

LEGAL UPDATE

Determining Whether School Is “In Session” During COVID-19

On June 26, 2020, The U.S. Department of Labor published [Field Assistance Bulletin 2020-3](#) to provide guidance on how to determine when a school that has physically closed in response to COVID-19 is considered to be “in session.” Under federal law, whether a school is in or out of session is relevant in the application of federal [child labor](#) requirements.

Nonagricultural Employment

For nonagricultural employment, school is considered to be in session during any week during which the public school district in which the child resides requires its students to attend school, either physically or through virtual or distance learning. Conversely, a physically closed school generally will not be considered to be in session if the district does not require virtual or distance learning.

Nonagricultural Employment

For agricultural employment, whether school is in session depends on the school calendar for the public school district where the minor lives. This also means that a school remains in session if the school district continues to require instruction via virtual or distance learning.

Summer School

Finally, summer school sessions are considered to be outside of school hours.

However, some school districts may be considering mandatory instruction for all students over the summer to make up for instruction time lost due to COVID-19. Please note that mandatory summer sessions should be viewed as extensions of the school district’s regular schedule. As a result, mandatory summer instruction would be considered “school hours,” and school would be considered to be in session during any day and during any week in which the school district requires all students to receive instruction.

Child Labor Under the FLSA

All work for minors who are 14 or 15 years of age must be performed outside school hours. In addition, these minors **may not** work:

- ❌ More than 3 hours on a school day, including Friday
- ❌ More than 18 hours per week when school is in session
- ❌ More than 8 hours per day when school is not in session
- ❌ More than 40 hours per week when school is not in session
- ❌ Before 7 a.m. or after 7 p.m. on any day, except from June 1st through Labor Day, when nighttime work hours are extended to 9 p.m.

School is in session during any week in which the district requires students to attend school, either physically or through virtual or distance learning.

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