

April 2, 2020

Superintendents,

There have been many questions surrounding the recently released information from the US Department of Labor regarding the provisions of the Families First Coronavirus Response Act (FFRCA) and related personnel issues. We are very grateful that our Office of General Counsel worked in conjunction with the Alabama Association of School Boards (AASB) and others to provide the attached guidance. This includes an

- FAQ document as these provisions relate to local schools
- Sample flexible “skeleton crew” schedule for employees
- Sample employee leave request form

These are meant to be informative, but not all inclusive of the issues you may face. As always, I encourage you to run any unique situations by your Board attorney.

Thank you,

Eric S. Mackey

State Superintendent of Education

FAQs for Families First Coronavirus Response Act (FFCRA) and Related Personnel Issues for School Boards

Signed into law March 18, 2020; Effective April 1, 2020-December 31, 2020

This guidance addresses general questions related to the FFCRA but is not intended to address every discrete issue that may arise. It is imperative that school boards seek legal advice from their local counsel to address specific issues.

Are school boards subject to the FFCRA?

Yes. The FFCRA applies to local school boards. The Act also applies to the federal, state and local government, as well as private employers with less than 500 employees.

Which employees are covered by the FFCRA?

All full-time and part-time school system employees are covered by the Act and eligible for the 2 weeks of emergency paid sick leave if they meet the criteria noted in the table below. If an employee has been employed for more than 30 days, they are also entitled to the additional 10 weeks of leave under the Emergency FMLA related to childcare. Teleworking employees are not eligible for this leave unless they are ill or caring for someone impacted by COVID-19 and unable to work even from home.

When does this law become effective?

The provisions of the law become effective April 1, 2020, and expire on December 31, 2020.

Does an employee have to request this leave?

Yes. A sample request form is provided.

So what does this law do?

For our purposes, the law provides 2 types of leave for employees impacted by COVID-19: emergency paid sick leave and expanded FMLA leave. A quick breakdown can be found on the next page.

EMERGENCY PAID SICK LEAVE & EMERGENCY FMLA LEAVE QUICK REFERENCE CHART					
Related to	Reason for Leave	Employee	Leave	Maximum Pay	Notes
Self	1-Subject to federal, state or local quarantine order	Full time or part time employee	Emergency Paid Sick Leave	100% pay for 10 work days up to \$511/day	As of April 1, there is no current federal, state or local quarantine that would apply in Alabama.
	2-Advised to quarantine by health care provider	Full time or part time employee	Emergency Paid Sick Leave	100% pay for 10 work days up to \$511/day	
	3-Experiencing symptoms and seeking a diagnosis	Full time or part time employee	Emergency Paid Sick Leave	100% pay for 10 work days up to \$511/day	
Others	4-Caring for a person subject to quarantine order from govt. officials or health care provider	Full time or part time employee	Emergency Paid Sick Leave	67% pay for 10 work days up to \$200/day	As of April 1, there is no current federal, state or local quarantine that would apply in Alabama, but this reason still may apply if ordered by a health care provider.
	5-Caring for child whose school or daycare is closed	Full time or part time employee employed for at least 30 days	Emergency Paid Sick Leave	67% pay for 10 work days up to \$200/day	Total of 12 weeks; Applies only to children under the age of 18
			Emergency FMLA Leave	Additional 10 weeks up to \$200/day	
6-Experiencing similar condition as specified by HHS	Full time or part time employee	Emergency Paid Sick Leave	67% pay for 10 days up to \$200/day		

To summarize, if the leave is required based on the employee's own health, they earn 100% of their pay for 2 weeks. If the leave is based on caring for another, they earn 67% of their pay for 2 weeks. Additional leave is available for childcare up to 10 weeks at 67% of their pay.

Are we under a quarantine order in Alabama?

As of April 2, 2020, no. While we are under a state of emergency, “quarantine” has a particular legal definition under Alabama law. While Alabamians are encouraged to stay at home, no quarantine or mandated “stay-at-home” orders have been issued.

How will the childcare leave work exactly?

The leave for childcare is a bit tricky because two types of leave are available. Here is how that may work:

- Weeks 1-2 – Emergency Paid Sick Leave at 67% regular salary up to \$200/day
- Weeks 3-12 – Emergency FMLA Leave at 67% regular salary up to \$200/day

Additionally, employees using leave for childcare may choose to use certain accrued leave. See the next question for more information on using accrued leave.

Do employees have to exhaust their accrued leave before using this emergency leave?

According to a [Temporary Rule](#) issued by the Department of Labor (see page 25), employees may choose, or employers may require exhaustion of regular accrued leave (e.g. personal, vacation, sick leave), but be mindful of 3 points:

- Because this emergency leave is subject to salary caps and limits, employees may choose to use accrued leave so they can receive full pay, if applicable;
- If an employee chooses to use their accrued leave for childcare, they must also use the emergency leave at the same time (an example is provided below); and
- In Alabama, the emergency leave (childcare only) cannot be supplemented by accrued sick leave. Under Alabama law, sick leave can only be used for specified purposes. Caring for a healthy child is not a permissible reason for taking sick leave in Alabama.

Here is an example of how accrued leave and emergency leave may work together:

Teacher must stay home to care for son whose elementary school has closed due to COVID-19. Teacher has requested 8 weeks of leave through the end of the school year. Teacher can use 2 weeks of emergency paid sick leave at 67% and 6 additional weeks of emergency FMLA leave at 67%. Teacher has already earned 5 personal days of leave this year which she can use to earn 100% of her pay for the first week rather than 67%. Teacher can take the following leave:

- Week 1 – 5 personal days (100% of salary) at **same time** as emergency paid sick leave;
- Week 2 – Emergency paid sick leave (67% of salary); and
- Weeks 3-8 – Emergency FMLA leave (67% of salary).

Our part-time employees work varying hours. How do we calculate the hours?

If your part-time employees work varying hours, you can base the calculation on the average number of hours they typically work in a two-week period as averaged over the last 6 months.

Do I have to provide the full leave under this Act or can it be partial?

The emergency leave only lasts as long as the qualifying reason lasts so the 2-week/10-week increments are maximums. They are not minimums.

Can this leave be taken intermittently?

Only the childcare-based leave can be taken intermittently. All other types of leave provided by this Act must be taken all at once.

Can we ask for a doctor's excuse?

Generally, yes, but be mindful of the difficulty employees may have getting a doctor's excuse when health care providers are actively discouraging patients from coming to the doctor's office. Employers should consider permitting employees' certification that their request is for a reason permitted by law rather than mandating a doctor's excuse.

Will employers be reimbursed for the costs of this leave?

While most employers will receive tax credits to offset the cost of this leave, government employers like school systems will not. Government employers will be forced to bear the cost of this leave.

Can we discipline an employee who takes this leave?

No. As always, it is illegal to retaliate against an employee who exercises rights provided by law.

Is there a poster?

Yes. The Department of Labor has prepared a poster that must be placed where employees can see it. The best place is where your other employment posters are displayed, like your FLSA poster and your OSHA poster. If employees are not in the building, the system can send the poster to employees via email or post it conspicuously on the system's website or employee intranet.

We've ordered all employees to report to work each day from 10:00 AM-2:00 PM. Is this allowed?

Yes, but before issuing a blanket order that all or most employees report to work, consider whether that is necessary and whether the work can be accomplished by other means. State Superintendent Eric Mackey has provided clear guidance that systems need to "limit the number and time that teachers and staff spend together." In short, if an employee can telework or is

otherwise not needed in the building, administrators should not require them to be physically present in the building. Limiting access to our buildings reduces unnecessary exposure.

When it is necessary for employees to be in the building, the administration should:

- Ensure buildings are thoroughly cleaned **before** employees are allowed in;
- Limit employee time in the building;
- Allow for rotating schedules;
- Avoid close contact situations like faculty meetings;
- Respect social distancing guidelines;
- Frequently clean and sanitize common areas, computers, copiers, etc.; and
- Ensure strict compliance with all Department of Public Health and CDC guidelines.

It will also be helpful to give employees a clear idea of why they need to report to school and what the long term plans are. A good example was found in Mobile, simplified here to illustrate:

X Elementary School				
Grades	Time	April 6 Duties	April 7 Duties	April 8 Duties
Pre-K - 1	8 AM-10 AM	Collect student belongings and prep for distribution	Distribute student belongings to parents	Clean and close out classroom for the year
2-3	10 AM-noon			
4-5	Noon-2 PM			

After April 8, 2020, teachers will not be required to report to school. Any teacher who is unable to report during this week because they are exhibiting symptoms of COVID-19, have been tested for COVID-19 or have received a positive test should advise the building principal immediately.

This type of clear, thoughtful and intentional information will hopefully create buy-in among your staff and reduce employee uncertainty.

Some employees in our system are required to report to work and others are not, but all are being paid. Some are complaining that this is not fair. How do we handle this?

It's true that this may not be fair but the nature of the work dictates whether certain employees need to report. This is true for industries across the country as we watch healthcare workers, first responders and grocery store workers report to work in droves while other employees can telework and still others have lost jobs by the hundreds of thousands. In a recent memo to state agency heads, Governor Ivey wrote:

“The determination as to which employees are considered essential and non-essential should be exercised judiciously and not necessarily in blanket fashion. No employee is entitled to emergency leave [not a reference to FFCRA leave] merely because another co-worker, with different circumstances, is granted leave.”

Schools are no different. For example, schools with feeding programs will need CNP workers and custodians but may not need the school secretary. A teacher with sufficient technology at home may not need to report to school while her colleague needs to come in for a few hours to use her computer or the copier. As always, make sure that these assignments are not made in a discriminatory manner and that any staffing decisions are made for legitimate, nondiscriminatory reasons.

Some have said they are too afraid to report to work due to fears of contracting COVID-19. Can they refuse? What if they have underlying health conditions or other concerns?

Generally, if the administration has directed certain employees to report to work, they must comply or assume the same risk that they would normally have working in a school. If they are eligible, they can also apply for leave under the FFCRA or unpaid leave under the traditional FMLA. With that said, we encourage administrators to be sensitive when making these decisions due to the anxiety and disruption to daily lives caused by this virus. The [CDC](#) and the [Department of Public Health](#) have provided information regarding individuals who may be at an increased risk for infection so please be mindful and schedule accordingly. Our employees are faced with concerns for their health and the health of their families. They are also faced with childcare issues now that schools and many daycares have closed. Now is the time to be as gracious as possible as we all work through this difficult time.

What about the regular FMLA? Is that still available?

The regular provisions of the FMLA remain intact, including the 1,250 hours of employment requirement and the unpaid leave provisions.

Where can I find more information?

The best source of information on this Act is the Department of Labor’s [guidance](#) provided on its website. The DOL is updating its guidance regularly. Also, you can find up to date information on Alabama schools on the [AASB](#) and [State Department of Education](#) COVID-19 landing pages.

***We hope this guidance is helpful,
but please contact your local counsel for legal advice.***

EMPLOYEE LEAVE REQUEST

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Employee Name

Job Title

Work Location

First Date of
Leave

Duration of Requested Leave
(in work days)

Use accrued
leave?

yes
no

sick
pers

No. of
Days

Max.
Avail.

Reasons for
Leave
(check one)

- 1 - Employee is subject to federal, state or local COVID-19 quarantine/isolation order (*not currently available in Alabama)
- 2 - Employee has been advised to self-quarantine by health care provider due to COVID-19 (certification from health care provider may be required)
- 3 - Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis (certification from health care provider may be required)
- 4 - Employee is caring for a person subject to federal, state, local or health care official's COVID-19 quarantine/isolation order
- 5 - Employee is caring for a son or daughter under whose school has been closed due to COVID-19 or whose childcare is unavailable during COVID-19
- 6 - Employee is experiencing a substantially similar condition as designated by Department of Health and Human Services

I certify that the above information is correct and my request is based on the reason indicated.

Employee's
Signature

Date Signed

OFFICE USE ONLY

Action Date

Action taken by

Type of Leave
(check all that apply)

Emergency Paid Sick Leave
FMLA

Action
(check one)

Leave Approved
Leave Denied

Notes