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***The Association of
Independent Funeral Homes
of Virginia***

Officers: David Cecil, President
Johnny Muncey, Vice President
Eric Bliley, Sec/Treasurer
Sammy Oakey, Past Pres.

Directors:

Robert Givens	Mary Morehead
Glenn Wood	Willie Coffman
Paul Welch	DD Watson

Executive Director

B. Bennett Keeney Jr. "Bo"



Dear Associates,

Let me begin by saying that it is with a great amount of humility and respect that I accept the position of President of the Independent Funeral Homes of Virginia. IFHV was organized by a group of men and women who wanted to make a difference and to be sure that the word "Independent" meant something. We are indebted to our founders.

I would like to take a moment and thank all those who have guided this organization from its conception until now. Our organization is strengthened by understanding all the ways one situation/ problem can affect us all differently. Even though we don't all agree on everything, we do agree to disagree. My hope is that we will continue to support one another as we face the future together.

We all hope and anticipate being in Phase 4 of Covid-19 in the next several months. We continue to strive to meet the needs of those we serve and keep our families and staff safe.

There are a few things going on that we will be keeping an eye on. We will work to keep you up to date with the restrictions imposed in the different Phases of Covid-19 and the "Next of Kin" proposed legislation.

I am sure there are other concerns you are faced with and I hope you will call the IFHV office. We encourage you to express your concerns and together we will continue to make a difference in our profession.

Yours truly,

David

Reporting COVID-19: When to Report

Hazard Reporting



Reporting COVID-19 positive cases: [16 VAC 25-220-40.B.8.e](#) of the Emergency Temporary Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 provides that “The employer shall notify the Virginia Department of Labor and Industry within 24 hours of the discovery of **three (3) or more employees** present at the place of employment within a 14-day period testing positive for SARS-CoV-2

virus during that 14-day time period. Coronavirus (COVID-19) case reports can be filed [online](#) through the United States Department of Labor reporting page. These reports are directly forwarded to the Virginia Department of Labor and Industry.

Reporting a Fatality: [Virginia Code § 40.1-51.1.D](#) requires all employers, regardless of how many individuals they employ, to report any work related incident resulting in a fatality within eight (8) hours to the Virginia Department of Labor and Industry (DOLI). Medical events i.e. heart attacks are also required to be reported.

When it Becomes Known: If an employer does not learn of a fatality or catastrophe at the time that it occurs, and the incident would otherwise be reportable to DOLI, the employer is required by law to report the incident within 8 hours of the time that it is made known to any agent or employee of the employer. If an employee dies as a result of the incident, the employer is required to report the death to DOLI within 8 hours of learning of the death.

Reporting Inpatient Hospitalizations of One or More Persons, Amputations, or Loss of an Eye: [Virginia Code § 40.1-51.1.D](#) also provides that “every employer shall report to the Virginia Department of Labor and Industry within 24 hours any work-related incident resulting in (i) the inpatient hospitalization of one or more persons, (ii) an amputation, or (iii) the loss of an eye, as prescribed in the rules and regulations of the Safety and Health Codes Board.” Medical events i.e. heart attacks are also required to be reported.

How to Report:

Employers can report Coronavirus (COVID-19) cases [online](#) and fatalities or injuries by telephone, or in-person to the nearest **VOSH Regional Office**; or through the OSHA toll-free central telephone number, 1-800-321-6742.

Be prepared to supply: *Business name; names of employees affected; location and time of the incident, brief description of the incident; contact person and phone number.*

During normal business hours (8:15 A.M. – 4:30 P.M.) an incident should be reported to the closest regional or field office.

(804) 371-3104
(703) 392-0900
(757) 455-0891
(540) 562-3580
(276) 676-5465
(434) 385-0806
(540) 248-9280

Central Region Office
Northern Virginia Region Office
Tidewater Region Office
Southwest Region Office
Abingdon Field Office
Lynchburg Field Office
Verona Field Office

Before or after normal business hours or on weekends and holidays, incidents can be reported by calling the appropriate cell phone or pager number for the nearest office. If unable to reach the local phone numbers or pagers, the State Police Duty Sergeant in Richmond, VA should be contacted at 804 674-2026.

(804) 229-4666 Cell Phone
(571) 264-4089 Cell Phone
(757) 837-2017 Cell Phone
(540) 983-5362 Pager
(540) 983-5362 Pager
(540) 983-5362 Pager
(571) 264-4089 Cell Phone

Central Region Office
Northern Virginia Region Office
Tidewater Region Office
Southwest Region Office
Abingdon Field Office
Lynchburg Field Office
Verona Field Office

Families First Coronavirus Response Act (FFCRA or Act)

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

Generally, the Act provides that employees of covered employers are eligible for:

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and
- *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.
-

Covered Employers: The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.^[1] Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Eligible Employees: *All employees* of covered employers are eligible for two weeks of paid sick time for specified reasons related to COVID-19. *Employees employed for at least 30 days* are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.^[2]

Notice: Where leave is foreseeable, an employee should provide notice of leave to the employer as is practicable. After the first workday of paid sick time, an employer may require employees to follow reasonable notice procedures in order to continue receiving paid sick time.

Qualifying Reasons for Leave:

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or

6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

Duration of Leave:

For reasons (1)-(4) and (6): A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Calculation of Pay:[\[3\]](#)

For leave reasons (1), (2), or (3): employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For leave reason (5): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period). [\[4\]](#)

Additional Guidance on Deferral of Employee Social Security Taxes Released

On August 28th, the IRS released guidance on the President's Executive Memorandum regarding the deferral of employees' social security payroll taxes. The deferral applies to employees whose pretax compensation during any biweekly pay period is less than \$4,000 for the period of September 1, 2020 through December 31, 2020.

Are employers required to defer employees' taxes?

In oral comments the Treasury Secretary stated that the deferral will be optional for employers. The guidance does not explicitly mandate that employers comply with the Executive Memoranda.

How do employers subsequently withhold and pay deferred taxes?

The guidance states that the taxes should be withheld and paid over the period of January 1, 2021 through April 30, 2021. Please note employers will need a way to track employee deferrals between time of deferment and December 31, 2020 as the deferral does not release the employer of the liability to pay the taxes.

If an employee defers their taxes and their employment is subsequently terminated, will the employer be liable for the taxes?

Employers will be liable for employees' unpaid deferred taxes and, on May 1, 2021, any unpaid taxes will begin to accrue penalties and interest. The guidance allows employers to "make arrangements to otherwise collect the total Applicable Taxes from the employee." Employers may be able to withhold the entire balance of deferred taxes from a terminated employees' final wages. Please consult your legal counsel regarding employment and wage laws.

What documentation is required by employers?

Although the guidance does not address required documentation, we recommend employers obtain written confirmation from employees opting to defer their taxes and the terms of subsequent payment. Employers should communicate to employees the requirements to repay deferred taxes to ensure employees understand that future paychecks will be reduced for deferred taxes.

NEW IFHV Offices Elected

We're pleased to announce that the follow individuals have been elected by unanimous consent.

- IFHV President - David Cecil
- IFHV President-Elect - Johnny Muncy
- IFHV Trustees: Robert Givens, Mary Morehead & Glenn Wood

These new officers will begin their 2 year terms immediately. Please join me in congratulating them! Also please join me in thanking Pat Loving, Randy Minter and Nathan Hines who have finished their terms of office on the IFHV board.



IFHV 2020-2021 Officers and Board of Directors

President - David Cecil

President Elect - Johnny Muncy

Secretary/Treasurer - Eric Bliley

Imm. Past President - Sammy Oakey

Trustees: Robert Givens, Mary Morehead, Glenn Wood, Willie Coffman, Paul Welch, DD Watson



Help Families Make Online Arrangements with **FAMILY CONNECTIONS**



With Family Connections, your firm can provide each family with a private, password-protected planning website that allows them to:

- ✓ Preview and select choices for creating meaningful funeral services
- ✓ Browse and select caskets, urns, keepsakes and other funeral merchandise
- ✓ Complete biographical information for the death certificate and other forms
- ✓ Upload favorite photographs for an online obituary or video tribute

**Contact your Matthews Aurora Funeral Service Consultant
for more information or visit matthewsaurora.com.**

IFHV March 2021 1 Day Conference has gone Virtual

As a result of ongoing concerns with COVID-19, the IFHV Board of Directors has decided to offer the 2021 1 Day CE conference as a virtual conference. Mark your calendars and save the date: March 15-19th. We'll offer 1 hour of CE each morning from 8:30 am – 9:30 am via zoom. Registration information and further details will be distributed later in the year and will be available on the IFHV website at www.IFHV.org.



SCHEDULE OF EVENTS:

Monday March 15, 2021 @ 8:30 am

- Speaking of Suicide: *How to Talk to Families Who've Suffered a Loss by Suicide* (Anne Moss Rogers)

Tuesday March 16, 2021 @ 8:30 am

- Laws and Regulations – A Timely Update (Corie Tillman Wolf – State Board Ex. Director)

Wednesday March 17th, 2021 @ 8:30 am

- Title: 5 Keys to Cremation Success (Mike Niccodemus)

Thursday March 18th, 2021 at 8:30 am

- Title: Defusing Conflict in the Arrangement Room (Jason Troyer)

Friday March 19th, 2021 at 8:30 am

- Preneed for Today's World (James Ruggerio with Lakeland Preneed)



Warfield-Rohr
Casket Co., Inc.

IFHV MEMBER BENEFIT WITH WARFIELD-ROHR

To show support of Virginia's independent firms and particularly IFHV members, Warfield-Rohr Casket Company just announced a special casket program just for IFHV firms. The program was reviewed and unanimously endorsed by the IFHV Board of Directors.

The Warfield-Rohr Benefit Program for IFHV Members offers member firms a quantity driven discount plan of up to a combined Terms Discount/Rebate of up to 20%. The rebate program began on August 1 and ends July 31 of each year. The rebate program quarters will end on November 30, February 28, May 31 and August 31 of each year.

Quantity of Caskets Purchased	Terms Discount	IFHV Member Rebate	Total Percentage Rebate	Contribution to IFHV per Casket
1 – 25	5%	6%	11%	\$2.00
26 -39	5%	9%	14%	\$2.00
40 – 59	5%	10%	15%	\$2.00
60 – 99	5%	13%	18%	\$2.00
100+	5%	15%	20%	\$2.00

To further show support for IFHV and its members, Warfield-Rohr will additionally contribute \$2 for every casket sold by them to an IFHV member. This program is an example of the benefits of IFHV membership and how IFHV works for the mutual benefit of its firm and associate members. Any questions may be addressed by your Warfield-Rohr sales representatives.



What have you
done for me
LATELY?

- **Virginia Board of Funeral Directors and Embalmers Regulatory Advisory Panel (RAP)**
 - Submitted 2 sets written comments to the RAP in response to SB 1044 which will establish multiple license types under the Board of Directors and Embalmers. (Embalmer, Funeral Director and Funeral Service licensee.) Additionally Paul Welch served on the committee to represent IFHV's interest.

- **Virginia General Assembly Special Session**
 - IFHV has been present at the 2020 Special Session of the Virginia General Assembly. The focus of the 2020 special session is limited to COVID-19 response, criminal justice reform and the state budget. IFHV has been monitoring and involved in a variety of pieces of legislation; including but not limited to:
 - [HB 5002](#) Income tax, state; subtraction for Paych...
 - [HB 5019](#) COVID-19 virus; immunity from civil clai...
 - [HB 5028](#) Workers' compensation; presumption of co...
 - [HB 5036](#) Telework expenses; reinstates for taxabl...
 - [HB 5037](#) COVID-19 virus; immunity from civil clai...
 - [HB 5040](#) COVID-19 virus; immunity from civil clai...
 - [HB 5054](#) Unemployment compensation; benefits, sui...
 - [HB 5116](#) Public and private employers; required t...
 - [HB 5130](#) Essential workers; hazard pay, employers...
 - [SB 5064](#) Employers; reporting outbreaks of COVID-...
 - [SB 5067](#) COVID-19 virus; immunity from civil clai...
 - [SB 5076](#) Public & private employers; paid sick le...
 - [SB 5099](#) COVID-19 virus; immunity from civil clai...

- **Updated Members on COVID-19 Resource through website, emails and facebook**
 - Employment Guidance
 - PPE Resources
 - CARES ACT, PPP, HHS Grants, EIDL
 - Provided information on the COVID-19 Crisis Response Fund for funeral homes
 - Tax relief information
 - CDC Guidance Information Concerning Handling COVID-19 remains
 - Updates on Department of Labor and Industry Emergency Temporary regulations

- **Continued to serve of the state's Mass Fatality Task Force to represent IFHV and independent funeral directors during the COVID-19 response.**

Creative Funeral Service Ideas During the Coronavirus Pandemic

April 03, 2020 by [Melissa Heller](#)

[Funeral Industry Trends](#), [Featured](#), [Funeral Home Customer Service](#), [Funeral Home Social Media](#)

Over the past few weeks, two friends of my teenage daughter each lost their fathers unexpectedly. Our family has felt the heartbreak on many different levels. We are heartbroken for those families. We are heartbroken that we have lost friends. But most of all, we are heartbroken because we are not able to show our support in person with a hug or a few words of support at their funeral services. Our hearts ache knowing these families are not able to be surrounded by the army of friends and relatives they've each had supporting them through other, less painful life events. During these days of social distancing, funeral services look a lot different than they did just a month ago. Gatherings are limited to 10 people or less, leaving some family members, friends, co-workers and neighbors searching for ways to show their support and celebrate the life of their loved one. Funeral professionals have stepped up with creativity and compassion to help their communities show love and support from a distance. The list below is just a sampling of some of the ways funeral directors can care for families and conduct meaningful funeral services during this crisis.

LIVE STREAM SERVICES -Funeral homes are using platforms like [Facebook Live](#) or [YouTube](#) to stream funeral services. This typically doesn't require much technical equipment other than the camera on a smartphone or tablet set up on a tripod. Viewers can also send their condolences in the comments during the service. Be sure to include a link to the service in the deceased's online obituary and encourage the family to share it as well. This is a simple and effective way to connect friends and family who want to pay their respects, while also building your social media audience.

DRIVE-THROUGH VISITATION- Host a drive-through visitation. Invite friends and family to pass through your funeral home's parking lot to greet immediate family members of the deceased and express their condolences without leaving their vehicles. The family can be comfortably situated just outside the front door, with tissues and snacks nearby, while still maintaining social distancing guidelines.

LINE THE PROCESSION ROUTE -Encourage family and friends to stand sentry along the route from the funeral home to the graveside service, maintaining the recommended social distance while still showing support for the family and respect for the deceased. In the obituary, be sure to share the route you will be taking and encourage attendees to maintain social distancing guidelines. This can be a powerful show of support for both the family and members of the community. A school bus driver of more than 50 years recently passed away. Friends, family and students – past and present – lined the route with signs showing their love and appreciation. During the procession, the driver's daughter sat in the lead car with the windows down, waving to those who came to show their support.

HUGS FROM HOME- Through the Hugs from Home program, family and friends of the deceased submit messages for the family directly to the funeral home, either through an online submission form or in an email to the funeral director or office manager. The funeral home will handwrite the messages, tie them to balloon weights and place the balloons throughout their chapel so the family can see the support of their friends and relatives, even though only a few of them can attend the service in person. This is a powerful visual to show support for the family. Milner and Orr Funeral Home in Paducah, Kentucky, recently shared this on their website: "These balloons will fill our chapel as hugs for the families. They will be able to read your heartfelt messages and hopefully know that many others are there with them in spirit."



IFHV 2021 Membership Renewals

Starting in October the 2021 membership renewals will be sent out. You may pay your 2021 membership online or by mail. Please make sure you update your membership information on your dues invoice so we have the most up to date contact information. As a reminder your membership dues cover all persons in your funeral home. That means each and every funeral director can take advantage of IFHV's discounted CE, membership benefits, and information!



TOTAL NUMBER OF SERVICES PER YEAR INCLUDING ALL LOCATIONS

Dues Schedule

<input type="checkbox"/>	0-50 Services per year	\$195
<input type="checkbox"/>	51-150 Services per year	\$350
<input type="checkbox"/>	151-300 Services per year	\$650
<input type="checkbox"/>	301-500 Services per year	\$975
<input type="checkbox"/>	500 + Services per year	\$1,275
<input type="checkbox"/>	Associate Member (Suppliers)	\$375

Renew Online at www.IFHV.org

Paper copies will be sent out in October 2020

DOL Updates



Department Of
Labor And Industry

The U.S. Department of Labor (DOL) has addressed in regulatory fashion the uncertainty over who is entitled to leave under the Families First Coronavirus Response Act (FFCRA). A New York federal judge created the uncertainty on

August 2, 2020 by striking down several critical aspects of the DOL's Final Rule implementing the FFCRA. The new "temporary" [rule](#) takes effect **September 16, 2020** and largely restates the original guidance given.

The FFCRA, which applies to most employers with under 500 employees, granted workers two weeks – up to 80 hours – of emergency paid sick leave at full pay if they are sick or have to quarantine, and the same allotment at partial pay if the workers have to care for sick family members or homebound children. The law also granted additional partial paid expanded family and medical leave – up to 10 weeks – to employees who are unable to work (or telework) because their child's school or day care provider has closed. The FFCRA took effect April 1, 2020, and the DOL subsequently issued several rounds of interpretive guidance (including an expanding list of Q&As), which employers have relied on to date.

However, the State of New York sued the DOL and claimed that the agency had exceeded its authority in taking four positions when it issued its "Final Rule" implementing the FFCRA's provisions. The four components of the Final Rule challenged by the New York lawsuit follow:

1. The “work-availability” requirement; that is, covered employers could deny workers leave when the businesses do not have work for them. The effect of the rule was to relieve employers that closed and/or furloughed employees from providing impacted employees with paid leave.
2. The broad definition of “health care provider” which included anyone employed at hospitals, medical schools and a range of other places “where medical services are provided.” The DOL conceded the original HCP definition could potentially exclude an English professor, a librarian, or a cafeteria manager at a university with a medical school from the leave benefits of the FFCRA.
3. The provisions that required employer consent before an employee could take intermittent leave to discharge childcare responsibilities.
4. The notice requirements imposed on employees seeking to take FFCRA leave.

Concluding that the DOL had acted beyond its authority, the Court [invalidated](#) each of these four provisions.

The Order left employers and employees alike in a lurch and uncertain about their respective obligations under the FFCRA, just as the pandemic enters a new phase where the economy generally is re-opening and traditional schools are welcoming students back to virtual and actual classrooms. The DOL jumped into this void (rather than pursue an appeal, especially as the FFCRA will sunset at year’s end). As described below, the DOL effectively reiterated its previous guidance, albeit with a fuller explanation for its decision making.

The Work-Availability Requirement – No Changes

The DOL reaffirmed its determination that FFCRA’s leave entitlements are not available where employers do not have work for their employees to perform. Thus, the FFCRA benefit exists only if the employer has work available to its workforce; an employer is not penalized twice when it is unable to generate revenue. The DOL elaborated on its reasoning for the work-availability requirement to meet the Court’s stated concerns. The temporary rule further clarifies that this requirement applies to **all** qualifying reasons to take paid sick leave and expanded family and medical leave.

Revised, Narrow Definition of Health Care Provider – Significant Changes

In a concession to the Court order, the DOL revised and narrowed the expansive definition of “health care providers” by cropping it at the edges to create limits. The term now tracks the “pre-COVID” definition of health care provider under the FMLA, pursuant to [29 CFR 825.102](#) and [29 CFR 825.125](#), and includes “other employees who are employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care.” The revised definition includes, for example, nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under their state’s law. To illustrate the limits of the revised definition, the DOL identified information technology (IT) professionals, building maintenance staff, human resources personnel, cooks, food service workers, records managers, consultants, and billers as workers who are not “health care providers.” Thus, the statutory exemption available to employers in the medical field is narrowed to those workers with a more direct connection to patient care. Because there is no clear demarcation of where to draw that line, prudent employers might exercise caution and avoid stretching the optional exclusion of employees from FFCRA leave to ensure operational capacity. So, while the revised definition of health care provider is much more limited in describing the employees it reaches, employers can at least draw upon the original FMLA definitions found at [29 CFR 825.102](#) and [29 CFR 825.125](#).

Intermittent Leave – No Changes -- Employer Permission Still Required

The DOL reaffirmed that, where intermittent FFCRA leave is permitted, an employee must obtain his or her employer’s approval to take paid sick leave or expanded family and medical leave intermittently (and the specific increments of time of the approved leave). Absent clear agreement, no leave under the FFCRA may be taken intermittently. Other than a fuller explanation for taking this stance, the DOL’s original guidance remains unchanged.

The DOL also took the opportunity to turn its recent Q&A guidance on school-related leaves into enforceable law. The new rule states that the employer-approval condition would not apply to employees who take FFCRA leave in full-day increments to care for their children whose schools are operating on an alternate day (or other

hybrid-attendance) basis because such leave would not be “intermittent.” In an alternate day or other hybrid-attendance schedule implemented due to COVID-19, the DOL explains that school is physically closed with respect to certain students on particular days as determined and directed by the school, not the employee. The employee might be required to take FFCRA leave on Monday, Wednesday, and Friday of one week and Tuesday and Thursday of the next, provided that leave is needed to actually care for the child during that time, and no other suitable person is available to do so. Thus, for the purposes of the FFCRA, each day of school closure constitutes a separate reason for FFCRA leave that ends when the school opens the next day. The employee may take leave due to a school closure until that qualifying reason ends (*i.e.*, the school opened the next day), and then take leave again when a new qualifying reason arises (*i.e.*, school closes again the day after that).

In DOL’s view, intermittent leave is not needed because the school literally closes and opens repeatedly. The DOL finds the same reasoning applies to longer and shorter alternating schedules, such as where the employee’s child attends in-person classes for half of each school day or where the employee’s child attends in-person classes every other week, and the employee takes FFCRA leave to care for the child during the half-days or weeks in which the child does not attend classes in person. This situation is distinguished from the scenario where the school is closed for some period, and the employee wishes to take leave only for certain portions of that period for reasons other than the school’s in-person instruction schedule. Under the latter circumstances, the employee’s FFCRA leave is intermittent per DOL and would require his or her employer’s agreement.

Documentation Requirements – Minimal Changes

As a precondition to securing FFCRA leave, the DOL’s Final Rule had made employees submit “documentation indicating, [among other things], their reason for leave, the duration of the requested leave, and when relevant, the authority for the isolation or quarantine order qualifying them for leave.” In response to the Order, the DOL revised Section 826.100 to clarify that the information the employee must give the employer to support the need for his or her leave should be provided to the employer as soon as practicable but not “prior to” taking the leave. Likewise, the DOL revised Section 826.90 to correct an inconsistency regarding when an employee may be required to give notice of expanded family and medical leave to his or her employer. Advance notice of expanded family and medical leave is required as soon as practicable; if the need for leave is foreseeable, notice should be given before taking leave.

<https://www.williamsmullen.com/news/dol-doubles-down-its-covid-19-leave-guidance-most-part-old-normal-again-new-normal>