

[Click Here for COVID-19 Related Resources](#)

FISCAL REPORT

DOL Revises FFCRA Regulations

 [BY DANYEL CONOLLEY](#)

 [BY DEBBIE FRY](#)

 [BY CHARLENE QUILAO](#)

 [BY SUZANNE SPECK](#)

Copyright 2020 School Services of California, Inc.

posted September 17, 2020

As a result of the court case *State of New York vs. United States Department of Labor, et al.*, No. 1:20-cv-03020-JPO (see “[New York Challenges Provisions of the DOL Regulations](#),” in the September 2020 Fiscal Report), the U.S. Department of Labor (DOL) made revisions to regulations relating to Emergency Paid Sick Leave (EPSL) and Expanded Family and Medical Leave–Emergency Family and Medical Leave (EFML) provisions of the Families First Coronavirus Response Act (FFCRA).

Effective September 16, 2020 through December 31, 2020, the following revisions have been made per the DOL’s news release last week:

- Reaffirms that paid sick leave and expanded family and medical leave may be taken only if the employee has work from which to take leave, and clarifies that this requirement applies to all qualifying reasons to take paid sick leave.
- Also reaffirms that when intermittent leave is permitted to care for a child whose place of care, or childcare provider is closed or unavailable due to COVID-19, the employee must obtain employer’s approval to take paid sick leave or expanded family and medical leave intermittently.
- Clarifies that if an employee is teleworking and not entering the workplace, he or she may take intermittent leave for any of the qualifying reasons with the employer’s consent.
- Clarifies that employer approval is not required when employees take FFCRA leave in full-day increments to care for their children whose schools are operating on an alternate day basis. For example, if a child is attending in-person instruction three days a week and participating in distance learning the remaining two days, the parent’s need for leave two days per week is not considered intermittent, and therefore, does not require approval. If the reason for this leave is foreseeable, it will generally be practicable to provide notice prior to the need to take leave.

These new revisions officially went into effect on September 16, 2020, when posted in the Federal Register—which can be located [here](#). Local educational agencies should review current FFCRA policies and procedures and prepare to make changes based on the DOL’s revised ruling. In the meantime, consult legal counsel if

your leave policies are challenged based on the recent revisions to the FFCRA.