

5 Steps Employers Should Take to Gear Up For Back-to-School

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As children across the country head back to school amidst the backdrop of an unprecedented pandemic, parents and educators are not the only ones feeling the impact of the back-to-school crisis that COVID-19 has delivered. Employers, too, face difficult challenges as they ready themselves to manage a workforce filled with millions of working parents who are at risk of losing the safety net of childcare that the school structure provides. So, as summer turns to fall, and the realization sets in that back-to-school preparations this year will involve much more than pencils, books and backpacks, here are five steps all employers should take to gear up for this year's back-to-school season.

Step 1: Brush Up On Leave Obligations

With millions of children attending school remotely, in a hybrid form of remote and in-person learning or with the threat of unplanned closures or orders to quarantine on a moment's notice, employers need to understand their legal obligations to provide leave to employees who request time off because their children are not able to physically report to school buildings.

The Family First Coronavirus Recovery Act (FFCRA), passed in Spring 2020, is the first federal law to provide both protected *and* paid leave to parents who need time off to care for school aged children whose school is closed due to the COVID-19 pandemic. FFCRA requires employers with fewer than 500 employees to provide up to 12 weeks of leave to employees who are "unable to work or telework" because they need to care for a child whose school "is closed" due to the COVID-19 pandemic when no other suitable adult is available to care for the child (or children). Under FFCRA, employees receive up to 2/3 pay, capped at \$200 per day for a maximum total of \$12,000. Up to 80 hours (or the first two weeks) of the leave is considered "Emergency Paid Sick Leave," while the remaining 10 weeks is considered "Emergency Paid Family Leave" under FFCRA. The employer is fully reimbursed for the payments made to the employee through a dollar-for-dollar quarterly payroll tax credit.

The United States Department of Labor (DOL) recently set forth guidance on how FFCRA will play out under current school models for reopening. First, the DOL clarified that schools that offer only remote or on-line instructions are "closed" for the purposes of FFCRA, and parents needing time off to care for children in that situation are eligible for FFCRA leave. Second, the DOL's guidance also provides that if the child's school has adopted a hybrid form of learning where the child is attending school in person some days but learning remotely on other days, then the employee is eligible for FFCRA leave...*but* only on the days when the child's school is not available for in-person learning. In other words, if the child goes to school in-person on Mondays and Tuesdays, but learns remotely Wednesday, Thursday and Friday, the parent is only eligible for FFCRA leave on Wednesdays, Thursdays and Fridays. Third, the DOL's regulations provide that when a child's school has provided a parent with a choice between in-person and on-line learning, FFCRA is not available if the parent chooses remote learning where in-person learning is otherwise available. Finally, FFCRA's "Emergency Paid Sick Leave" will be available to the parents of a child whose school is open, but who has been ordered to quarantine due to an exposure in the classroom.

FFCRA is currently scheduled to expire on December 31, 2020. Whether FFCRA will be extended or expanded has been, and likely will continue to be, part of the legislative debate as Congress considers further pandemic relief measures. In addition to FFCRA, some state and local laws extend FFCRA requirements to employers with more than 500 employees and many states have laws requiring employers to provide time off to parents of school aged children. Employers should brush up on those state and local laws in addition

to their obligations under FFCRA and brace themselves for the possibility that the obligation to provide leave to employees to care for school age children may last well into 2021.

Step 2: Exercise Flexibility, But Be Consistent

In addition to time off, employers are going to have to look for ways to accommodate the large number of working parents that make up their workforce. According to the Bureau of Labor Statistics, in 2019, 33.4 million families (or two-fifths of all families) have children under the age of 18. Amongst those families, 91.3% have at least one parent working and 80.3% of mothers with children aged 6-17 work full-time. As so many employees are impacted by the lack of consistent in-person schooling, employers will have to consider implementing support for working parents such as flexible schedules, the opportunity to work remotely and increased benefits for childcare.

While many employers express an openness to flexible measures to support working parents during the back-to-school crisis, employers also have to be cautious that they dole out those flexible measures in a consistent manner. As so many employees are bound to request flexibility in light of back-to-school demands, employers may find themselves faced with the need to grant flexibility to some employees while denying it to others. When that happens, the employer leaves itself exposed to discrimination claims by employees in protected classes. To minimize that exposure, employers need to develop a well thought out and legitimate reason for granting flexibility in some cases, while denying it in others. Otherwise, the lack of consistency will give fodder to discrimination claims from individuals in protected classes and expose employers to unwanted and expensive lawsuits and claims.

Step 3: Measure Productivity and Curb Overtime

While most employers are willing to consider extending time off and providing flexibility, all employers need to maintain productivity to ensure a stable bottom line. So, how can employers ensure that their employees are productive while also juggling their children's schooling needs? In the pre-COVID world, employers often used the number of hours worked as the measure of an employee's productivity. The employees who put in the longest work day, were often considered the most productive. However, in the post-COVID world, the number of hours worked has been blunted as an effective tool to measure employee productivity. As employees work remotely and outside their manager's eyesight, logging into work for extended hours does not always mean productivity. Moreover, as more working parents need to also meet the demands of children's schooling, it is often not practical for employees to work consecutive hours. Therefore, the quantity of time worked is not the most effective measurement of productivity.

So what is the best tool for measuring productivity in the current COVID world? The answer is good old fashioned management. Simply put, managers need to step up and manage the employees that report to them. That means they need to understand what their employee's jobs are and what goals those employees need to accomplish in performing those jobs. Managers then need to communicate those goals to employees and hold employees accountable when those goals are not met. While this requires a lot of work on the part of managers, it may be the only effective tool that will allow employees the flexibility they will need to survive back-to-school while ensuring employers sustain the productivity they need to maintain a successful business.

Step 4: Protect Your Workplace from the Increased Exposure Schools Will Yield

In addition to extending time off, providing flexibility and managing productivity, employers also need to be concerned about the safety of their workplace as students from kindergarten to college bring home exposure to the virus to the parents and family members who then report to the workplace. So, what should employers do to protect their workplaces from the increased exposure that the opening of schools will bring? Initially, employers should continue to promote remote work wherever possible. Allowing employees to work

remotely from their home will ensure that they do not bring unwanted exposure to the workplace.

However, not all jobs can be performed remotely, not all employees are productive outside the office and many employees will need to still report to the physical workplace. In that case, the employer should have in place stringent safety protocols to prevent the spread of the virus including pre-screening measures, increased cleaning and sanitation and face covering mandates. In light of the back-to-school crisis, pre-screening measures should include disclosure of travel to high risk locations, especially as parents of college students transport students to and from college. To ensure that the increased risk of exposure that will result from the opening of schools does not increase exposure in the workplace, it is crucial that employers communicate their safety plans to employees, train employees on how they are expected to implement those safety plans and enforce those safety measures.

Step 5: Communicate, Communicate, Communicate

Whether it be time off requests, the need for flexibility, productivity mandates or safety protocols, communication between employees and employers during the back-to-school crisis will be key. Employers should start with their written communications. They should make sure that written policies and procedures for leave requests and safety protocols are up-to-date and distributed to employees. Employers should also make sure that job descriptions are updated and clear goals are outlined to employees, and that the failure to meet those goals is adequately documented so that the employee can be held accountable. In addition to written communications, employers should make certain that there are effective communication tools in place so that employees can communicate their needs for accommodations as they attempt to balance schooling and childcare with work demands. Finally, employers need to make certain that communication between employees and managers is routine. This may mean regular check-ins to determine what work the employee is performing, how the employee is performing the work and whether the employee needs support due to childcare and schooling demands.

In sum, we do not yet know all the challenges that this year's back-to-school season will hold in store for employers. But, if employers start to gear up by taking these five steps, they should be well on their way to getting straight A's during the first back-to-school season of the COVID-induced "new normal."

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As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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