School Re-Openings And COVID-19 Leave

Insights

10.30.20

The school year is several months underway, and re-opening plans vary widely for schools across the nation during the COVID-19 pandemic. Some schools have transitioned to a distance, or remote, learning model, which require students to attend classes online. Other schools have opened for in-person learning, while others have taken a hybrid approach — permitting in-person learning several days a week and directing student to attend remotely on other days. Others have also split classes into morning and afternoon sessions.

The realities of COVID-19 have caused hardships for many working parents, including those with children who are distance learning. Until recently, most dealerships were not legally obligated to give employees time off to care for kids who were stuck at home. However, with passage of the Families First Coronavirus Response Act (FFCRA) in March, a variety of leave options are now available for working parents.

As the school year continues, dealerships will likely see more FFCRA leave requests. To help prevent any operational issues, you should be prepared for an influx in these requests and the issues that you could face as schools reopen.

## **Paid Leave Benefits For Working Parents Under The FFCRA**

The FFCRA applies to employers who employ fewer than 500 employees. There are exemptions for certain employers with fewer than 50 employees who are able to show that providing paid leave under the Act would jeopardize the viability of the business as a going concern.

Under the FFCRA, eligible employees are entitled to Emergency Paid Sick Leave (EPSL) and/or expanded family and medical leave (EFML) if they are unable to work or telework because they need to care for their son or daughter if (a) the child's school or place of care is closed, or (b) the child care provider is unavailable, due to COVID-19-related reasons. The FFCRA regulations provide that an employee may take leave to care for their child only when the employee needs to, and actually is, caring for the child. The Department of Labor (DOL) has advised that "generally, an employee does not need to take such leave if another suitable individual — such as a co-parent, co-guardian, or the usual child care provider — is available to provide the care the employee's child needs."

## **What Counts As A School Closure Or "Place Of Care" Closure?**

If the physical location where your employee's child received instruction or care is closed, the school or place of care is deemed "closed" for purposes of the EPSL and EFML. The DOL has instructed that this is true even if some or all instructions are being provided online or whether, through another format such as distance learning, the child is still expected or required to complete assignments.

This also applies when the child's school is operating on a hybrid model. That is, your employees may be eligible to take paid leave under the FFCRA on days when their child is not permitted to attend school in-person and must instead engage in remote learning — as long as the need for leave is to care for the child during that time and only if no other suitable person is available to do so. Additionally, an employee may qualify for FFCRA leave if the employee's child's school is open, but the child's before or after school program—i.e., place of care—is closed.

However, if an employee chooses to keep their child at home or has the child homeschooled even though the child's school is open, the DOL has stated that the employee would not be entitled to FFCRA leave. Similarly, the DOL has clarified that an employee is not eligible to take paid leave under the FFCRA if the child's school is open and offers the choice of in-person or remote learning, and the employee chooses remote learning. Under these instances, the child's school is not "closed" due to COVID-19 related reasons.

### **Is There an Age Limit For An Employee's Child?**

EPSL and EFML leave may only be taken to care for an employee's non-disabled child if they are under the age of 18. If the employee's child is 18 years of age or older with a disability and cannot care for themselves due to that disability, the employee may take EPSL and EFML leave to care for the child if their school or place of care is closed or the child care provider is unavailable due to COVID-19-related reasons and the employee is unable to work or telework as a result.

Additionally, EPSL is available to care for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. If an employee has a need to care for a child age 18 or older who needs care for these circumstances, the employee may take EPSL if they are unable to work or telework as a result of providing care. In no event may the employee's total paid sick leave exceed two weeks.

### **What About Employees Who Previously Teleworked?**

Because of the pandemic, dealerships, like many employers across the country, have permitted some of its employees to telework. The DOL has made it clear that this should not prevent leave under the FFCRA. The fact that an employee who previously teleworked while the employee's child's school was closed does not prevent the employee from now taking leave to care for their child whose school is closed for COVID-19 related reasons.

### **What About Employees Who Are Parents To The Same Child?**

Employees may take EPSL or EFML leave to care for their child only when they need to, and actually are, caring for the child if they are unable to work or telework as a result of providing care. Generally, employees do not need to take such leave if a co-parent, co-guardian, or the usual child care provider is available to provide the care the child needs. With that in mind, while both employees who work for the dealership would each be eligible for leave, they would likely not be able to both take leave to care for their child since they would have to certify that there is no alternative suitable caregiver.

Under DOL regulations, spouses who work for the same employer can be required to share a combined 12 weeks of FMLA leave to bond with their new child or care for their own parent with a serious health condition. The EFMLA does not provide for the same carveout. But keep in mind that while both employees who work for the same employer would each be eligible for EFMLA leave, they would likely not be able to both take leave to care for their child since they have to certify that there is no alternative suitable caregiver.

### **How Much Leave Is Permitted For Child Care Purposes?**

The DOL regulations state that employees are entitled to only a one-time use of 80 hours of EPSL, regardless of the reason. If an employee has not exhausted their full EPSL allotment, they may use the remaining time for other permitted reasons.

This applies to new employees who already used up all of their EPSL while working for a different employer. An employee who has taken all such leave and then changes employers is not entitled to additional EPSL from their new employer. However, an employee who has taken some (but fewer than 80 hours of) EPSL and then changes employers is entitled to the remaining portion of such leave from their new employer, but only if the new employer is covered by the FFCRA. Additionally, an employee may only take a total of 12 workweeks for FMLA or EFMLA reasons during the dealership's designated benefit year.

### **What About Supporting Documentation?**

When requesting EPSL or EFML leave, employees must provide the following information to the dealership, either orally or in writing:

- Employee's name;
- The date(s) for which employee requests leave;
- The reason for leave; and
- A statement that the employee is unable to work because of a FFCRA qualifying reason.

If the employee requests leave because they are subject to a quarantine or isolation order or to care for an individual subject to such an order, they should additionally provide the name of the government entity that issued the order. If the employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, they should also provide the name of the health care provider who gave the advice.

such advice, they should also provide the name of the health care provider who gave the advice.

If the employee requests leave to care for a child whose school or place of care is closed, or child care provider is unavailable, they must also provide:

- The name of the child;
- The name of the school, place of care, or child care provider that has closed or become unavailable; and
- A statement that no other suitable person is available to care for the child.

Supporting documentation can be submitted after the leave has commenced.

## **Conclusion**

As schools reopen and adjust their learning models to address the needs of students, families, and educators during these unprecedented times, you should consider ensuring your team is aware of and can handle the issues related to FFCRA leave requests.

## ***Related People***



**Christopher Alvarez**  
Partner  
916.210.0403  
[Email](#)

## ***Service Focus***

Employee Leaves and Accommodations

## ***Industry Focus***

Automotive Dealership

