
Subject: FOUO://Families First Coronavirus Response Act (FFCRA) -- INTERIM Guidance - UPDATE #1 - OPM & HAF Guidance

Importance: High

From: LOCK, CLINT E JR GS-14 USAF USAFE 86 FSS/FSC

Sent: Friday, May 1, 2020 10:44 AM

Commanders/Directors –

BLUF: Additional governance is now available wrt FFCRA and should be disseminated as widely as possible. [HAF/A1CP FFCRA Fact Sheet](#) provides AF governance including a number of important FAQs. [OPM EPSLA Summary](#) provides extensive details on qualifying circumstances and payment details for Emergency Paid Sick Leave Act (EPSLA). NAF HRO will provide specific implementing procedures for US NAF employees to respective commanders under separate cover once received from AFSVC.

ADDITIONAL KEY EXCERPTS:

- EPSLA paid sick leave or Emergency Family and Medical Leave Expansion Act (EFMLEA) may only be used if the employee is *unable* to work *or* telework.
- To minimize the spread of COVID-19, commanders are encouraged to be judicious when excluding health care providers or emergency responders from taking EPSLA paid sick leave.
- A supervisor may not deny an employee EPSLA paid sick leave or Expanded FMLA on the grounds that the employee has already taken another type of leave or taken leave from another source (e.g., Weather and Safety Leave, Annual Leave, Sick Leave), including leave taken for reasons related to COVID-19.
- Use of EPSLA paid sick leave must cease at the commencement of the employee's next scheduled work shift immediately following the termination of the employee's qualifying circumstance.
 - Example – Quarantine order or health care provider self-quarantine advisory period has expired
 - Example – COVID-19 related school closure ends (e.g. school resumes, summer break begins)
 - Example – Child & Youth Programs (CDC/Youth Center) reopens
- Documentation – “As soon as practicable” as outlined in the fact sheet; 4 year retention for all granted/denied requests
- [DoL FFCRA notice](#) posting requirement has been satisfied via placement on the [CPO website](#). You may additionally post within your orgs and/or e-mail to employees.

CRITICAL POINT (REPEATED FOR EMPHASIS):

- Leave codes are not programmed to account for the different rates of pay that may apply, thus their use will not prevent an employee from taking leave over the statutory limits under the FFCRA, nor enforce the statutory caps on daily or aggregate pay. Thus, the employee must be informed that a debt may be incurred and payment collected at a later date. Debt waivers for overpayment will not be considered.

We remain postured to advise and assist. Please address specific questions to US Employee Relations: 86fss.fsec.us-emr@us.af.mil.

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86 FSS/FSC/Bldg 2120
DSN: 314 478-6680

From: LOCK, CLINT E JR GS-14 USAF USAFE 86 FSS/FSC
Sent: Monday, April 20, 2020 2:37 PM
Subject: FW: FOUO://Families First Coronavirus Response Act (FFCRA) -- INTERIM Guidance

Commanders/Directors –

BLUF: Interim guidance on Emergency Paid Sick Leave Expansion Act (EPSLEA) and Emergency Family and Medical Leave Act (EFMLA) expansion under the Families First Coronavirus Response Act (FFCRA) is attached. Please forward within your organizations; once additional DoD and Air Force policy is released it will be disseminated broadly. The attached guidance will be posted alongside the extensive COVID-19-related guidance on the [Ramstein CPO website](#). NAF HRO will provide specific implementing procedures for US NAF employees to respective commanders under separate cover.

BACKGROUND: The FFCRA provides eligible employees with paid sick leave and expanded family and medical leave for reasons related to the coronavirus disease 2019 (COVID-19) effective 1 Apr20 - 31 Dec 2020. The Department of Labor (DOL) published regulations and fact sheets implementing the FFCRA. DOL, not the Office of Personnel Management, is responsible for administering the FFCRA, including portions applying to Federal employees.

DISCUSSION: The attached interim guidance provides information on eligibility rules and time and attendance procedures DoD Components should use until additional information becomes available. DoD DCPAS intends on providing comprehensive guidance in the future.

KEY POINTS:

- Emergency Family and Medical Leave Expansion Act (EFMLEA). Division C of the FFCRA provides for expanded family and medical leave to covered employees up to 12 weeks, 10 of which are paid leave at two-thirds rate of pay. The first two weeks of EFML is unpaid leave, however, the employee may substitute paid sick or accrued leave. Covered employees may invoke leave under Title I of the Family and Medical Leave Act of 1993 (FMLA) because the employee is unable to work (or telework) due to a need for leave to care for the employee's child (under 18 years of age) as a result of the child's school or place of care has been closed, or the child care provider of the child is unavailable, when related to a public health emergency connected to coronavirus disease 2019 (COVID-19).

- **Eligibility:** The employee must be employed for at least 30 calendar days prior to the leave request and covered under Title I of the FMLA (chapter 28 of Title 29, USC). Coverage under Title I of FMLA applies to DoD employees:
 - with an intermittent work schedule (i.e., non-appropriated fund flexible employees on an intermittent work schedule);
 - under a temporary appointment (i.e., an appointment with a time limitation of 1 year or less); or,
 - covered under unique statutory authorities that apply provisions of title I (e.g. certain employees of the Department of Defense Education Activity)
- **Limitation of Expanded FMLA:** Paid leave under this section may not exceed \$200 per day or \$10,000 in the aggregate.

*****Most of our employees will not be eligible since they are covered under Title II of FMLA.** Additionally, healthcare providers and emergency responders may be excluded based upon mission requirements.

- Emergency Paid Sick Leave Act (EPSLA). Division E of the FFCRA provides up to 80 hours of emergency paid sick leave to all Federal civilian employees in specified circumstances related to COVID-19. This new temporary leave category is

in addition to any other paid leave entitlements. An employee qualifies for emergency paid sick leave if the employee is **unable to work (or unable to telework)** because the employee:

- **Regular Rate of Pay:**
 - a) is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
 - b) has been advised by a health care provider to self-quarantine related to COVID-19;
 - c) is experiencing COVID-19 symptoms and is seeking a medical diagnosis;

- **Two-thirds (2/3) Rate of Pay:**
 - d) is caring for an individual subject to a quarantine or isolation order or self-quarantine; or
 - e) is caring for his/her own child, whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
 - f) is experiencing a substantially similar condition, as specified by the Secretary of Health and Human Services

- **Eligibility:** All DoD civilian employees are eligible for leave under EPSL; healthcare providers and emergency responders may be excluded based upon mission requirements.

- **Limitation of EPSL:** An employee is paid up to \$511 per day and \$5,110 in the aggregate for reasons a through c listed above, and up to \$200 per day and \$2,000 in the aggregate for reasons d through f above.

CRITICAL POINTS: Please read the HAF and DCPAS messages very carefully; additional guidance will be provided as it becomes available.

- Substantiating documentation prescribed in HAF/A1 memo must be provided.
- The vast majority of employees are/were telework ready therefore EPSL ineligible.
- There is *potential* for retroactive EPSL, pending further guidance, for those who may have taken personal leave to care for children and were not able to telework at that time.
- **ATAAPS codes are NOT programmed to account for different rates of pay**
 - **Leave under FFCRA may result in debt that will be collected at a later date. Employees will be ineligible to submit a debt waiver for this overpayment.**

This FFCRA is clearly not a simple Act to execute. We will forward additional guidance as it is received and remain postured to assist and advise you and your employees.

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Attachments:

- 1) [AF interim Implementation Guidance Families First COVID Response Act](#)
- 2) [DCPAS Message 2020039 - Families First Coronavirus Response Act](#)
- 3) [OPM Fact Sheet_FFCRA](#)
- 4) [DOL FFCRA_ Questions and Answers](#)



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC

April 14, 2020

MEMORANDUM FOR ALL MAJCOM-FOA-DRU/CC
DISTRIBUTION C

FROM: AF/A1
1040 Air Force Pentagon
Washington, DC 20330-1040

SUBJECT: Interim Implementation Guidance - Families First Coronavirus Response Act (FFCRA)

References: (a) Public Law 116-127, March 18, 2020 (FFCRA)
(b) Office of Personnel Management *Fact Sheet: Federal Employee Coverage under the Leave Provisions of the Families First Coronavirus Response Act (FFCRA)*
(c) Department of Defense, *Interim Guidance on the Emergency Paid Sick Leave and Emergency Family Medical Leave Expansion under the Families First Coronavirus Response Act*, DCPAS Message 2020039

Background. President Trump signed into law the FFCRA providing employees with paid sick leave and expanded family and medical leave for reasons related to the coronavirus disease 2019 (COVID-19). The FFCRA leave provisions are effective from April 1, 2020, through December 31, 2020.

Policy. Pending issuance of final Department of Defense (DoD) and Department of the Air Force (DAF) guidance, the following interim guidance is provided to document eligibility rules and time and attendance procedures and to allow for commands to begin approving emergency family and medical leave and/or emergency paid sick leave as appropriate.

EXPANDED FAMILY AND MEDICAL LEAVE (EFML)

Division C of the FFCRA, "The Emergency Family and Medical Leave Expansion Act" (EFMLEA), which amends Title I of the U.S.C. 2601 et seq. (FMLA), provides for "expanded family and medical leave" (herein EFML) to covered employees for specified reasons related to COVID-19. Certain employees may take up to twelve weeks of EFML, ten of which are paid leave, at the **two-thirds (2/3)** rate of pay. While Division C provides that the first two weeks of EFML is unpaid leave, an employee has the right to substitute either paid sick leave under division E or accrued paid leave for the initial unpaid leave. For an employee to be eligible for coverage under the EFMLEA, the employee must be employed for at least 30 calendar days prior to the leave request and covered under title I of the FMLA (chapter 28 of title 29, United States Code).

A covered employee may invoke leave under title I of the FMLA because the employee is unable to work (or telework) due to a need for leave to care for the employee's child as a result of the child's school or place of care has been closed, or the child care provider of the child being unavailable, when related to a public health emergency connected to coronavirus disease 2019 (COVID-19). Coverage under title I of FMLA only applies to the following DAF employees:

- with an intermittent work schedule (i.e., non-appropriated fund flexible employees on an intermittent work schedule);
- under a temporary appointment (i.e., an appointment with a time limitation of 1 year or less); or,
- covered under unique statutory authorities that apply provisions of title I. (See Ref b, Table B)

Limitation of Expanded FMLA. Paid leave under this section may not exceed \$200 per day or \$10,000 in the aggregate per eligible employee when the employee takes expanded FMLA for up to ten weeks after the initial two-week period of unpaid expanded FMLA. Total EFMLEA payment per employee for the ten-week period is capped at \$200 per day and \$10,000 aggregate, for a total of no more than \$12,000 when combined with two weeks of paid leave taken under EPSL.

EMERGENCY PAID SICK LEAVE (EPSL)

Division E of the FFCRA, “The Emergency Paid Sick Leave Act” (EPSLA) provides no more than 80 hours of paid sick leave; herein “emergency paid sick leave” (EPSL) to all Federal civilian employees in specified circumstances related to COVID-19. This new temporary leave category is in addition to any other paid leave entitlements. EPSL cannot exceed 80 hours total. While all DAF civilian employees are eligible, supervisors and organizational leadership may exclude “health care providers and emergency responders” from both the emergency family leave and emergency paid sick leave provisions based upon mission requirements. This does not prohibit supporting use of provisions for subject employees where feasible and consistent with mission.

- **Health Care Providers:** For purposes of exclusion as defined in the Act, health care providers include any individual who is capable of providing health care services necessary to combat the COVID-19 public health emergency. This includes not only medical professionals, but also other workers who are needed to keep hospitals and similar health care facilities well supplied and operational. This further includes, for example, workers who are involved in research, development, and production of equipment, drugs, vaccines, and other items needed to combat the COVID-19 public health emergency.
- **Emergency Responders:** There is a broad interpretation of “emergency responder.” An emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. It includes employees who (1) interact with and aid individuals with physical or mental health issues, including those who are or may be suffering from COVID-19; (2) ensure the welfare and safety of our communities and of our Nation; (3) have specialized training relevant to emergency response; and (4) provide essential services relevant to the American people’s health and well-being.
 - Positions include firefighters, paramedics, emergency medical technicians, law enforcement officers, fire fighters, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.
 - Additional positions consistent with the above categories can be designated by the Director of the Office of Management and Budget consistent with the Act and in accordance with the Federal Register Vol. 85, No. 66 / Monday, April 6, 2020.

EPSL Qualifying Reasons. An employee qualifies for EPSL if the employee is unable to work (or unable to telework) because the employee:

- (a) is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- (b) has been advised by a health care provider to self-quarantine related to COVID-19;
- (c) is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- (d) is caring for an individual subject to a quarantine or isolation order (IAW (a) above) or self-quarantine (IAW (b) above); or
- (e) is caring for his or her own child, whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
- (f) is experiencing a substantially similar condition, as specified by the Secretary of Health and Human Services.

Employees are eligible for:

- Up to two weeks (80 hours) of paid sick leave at the employee's **regular rate** of pay if the employee is unable to work because of EPSL qualifying reasons (a), (b) and (c) listed above; or
- Up to two weeks (80 hours) of paid sick leave at **two-thirds (2/3)** the employee's regular rate of pay for EPSL qualifying reasons (d), (e) and (f) listed above.

Limitation of EPSL. The cash value of EPSL is calculated based on the employee's regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated below for those with varying work weeks). The employee is paid at the greater of the employee's regular rate of pay, or the applicable minimum wage (federal, state, or local), up to --

- \$511 per day and \$5,110 in the aggregate for an employee that is unable to work because of EPSL qualifying reasons (a), (b), and (c) listed above; and
- \$200 per day and \$2,000 in the aggregate for an employee who is unable to work because of EPSL qualifying reasons (d), (e), and (f) listed above.

Documentation. Employees must provide appropriate documentation requesting the leave, to include: the employee's name, qualifying reason for requesting leave, statement that the employee is unable to work (including telework), and the date(s) for which leave is requested.

- Documentation supporting the leave request is also required. This may include the name of the Federal, State or local entity issuing the quarantine or isolation order related to COVID-19 applicable to the employee or the name of the health care provider advising the employee to self-quarantine.
- This information shall be provided concurrent with the request; supervisors may provide an extension based upon extenuating circumstances.
- For those taking leave due to the closure of a child's school or place of care, the employee must also provide: (1) the name of the son or daughter being cared for; (2) the name of the school, place of care, or child care provider that has closed or become unavailable; and (3) a representation that no other suitable person will be caring for the son or daughter during the period for which the leave is requested.

- Failure to provide substantiating documentation will result in the revocation of the EPSL with the employee being assessed “chargeable leave” (e.g., annual leave or sick leave if applicable) or leave without pay (LWOP). This will be retroactively applied for the entirety of the time period.

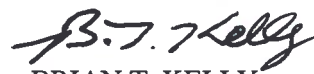
Time and Attendance Procedures. The Defense Finance and Accounting Service (DFAS) has implemented the following time and attendance codes for use of the two types of leave under the FFCRA:

- EFML will be coded in time and attendance systems using “LV-Excused Absence” and environmental hazard code “DZ.” The first 2 weeks of EFML is to be coded as LWOP “KA”. If the employee elects to use another form of leave (leave annual, sick leave, EPSL, etc.), those leave codes should be used in place of LWOP for the first two weeks.
- EPSL will be coded in time and attendance systems using “LV” with one of the following environmental hazard codes:
 - “DX” for emergency paid sick leave paid at an employee’s full rate of pay for EPSL qualifying reasons (a), (b), and (c); or
 - “DY” for emergency paid sick leave paid at two-thirds an employee’s rate of pay for EPSL qualifying reasons (d), (e), or (f).

IMPORTANT. Above leave codes are not programmed to account for the different rates of pay that may apply, will not prevent an employee from taking leave over the statutory limits under the FFCRA, nor enforce the statutory caps on daily or aggregate pay. Thus, the employee must understand that a debt may be incurred and payment collected at a later date. **Debt waivers for overpayment will not be considered.**

Collective Bargaining. Installation Commanders are reminded that all applicable bargaining obligations are to be accomplished as practicable.

AF/A1 POC is Mr. Scott Stoner, HQ AF/A1CP, scott.m.stoner2.civ@mail.mil, (703) 571-1728, DSN 671-1728.



BRIAN T. KELLY
Lieutenant General, USAF
DCS, Manpower, Personnel and Services

Attachments:

1. OPM Fact Sheet
2. DoL Q&A



DEPARTMENT OF DEFENSE
DEFENSE CIVILIAN PERSONNEL ADVISORY SERVICE
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22350-1100

FOR: CIVILIAN PERSONNEL POLICY COUNCIL MEMBERS

FROM: Defense Civilian Personnel Advisory Service Director, Ms. Michelle LoweSolis

SUBJECT: Interim Guidance on the Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion under the Families First Coronavirus Response Act

ACTION: Disseminate to Appropriated and Nonappropriated Fund Department of Defense (DoD) Human Resources Practitioners

REFERENCE(S):

- a. Families First Coronavirus Response Act (FFCRA), dated March 18, 2020, <https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>
- b. Department of Labor (DoL), Temporary Rule Paid Leave under the FFCRA, published April 6, 2020, <https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>
- c. DoL, COVID-19 and the American Workplace, Factsheets and Questions and Answers, published April 6, 2020, <https://www.dol.gov/agencies/whd/pandemic>
- d. FFCRA Interim Guidance

BACKGROUND/INTENT: President Trump signed into law the FFCRA (reference a), providing employees with paid sick leave and expanded family and medical leave for reasons related to the coronavirus disease 2019 (COVID-19). The FFCRA leave provisions are effective from April 1, 2020, through December 31, 2020.

The Department of Labor (DOL) published regulations, (reference b), implementing the FFCRA. DOL also published fact sheets and questions and answers (reference c). DOL, not the Office of Personnel Management, is responsible for administering the FFCRA, including portions applying to Federal employees.


While the Defense Civilian Personnel Advisory Service intends on providing comprehensive guidance on the FFCRA, the attached interim guidance (reference d) provides information on eligibility rules and time and attendance procedures DoD Components should use until additional information becomes available.

POINT(S) OF CONTACT: DCPAS Emergency Preparedness email: dodhra.mc-alex.dcpas.list.emergency-preparedness@mail.mil.

Attachment(s):

As stated

www.dcpas.osd.mil

 @DCPASExcellence <https://twitter.com/DCPASExcellence>

 @DCPAS-Excellence <https://www.linkedin.com/company/dcpas-excellence>

Families First Coronavirus Response Act Interim Guidance

Leave Entitlements

Emergency Family and Medical Leave. Division C of the Families First Coronavirus Response Act (FFCRA) provides for expanded family and medical leave to covered employees up to 10 weeks of paid leave at the two-thirds rate of pay. A covered employee may invoke leave under title I of the Family and Medical Leave Act of 1993 (FMLA) because the employee is unable to work (or telework) due to a need for leave to care for the employee's child (under 18 years of age) as a result of the child's school or place of care has been closed, or the child care provider of the child is unavailable, when related to a public health emergency connected to coronavirus disease 2019 (COVID-19).

Emergency Paid Sick Leave. Division E of the FFCRA provides up to 80 hours of emergency paid sick leave to all Federal civilian employees in specified circumstances related to COVID-19. This new temporary leave category is in addition to any other paid leave entitlements.

An employee qualifies for emergency paid sick leave if the employee is unable to work (or unable to telework) because the employee:

- is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- has been advised by a health care provider to self-quarantine related to COVID-19;
- is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- is caring for an individual subject to a quarantine or isolation order or self-quarantine; or
- is caring for a child under (18 years of age) whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

Eligibility

For an employee to be eligible for coverage under the **Emergency Family and Medical Leave Act**, the employee must be employed for at least 30 calendar days prior to the leave request and covered under title I of the FMLA (chapter 28 of title 29, United States Code). Coverage under title I of FMLA applies to DoD employees:

- with an intermittent work schedule (i.e., non-appropriated fund flexible employees on an intermittent work schedule);
- under a temporary appointment (i.e., an appointment with a time limitation of 1 year or less); or,
- covered under unique statutory authorities that apply provisions of title I (e.g. certain employees of the Department of Defense Education Activity).

As mentioned above, all DoD civilian employees are eligible for leave under the **Emergency Paid Sick Leave Act**.

Interim Time and Attendance Procedures

The Defense Finance and Accounting Service implemented the following time and attendance codes for use of the two types of leave under the FFCRA:

- Emergency Family and Medical Leave Expansion Act leave will be coded in time and attendance systems using “LV-Excused Absence” and environmental hazard code “DZ”
- Emergency Paid Sick Leave Act will be coded in time and attendance systems using “LV-Excused Absence” and environmental hazard code “DX” for emergency paid sick leave paid at an employee’s full rate of pay, and environmental hazard code “DY” for emergency paid sick leave paid at two-thirds an employee’s rate of pay

These leave codes are not programmed to account for the different rates of pay that may apply, and will not prevent an employee from taking leave over the statutory limits under the FFCRA, nor enforce the statutory caps on daily or aggregate pay. Thus, DoD Components should develop guidance and procedures for employees that make clear leave under the FFCRA may result in debt that will be collected at a later date. Employees will be ineligible to submit a debt waiver for this overpayment.



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

Employee Services

Fact Sheet: Federal Employee Coverage under the Leave Provisions of the Families First Coronavirus Response Act (FFCRA) (Public Law 116-127, March 18, 2020)

Division E—Emergency Paid Sick Leave Act

Division E of the FFCRA provides up to two weeks (up to 80 hours) of emergency paid sick leave to all Federal civil service employees in specified circumstances related to COVID-19—unless they are in an exempted category as described below. This paid sick leave is in addition to any other paid leave entitlements. Depending on the circumstances, the sick leave is paid at the Fair Labor Standards Act (FLSA)-based regular rate of pay for an employee or two-thirds of that rate (subject to statutory limitations on daily and aggregate cash value of paid leave). Paid sick leave under division E is available for use during the period from April 1, 2020, through December 31, 2020. The Department of Labor issued regulations under the emergency paid sick leave law, and has posted information and guidance on the leave provisions of the Act at <https://www.dol.gov/agencies/whd/pandemic>.

A Federal agency employing a health care provider or an emergency responder may elect to exclude such employee from coverage under division E.

The Director of the Office of Management and Budget (OMB) may, for good cause, exclude certain categories of Federal employees from coverage under division E.¹

Division C—Emergency Family and Medical Leave Expansion Act²

Division C of the FFCRA provides for expanded family and medical leave (“expanded FMLA leave”) during the period from April 1, 2020, through December 31, 2020, because a covered employee (see coverage discussion below) is unable to work in person or telework due to a need to care for the employee’s eligible child (i.e., a “son or daughter” as defined in Department of Labor regulations) because the child’s school or place of care has been closed or the child’s care provider is unavailable as a result of the COVID-19 public health emergency. Division C further provides that the first 10 days of expanded FMLA leave is unpaid leave; however, an employee has the right to substitute either paid sick leave under division E or accrued paid leave for that initial unpaid leave. After the first two workweeks (usually 10 workdays), the employer must provide partially paid leave for any additional expanded FMLA leave (up to 10 weeks)—unless the employee elects or the employer requires the employee to concurrently use certain categories of an employee’s accrued leave (at the normal rate) with expanded FMLA leave, which would allow the worker to receive full pay. The leave is paid at two-thirds of the employee’s FLSA-based regular rate of pay (subject to statutory limitations on the daily and aggregate cash value of paid leave), except that concurrent use of accrued leave is paid at the full amount under the employer’s policies.

¹ See section 5112 of division E of the FFCRA, as added by section 3604(b) of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136, March 27, 2020).

² **Important:** Most Federal employees are not eligible for expanded FMLA leave, which is applicable only to certain Federal employees covered by title I of FMLA.

This expanded family and medical leave law is regulated by the Department of Labor, which has posted information and guidance on the leave provisions of the Act at <https://www.dol.gov/agencies/whd/pandemic>.

Coverage of Federal employees under division C depends on several factors:

- The employee must be covered by title I of FMLA, which is codified in title 29, United States Code, and generally administered by the Department of Labor.
- The employee must have been employed for at least 30 calendar days with the employer from whom leave is being requested. (Note: The normal FMLA requirements—that the employee have at least 12 months of service and at least 1,250 hours of service with the employer during the previous 12-month period—do not apply.)
- The employee is not exempted under section 3105 of FFCRA, which allows an employer to exclude from coverage an employee who is a health care provider or an emergency responder.
- The employee is not in a category for which the agency has obtained an exclusion from coverage from the Director of OMB.

Table A, below, identifies categories of Federal employees who are not eligible for the expanded family and medical leave under FFCRA because they are covered under title II of the FMLA, which is codified in title 5 of the United States Code. Table B, below, identifies Federal employees who are covered under division C of the FFCRA, because they are covered under title I of FMLA. Employees who otherwise qualify for coverage under division C may be exempted, as described above and in the following paragraph.

Table A Federal Employees Who Are Covered by the Family and Medical Leave Act (FMLA) Provisions in Title 5, United States Code and Who, Therefore, <u>Are Not Covered</u> by the Expanded Family and Medical Leave Provisions Enacted in Division C of the Families First Coronavirus Response Act (FFCRA)	
Category	Notes
<p>Any employee appointed in the civil service who meets the definition of “employee” in 5 U.S.C. 2105, but <u>excluding</u>—</p> <ul style="list-style-type: none"> • employees not covered by the title 5 annual and sick leave system, except as otherwise provided in this table; • employees of the District of Columbia Government, the Government Accountability Office (GAO), and the Library of Congress (LOC); and • temporary or intermittent employees. 	<p>See 5 U.S.C. 6381(1)(A) and 6301(2).</p> <p>NOTE 3: Employees with intermittent work schedules are specifically excluded by language in section 6381(1)(A) but also would have been excluded based on the reference to section 6301(2)(ii).</p> <p>The following categories of employees are excluded from coverage under the title 5 FMLA provisions based on exclusion from the title 5 annual and sick leave system:</p>

Category	Notes
<p>NOTE 1: Employees of the United States Postal Service and the Postal Regulatory Commission are not considered employees for the purpose of title 5 leave provisions. (See 5 U.S.C. 2105(e).) Other Executive branch employees are covered by title 5 FMLA provisions unless a specific exclusion applies to them. (See the right column and NOTE 5 at the end of this table.)</p> <p>NOTE 2: Judicial branch employees are generally covered by title 5 leave provisions, including title 5 FMLA provisions. (Except for certain article I courts, the Administrative Office of the United States Courts is responsible for addressing leave coverage issues for Judicial branch employees.)</p>	<ul style="list-style-type: none"> • an employee of either House of Congress or of the two Houses (section 6301(2)(vi)); • a leave-exempt Presidential appointee as described in section 6301(2)(x)-(xiii); and • other employees described in section 6301(2)(iii), (vii), or (viii). <p>NOTE 4: See more information on Legislative branch employees in the row below dealing with employees of the Government Publishing Office.</p>
<p>An employee of the Veterans Health Administration who is covered by a leave system established under 38 U.S.C. 7421, excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See reference to section 6301(2)(v) in 5 U.S.C. 6381(1)(A) and OPM regulations at 5 CFR 630.1201(b)(3)(i) and (4).) Note: See also 38 U.S.C. 7421</p>
<p>A Department of Defense teacher holding a “teaching position” as defined in 20 U.S.C. 901, excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See reference to section 6301(2)(ix) in 5 U.S.C. 6381(1)(A) and OPM regulations at 5 CFR 630.1201(b)(3)(ii) and (4).)</p>
<p>An employee of a nonappropriated fund instrumentality associated with the armed forces, as described in 5 U.S.C. 2105(c), excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See 5 U.S.C. 2105(c)(1)(E) and OPM regulations at 5 CFR 630.1201(b)(3)(iii) and (4).)</p>
<p>An employee of the Government Publishing Office (GPO), excluding any temporary or intermittent employee.</p>	<p>GPO employees are civil service employees covered by the title 5 annual and sick leave system. This is the only category of employees in the Legislative branch covered by the title 5 FMLA provisions. The first row of this table identified exclusions of GAO employees, Library of Congress employees, and employees of the two Houses. Other Legislative branch employees are excluded because they are covered by the title 29 FMLA provisions pursuant to the Congressional Accountability Act of 1995. (See 2 U.S.C. 1301(3), 1302(a)(5), and 1312.) The Office of Congressional Workplace Rights administers the title 29 FMLA provisions for covered Legislative branch employees. GPO employees are not covered by the Congressional Accountability Act.</p>

Category	Notes
A Transportation Security Administration (TSA) employee who serves as a Transportation Security Officer (i.e., screeners), excluding any temporary or intermittent employee.	See section 7606 of subtitle A of title LXXVI of division F of Public Law 116-92, S. 1790, December 20, 2019. Section 7606 amended a law addressing the coverage of TSA screeners under various personnel laws, and expressly provided that TSA screeners are covered by the title 5 FMLA provisions. (See amendment to section 111(d)(2) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note).) TSA screeners are not covered by the title 5 annual and sick leave system.
NOTE 5: Some Federal employees would be otherwise covered by the title 5 FMLA provisions but for coverage under special personnel authorities possessed by their employing agency. Those special personnel authorities fall into one of two categories: (1) the law excludes their employees from coverage under the title 5 leave provisions; or (2) the law gives the agency discretionary authority to determine whether their employees are covered under the title 5 leave provisions. Agencies with special personnel authorities are responsible for informing their employees regarding whether the title 5 FMLA provisions apply. The general rule is that Federal employees who are not covered by the title 5 FMLA provisions are covered by the title 29 FMLA provisions (i.e., title I of FMLA). (See 29 U.S.C. 2611(2)(B)(i) and 29 CFR 825.109(c).) However, an agency with special personnel authorities may have a basis for determining that its employees are exempt from both the title 5 and the title 29 FMLA provisions.	

Table B Federal Employees Covered by the Expanded Family and Medical Leave Provisions Enacted in Division C of the Families First Coronavirus Response Act (FFCRA)	
Category	Notes
Employees of the United States Postal Service or the Postal Regulatory Commission	They are not covered by the title 5 FMLA provisions based on 5 U.S.C. 2105(e), read with 29 U.S.C. 2611(2)(B)(i).
Legislative branch employees, <i>except</i> employees of the <i>Government Publishing Office</i> .	See information on Legislative branch employees in Table A.
An employee with an intermittent work schedule (i.e., not part-time or full-time, no guarantee of any hours of work in any pay period).	See 5 U.S.C. 6381(1)(A), read with 29 U.S.C. 2611(2)(B)(i).
An employee with a temporary appointment (i.e., an appointment with a time limitation of one year or less).	See 5 U.S.C. 6381(1)(A), read with 29 U.S.C. 2611(2)(B)(i). No FMLA leave would be available after the temporary appointment ends.
An employee of an Executive branch agency who is <u>not</u> covered by title II of FMLA (i.e., title 5 FMLA provisions) —unless the agency has exercised a special personnel authority in statute to	See 29 U.S.C. 2611(2)(B)(i) and 29 CFR 825.109(c). See Table A—in particular, the first row and NOTE 5. Agencies with special personnel authorities are responsible for informing their

Category	Notes
exempt its employees from coverage under title I of FMLA (i.e., title 29 FMLA provisions).	employees regarding whether the FMLA provisions under title 5 or title 29 apply and whether division C of the FFCRA applies.
<p>NOTE: The Director of OMB may, for good cause, exclude certain categories of Federal Executive branch employees from the paid expanded family and medical leave. The OMB Director’s exemption authority does not provide a complete exemption from division C; rather it applies only to the paid leave provisions in section 110(b) of title I of FMLA. This means that these employees would still be entitled to receive FMLA job-protected unpaid leave under 29 U.S.C. 2612(a)(1)(F).</p>	

Department of Labor Regulations – Family and Medical Leave Act

§ 825.109 Federal agency coverage.

(a) Most employees of the government of the United States, if they are covered by the FMLA, are covered under Title II of the FMLA (incorporated in Title V [5], Chapter 63, Subchapter 5 [V] of the United States Code) which is administered by the U.S. Office of Personnel Management (OPM). OPM has separate regulations at 5 CFR Part 630, Subpart L. Employees of the Government Printing Office are covered by Title II. While employees of the Government Accountability Office and the Library of Congress are covered by Title I of the FMLA, the Comptroller General of the United States and the Librarian of Congress, respectively, have responsibility for the administration of the FMLA with respect to these employees. Other legislative branch employees, such as employees of the Senate and House of Representatives, are covered by the Congressional Accountability Act of 1995, 2 U.S.C. 1301.

(b) The Federal Executive Branch employees within the jurisdiction of these regulations include:

- (1) Employees of the Postal Service;
- (2) Employees of the Postal Regulatory Commission;
- (3) A part-time employee who does not have an established regular tour of duty during the administrative workweek; and,
- (4) An employee serving under an intermittent appointment or temporary appointment with a time limitation of one year or less.

(c) Employees of other Federal executive agencies are also covered by these regulations if they are not covered by Title II of FMLA.

(d) Employees of the judicial branch of the United States are covered by these regulations only if they are employed in a unit which has employees in the competitive service. For example, employees of the U.S. Tax Court are covered by these regulations.

(e) For employees covered by these regulations, the U.S. Government constitutes a single employer for purposes of determining employee eligibility. These employees must meet all of the requirements for eligibility, including the requirement that the Federal Government employ 50 employees at the worksite or within 75 miles.

Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136, March 27, 2020)

SEC. 3604. OMB WAIVER OF PAID FAMILY AND PAID SICK LEAVE.

(a) FAMILY AND MEDICAL LEAVE ACT OF 1993.—Section 110(a) of title I of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.) (as added by division C of the Families First Coronavirus Response Act) is amended by adding at the end the following new paragraph:

“(4) The Director of the Office of Management and Budget shall have the authority to exclude for good cause from the requirements under subsection (b) certain employers of the United States Government with respect to certain categories of Executive Branch employees.”.

(b) EMERGENCY PAID SICK LEAVE ACT.—The Emergency Paid Sick Leave Act (division E of the Families First Coronavirus Response Act) is amended by adding at the end the following new section:

“SEC. 5112. AUTHORITY TO EXCLUDE CERTAIN EMPLOYEES.

“The Director of the Office of Management and Budget shall have the authority to exclude for good cause from the definition of employee under section 5110(1) certain employees described in subparagraphs (E) and (F) of such section, including by exempting certain United States Government employers covered by section 5110(2)(A)(i)(V) from the requirements of this title with respect to certain categories of Executive Branch employees.”.



Families First Coronavirus Response Act: Questions and Answers

As provided under the legislation, the U.S. Department of Labor will be issuing implementing regulations. Additionally, as warranted, the Department will continue to provide compliance assistance to employers and employees on their responsibilities and rights under the FFCRA.

DEFINITIONS

“Paid sick leave” – means paid leave under the Emergency Paid Sick Leave Act.

“Expanded family and medical leave” – means paid leave under the Emergency Family and Medical Leave Expansion Act.

QUESTIONS & ANSWERS

- 1. What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act?**

The FFCRA’s paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

- 2. As an employer, how do I know if my business is under the 500-employee threshold and therefore must provide paid sick leave or expanded family and medical leave?**

You have fewer than 500 employees if, at the time your employee’s leave is to be taken, you employ fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. In making this determination, you should include employees on leave; temporary employees who are jointly employed by you and another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer’s payroll); and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than employees, are not considered employees for purposes of the 500-employee threshold.

Typically, a corporation (including its separate establishments or divisions) is considered to be a single employer and its employees must each be counted towards the 500-employee threshold. Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are joint employers under the FLSA with respect to certain employees. If two entities are found to be joint employers, all of their common employees must be counted in determining whether paid sick leave must be provided under the Emergency Paid Sick Leave Act and expanded family and medical leave must be provided under the Emergency Family and Medical Leave Expansion Act.

In general, two or more entities are separate employers unless they meet the integrated employer test under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act.

3. If I am a private sector employer and have 500 or more employees, do the Acts apply to me?

No. Private sector employers are only required to comply with the Acts if they have fewer than 500 employees.^[1]

4. If providing child care-related paid sick leave and expanded family and medical leave at my business with fewer than 50 employees would jeopardize the viability of my business as a going concern, how do I take advantage of the small business exemption?

To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.

You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.

5. How do I count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?

A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.

If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

6. **When calculating pay due to employees, must overtime hours be included?**

Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

If the employee's schedule varies from week to week, please see the answer to [Question 5](#), because the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee.

Please keep in mind the daily and aggregate caps placed on any pay for paid sick leave and expanded family and medical leave as described in the answer to Question 7.

Please note that pay does not need to include a premium for overtime hours under either the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act.

7. **As an employee, how much will I be paid while taking paid sick leave or expanded family and medical leave under the FFCRA?**

It depends on your normal schedule as well as why you are taking leave.

If you are taking paid sick leave because you are unable to work or telework due to a need for leave because you (1) are subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) have been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) are experiencing symptoms of COVID-19 and are seeking medical diagnosis, you will receive for each applicable hour the greater of:

- your regular rate of pay,
- the federal minimum wage in effect under the FLSA, or
- the applicable State or local minimum wage.

In these circumstances, you are entitled to a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period.

If you are taking paid sick leave because you are: (1) caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (2) caring for your child whose school or place of care is closed, or child care provider is unavailable,

due to COVID-19 related reasons; or (3) experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, you are entitled to compensation at 2/3 of the greater of the amounts above.

Under these circumstances, you are subject to a maximum of \$200 per day, or \$2,000 over the entire two week period.

If you are taking expanded family and medical leave, you may take paid sick leave for the first ten days of that leave period, or you may substitute any accrued vacation leave, personal leave, or medical or sick leave you have under your employer's policy. For the following ten weeks, you will be paid for your leave at an amount no less than 2/3 of your regular rate of pay for the hours you would be normally scheduled to work. The regular rate of pay used to calculate this amount must be at or above the federal minimum wage, or the applicable state or local minimum wage. However, you will not receive more than \$200 per day or \$12,000 for the twelve weeks that include both paid sick leave and expanded family and medical leave when you are on leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

To calculate the number of hours for which you are entitled to paid leave, please see the answers to Questions 5-6 that are provided in this guidance.

8. What is my regular rate of pay for purposes of the FFCRA?

For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your regular rate over a period of up to six months prior to the date on which you take leave. [2] If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.

If you are paid with commissions, tips, or piece rates, these wages will be incorporated into the above calculation.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

9. May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

10. If I am home with my child because his or her school or place of care is closed, or child care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both —how do they interact?

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless the you elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, you will receive $\frac{2}{3}$ of your regular rate of pay for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

11. Can my employer deny me paid sick leave if my employer gave me paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?

No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

12. Is all leave under the FMLA now paid leave?

No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

13. Are the paid sick leave and expanded family and medical leave requirements retroactive?

No.

14. How do I know whether I have “been employed for at least 30 calendar days by the employer” for purposes of expanded family and medical leave?

You are considered to have been employed by your employer for at least 30 calendar days if your employer had you on its payroll for the 30 calendar days immediately prior to the day your leave would begin. For example, if you want to take leave on April 1, 2020, you would need to have been on your employer's payroll as of March 2, 2020.

If you have been working for a company as a temporary employee, and the company subsequently hires you on a full-time basis, you may count any days you previously worked as a temporary employee toward this 30-day eligibility period.

15. What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?

If one of your employees takes paid sick leave under the Emergency Paid Sick Leave Act, you must require your employee to provide you with appropriate documentation in support of the reason for the leave, including: the employee's name, qualifying reason for requesting leave, statement that the employee is unable to work, including telework, for that reason, and the date(s) for which leave is requested. Documentation of the reason for the leave will also be necessary, such as the source of any quarantine or isolation order, or the name of the health care provider who has advised you to self-quarantine. For example, this documentation may include a copy of the Federal, State or local quarantine or isolation order related to COVID-19 applicable to the employee or written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave wages, you should retain this documentation in your records. You should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit.

If one of your employees takes expanded family and medical leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, under the Emergency Family and Medical Leave Expansion Act, you must require your employee to provide you with appropriate documentation in support of such leave, just as you would for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider. This requirement also applies when the first two weeks of unpaid leave run concurrently with paid sick leave taken for the same reason. If you intend to claim a tax credit under the FFCRA for the expanded family and medical leave, you should retain this documentation in your records. You should consult IRS applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit.

16. What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?

You are entitled to paid sick leave if you are unable to work or telework due to a qualifying reason related to COVID-19. You must provide to your employer documentation in support of the reasons for your paid sick leave. These documents may include a copy of the Federal, State or local quarantine or isolation order related to COVID-19 or written documentation by a health care provider advising you to self-quarantine due to concerns related to COVID-19.

You must provide to your employer documentation in support of your expanded family and medical leave taken to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. For example, this requirement may be satisfied with a notice of closure or unavailability from your child's school, place of care, or child

care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider. Your employer must retain this notice or documentation in support of expanded family and medical leave, including while you may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to provide medical certifications under the FMLA if required by your employer.

17. When am I able to telework under the FFCRA?

You may telework when your employer permits or allows you to perform work while you are at home or at a location other than your normal workplace. Telework is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.

18. What does it mean to be unable to work, including telework for COVID-19 related reasons?

You are unable to work if your employer has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of telework.

If you and your employer agree that you will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

19. If I am or become unable to telework, am I entitled to paid sick leave or expanded family and medical leave?

If your employer permits teleworking—for example, allows you to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then you are entitled to take paid sick leave.

Similarly, if you are unable to perform those teleworking tasks or work the required teleworking hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave. Of course, to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.

20. May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?

Yes, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and your employer may agree that you may take paid sick leave intermittently while teleworking. Similarly, if you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your employer may agree that you can take expanded family medical leave intermittently while teleworking.

You may take intermittent leave in any increment, provided that you and your employer agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

21. May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?

It depends on why you are taking paid sick leave and whether your employer agrees. Unless you are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

- You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- You are caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless you are teleworking, once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

If you no longer have a qualifying reason for taking paid sick leave before you exhaust your paid sick leave, you may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

In contrast, if you and your employer agree, you may take paid sick leave intermittently if you are taking paid sick leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if your child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you may take paid sick leave on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite on Tuesdays and Thursdays.

The Department encourages employers and employees to collaborate to achieve maximum flexibility. Therefore, if employers and employees agree to intermittent leave on less than a full work day for employees taking paid sick leave to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19-related reasons, the Department is supportive of such voluntary arrangements.

22. May I take my expanded family and medical leave intermittently while my child’s school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?

Yes, but only with your employer’s permission. Intermittent expanded family and medical leave should be permitted only when you and your employer agree upon such a schedule. For example, if your employer and you agree, you may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while your child is at home because your child’s school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of your leave.

The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements.

23. If my employer closed my worksite before April 1, 2020 (the effective date of the FFCRA), can I still get paid sick leave or expanded family and medical leave?

No. If, prior to the FFCRA’s effective date, your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

It should be noted, however, that if your employer is paying you pursuant to a paid leave policy or State or local requirements, you are not eligible for unemployment insurance.

24. If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but before I go out on leave, can I still get paid sick leave and/or expanded family and medical leave?

No. If your employer closes after the FFCRA's effective date (even if you requested leave prior to the closure), you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

25. If my employer closes my worksite while I am on paid sick leave or expanded family and medical leave, what happens?

If your employer closes while you are on paid sick leave or expanded family and medical leave, your employer must pay for any paid sick leave or expanded family and medical leave you used before the employer closed. As of the date your employer closes your worksite, you are no longer entitled to paid sick leave or expanded family and medical leave, but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because the employer was required to close pursuant to a Federal, State or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

26. If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?

No. If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

27. If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but tells me that it will reopen at some time in the future, can I receive paid sick leave or expanded family and medical leave?

No, not while your worksite is closed. If your employer closes your worksite, even for a short period of time, you are not entitled to take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State, or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional

information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>. If your employer reopens and you resume work, you would then be eligible for paid sick leave or expanded family and medical leave as warranted.

28. If my employer reduces my scheduled work hours, can I use paid sick leave or expanded family and medical leave for the hours that I am no longer scheduled to work?

No. If your employer reduces your work hours because it does not have work for you to perform, you may not use paid sick leave or expanded family and medical leave for the hours that you are no longer scheduled to work. This is because you are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19.

You may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents you from working your full schedule. If you do, the amount of leave to which you are entitled is computed based on your work schedule before it was reduced (see [Question 5](#)).

29. May I collect unemployment insurance benefits for time in which I receive pay for paid sick leave and/or expanded family and medical leave?

No. If your employer provides you paid sick leave or expanded family and medical leave, you are not eligible for unemployment insurance. However, each State has its own unique set of rules; and [DOL recently clarified additional flexibility to the States](#) (UIPL 20-10) to extend partial unemployment benefits to workers whose hours or pay have been reduced. Therefore, individuals should contact their State workforce agency or State unemployment insurance office for specific questions about eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

30. If I elect to take paid sick leave or expanded family and medical leave, must my employer continue my health coverage? If I remain on leave beyond the maximum period of expanded family and medical leave, do I have a right to keep my health coverage?

If your employer provides group health coverage that you've elected, you are entitled to continued group health coverage during your expanded family and medical leave on the same terms as if you continued to work. If you are enrolled in family coverage, your employer must maintain coverage during your expanded family and medical leave. You generally must continue to make any normal contributions to the cost of your health coverage. See WHD Fact Sheet 28A: <https://www.dol.gov/agencies/whd/fact-sheets/28a-fmla-employee-protections>.

If you do not return to work at the end of your expanded family and medical leave, check with your employer to determine whether you are eligible to keep your health coverage on the same terms (including contribution rates). If you are no longer eligible, you may be able to continue your coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA,

which generally applies to employers with 20 or more employees, allows you and your family to continue the same group health coverage at group rates. Your share of that cost may be higher than what you were paying before but may be lower than what you would pay for private individual health insurance coverage. (If your employer has fewer than 20 employees, you may be eligible to continue your health insurance under State laws that are similar to COBRA. These laws are sometimes referred to as “mini COBRA” and vary from State to State.) Contact the Employee Benefits Security Administration at <https://www.dol.gov/agencies/ebsa/workers-and-families/changing-jobs-and-job-loss> to learn about health and retirement benefit protections for dislocated workers.

If you elect to take paid sick leave, your employer must continue your health coverage. Under the Health Insurance Portability and Accountability Act (HIPAA), an employer cannot establish a rule for eligibility or set any individual’s premium or contribution rate based on whether an individual is actively at work (including whether an individual is continuously employed), unless absence from work due to any health factor (such as being absent from work on sick leave) is treated, for purposes of the plan or health insurance coverage, as being actively at work.

31. As an employee, may I use my employer’s preexisting leave entitlements and my FFCRA paid sick leave and expanded family and medical leave concurrently for the same hours?

No. If you are eligible to take paid sick leave or expanded family and medical leave under the FFCRA, as well as paid leave that is already provided by your employer, unless your employer agrees you must choose one type of leave to take. You may not simultaneously take both, unless your employer agrees to allow you to supplement the amount you receive from paid sick leave or expanded family and medical leave under the FFCRA, up to your normal earnings, with preexisting leave. For example, if you are receiving 2/3 of your normal earnings from paid sick leave or expanded family and medical leave under the FFCRA and your employer permits, you may use your preexisting employer-provided paid leave to get the additional 1/3 of your normal earnings so that you receive your full normal earnings for each hour.

32. If I am an employer, may I supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

If your employee chooses to use existing leave you have provided, yes; otherwise, no. Paid sick leave and expanded family medical leave under the FFCRA is in addition to employees’ preexisting leave entitlements, including Federal employees. Under the FFCRA, the employee may choose to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave, up to the employee’s normal earnings.

However, you are not required to permit an employee to use existing paid leave to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. Further, you may not claim, and will not receive tax credit, for such supplemental amounts.

33. If I am an employer, may I require an employee to supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

No. Under the FFCRA, only the employee may decide whether to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. The employee would have to agree to use existing paid leave under your paid leave policy to supplement or adjust the paid leave under the FFCRA.

34. If I want to pay my employees more than they are entitled to receive for paid sick leave or expanded family and medical leave, can I do so and claim a tax credit for the entire amount paid to them?

You may pay your employees in excess of FFCRA requirements. But you cannot claim, and will not receive tax credit for, those amounts in excess of the FFCRA's statutory limits.

35. I am an employer that is part of a multiemployer collective bargaining agreement, may I satisfy my obligations under the Emergency Family and Medical Leave Expansion Act through contributions to a multiemployer fund, plan, or program?

You may satisfy your obligations under the Emergency Family and Medical Leave Expansion Act by making contributions to a multiemployer fund, plan, or other program in accordance with your existing collective bargaining obligations. These contributions must be based on the amount of paid family and medical leave to which each of your employees is entitled under the Act based on each employee's work under the multiemployer collective bargaining agreement. Such a fund, plan, or other program must allow employees to secure or obtain their pay for the related leave they take under the Act. Alternatively, you may also choose to satisfy your obligations under the Act by other means, provided they are consistent with your bargaining obligations and collective bargaining agreement.

36. I am an employer that is part of a multiemployer collective bargaining agreement, may I satisfy my obligations under the Emergency Paid Sick Leave Act through contributions to a multiemployer fund, plan, or program?

You may satisfy your obligations under the Emergency Paid Sick Leave Act by making contributions to a multiemployer fund, plan, or other program in accordance with your existing collective bargaining obligations. These contributions must be based on the hours of paid sick leave to which each of your employees is entitled under the Act based on each employee's work under the multiemployer collective bargaining agreement. Such a fund, plan, or other program must allow employees to secure or obtain their pay for the related leave they take under the Act. Alternatively, you may also choose to satisfy your obligations under the Act by other means, provided they are consistent with your bargaining obligations and collective bargaining agreement.

37. Are contributions to a multiemployer fund, plan, or other program the only way an employer that is part of a multiemployer collective bargaining agreement may comply with the paid

leave requirements of the FFCRA?

No. Both the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act provide that, consistent with its bargaining obligations and collective bargaining agreement, an employer may satisfy its legal obligations under both Acts by making appropriate contributions to such a fund, plan, or other program based on the paid leave owed to each employee. However, the employer may satisfy its obligations under both Acts by other means, provided they are consistent with its bargaining obligations and collective bargaining agreement.

[1] If you are a Federal employee, you are eligible to take paid sick leave under the Emergency Paid Sick Leave Act. But only some Federal employees are eligible to take expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act. Your eligibility will depend on whether you are covered under Title I or Title II of the Family Medical Leave Act. Federal employees should consult with their agency regarding their eligibility for expanded family and medical leave. The Office of Personnel and Management will provide information on federal employee coverage. Additional FAQs regarding public sector employers will be forthcoming.

[2] If you are a Federal employee, the State or local minimum wage would be used to calculate the wages owed to you only if the Federal agency that employs you has broad authority to set your compensation and has decided to use the State or local minimum wage.

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