

# HR COMPLIANCE BULLETIN



## DOL FAQs: Families First Coronavirus Response Act

The [Families First Coronavirus Response Act \(FFCRA\)](#) was signed into law by President Trump on March 18, 2020. The Act enacted two laws that provide workers with paid leave for reasons related to the coronavirus (COVID-19) pandemic.

- The “Emergency Family and Medical Leave Expansion Act” allows **12 weeks of partially compensated FMLA leave** to care for a child whose school or child care facility has been closed due to COVID-19.
- The “Emergency Paid Sick Leave Act” requires employers to provide **80 hours of paid sick time** to employees in specified circumstances related to COVID-19 exposure and prevention.

As required, the U.S. Department of Labor (DOL) has issued [temporary regulations](#) to implement the FFCRA’s paid leave requirements.

This Compliance Bulletin presents the DOL’s answers to [frequently asked questions \(FAQs\)](#) on the FFCRA. These FAQs have been updated with the latest information published by the DOL on **Apr. 6, 2020**.

### 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.

### Highlights

- The FFCRA requires employers with fewer than 500 employees to provide 12 weeks of FMLA leave for child care reasons related to COVID-19.
- The new FMLA leave must be compensated after the first 10 days, at two-thirds of an employee’s wage, up to \$200 per day.
- Employers must also provide 80 hours of paid sick time for specified reasons related to COVID-19.

### Important Dates

#### March 18, 2020

President Trump signed the FFCRA into law.

#### April 1, 2020

The DOL provided guidance that the new paid leave provisions take effect on Apr. 1, 2020.

#### December 31, 2020

New leave laws sunset.

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## Questions and Answers

### 1. What is the effective date of the 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 Apr. 1, 2020, and apply to leave taken between Apr. 1, 2020, and Dec. 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?

An employer has fewer than 500 employees if, at the time an employee's leave is to be taken, the employer employs fewer than 500 full-time and part-time employees within the United States (including any state, the District of Columbia, or any territory or possession of the United States). In making this determination, employers should include:

- Employees on leave;
- Temporary employees who are jointly employed by the employer and another employer (regardless of whether the [jointly-employed employees](#) are maintained on only one employer's payroll); and
- Day laborers supplied by a temporary agency (regardless of whether the employer is 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 paid sick leave under the Emergency Paid Sick Leave Act and 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.

*Note: Federal employees are eligible to take paid sick leave under the Emergency Paid Sick Leave Act. However, only some federal employees are eligible to take expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act. An employee's eligibility will depend on whether they are covered under Title I or Title II of the FMLA. The DOL encourages federal employees to discuss questions about their eligibility for expanded family and medical leave with their employers or with the Office of Personnel Management. Additional FAQs regarding public sector employers will be forthcoming.*

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## 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 DOL, which will be addressed in more detail in forthcoming regulations.

*You should not send any materials to the DOL 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. 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.

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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 (HHS), you are entitled to compensation at two-thirds 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 two weeks 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 10 weeks, you will be paid for your leave at an amount no less than two-thirds of your [regular rate of pay](#) for the hours you would be normally scheduled to work. If you take paid sick leave during the first two weeks of unpaid expanded family and medical leave, you will not receive more than \$200 per day or \$12,000 for the 12 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. If you take employer-provided accrued leave during those first two weeks, you are entitled to the full amount for such accrued leave, even if that is greater than \$200 per day.

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. (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.) 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 to the same extent they are included in the calculation of the regular rate under the FLSA.

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You can also calculate 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 10 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 12 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 10 workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless you elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first 10 workdays have elapsed, you will receive two-thirds of your [regular rate of pay](#) for the hours you would have been scheduled to work in the subsequent 10 weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional 10 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 Apr. 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 10 days. This only includes 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 Apr. 1, 2020, you would need to have been on your employer's payroll as of March 2, 2020.

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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?**

Regardless of whether you grant or deny a request for paid sick leave or expanded family and medical leave, you must document the following:

- The name of your employee requesting leave;
- The date(s) for which leave is requested;
- The reason for leave; and
- A statement from the employee that he or she is unable to work because of the reason.

If your employee requests leave because he or she is subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally document the name of the government entity that issued the order. If your employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should additionally document the name of the health care provider who gave advice.

If your employee requests leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, you may must also document:

- The name of the child being cared for;
- The name of the school, place of care, or child care provider that has closed or become unavailable; and
- A statement from the employee that no other suitable person is available to care for the child.

Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave or expanded family and medical leave wages, you should retain appropriate 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. You are not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

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

When requesting paid sick leave or expanded family and medical leave, you must provide your employer either orally or in writing the following information:

- Your name;
- The date(s) for which you request leave;
- The reason for leave; and
- A statement that you is unable to work because of the above reason.

If you request leave because you are subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally provide the name of the government entity that issued the order. If you request leave

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to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should additionally provide the name of the health care provider who gave advice.

If you request leave to care for your child whose school or place of care is closed, or child care provider is unavailable, you may must also provide:

- The name of your child;
- The name of the school, place of care, or child care provider that has closed or become unavailable; and
- A statement that no other suitable person is available to care for your child.

In addition to the above information, you must also provide to your employer written documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information.

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 allows 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 that 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

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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 DOL encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the DOL is supportive of these 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 HHS.

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 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 Dec. 31, 2020, if another qualifying reason occurs.

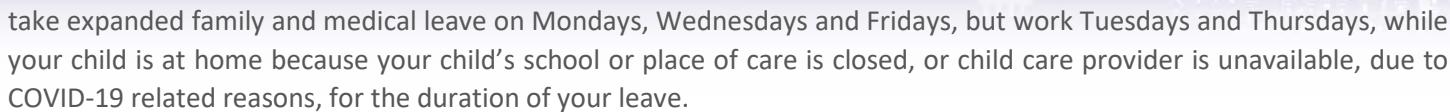
In contrast, if you and your employer agree, you may take paid sick leave intermittently if you are taking paid sick leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if your child is at 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 DOL 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 DOL is supportive of those 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 allowed only when you and your employer agree upon this type of schedule. For example, if your employer and you agree, you may

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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 DOL 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 DOL supports these voluntary arrangements.

## **23. If my employer closed my worksite before Apr. 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 stopped 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 Apr. 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 Apr. 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>.

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## **27. If my employer closes my worksite on or after Apr. 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 calculated 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 the 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 more information, please see <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](#).

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

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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 \(EBSA\)](#) 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?**

During the first two weeks of unpaid expanded family and medical leave, you may not simultaneously take paid sick leave under the Emergency Paid Sick Leave Act and preexisting paid leave, unless your employer agrees to allow you to supplement the amount you receive from paid sick leave with your preexisting paid leave, up to your normal earnings. After the first two workweeks (usually 10 workdays) of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act, however, you may elect—or be required by your employer—to take your remaining expanded family and medical leave at the same time as any existing paid leave that, under your employer's policies, would be available to you in that circumstance. This would likely include personal leave or paid time off, but not medical or sick leave if you are not ill.

If you are required to take your existing leave concurrently with your remaining expanded family and medical leave, your employer must pay you the full amount to which you are entitled under your existing paid leave policy for the period of leave taken. If you exhaust your preexisting paid leave and still are entitled to additional expanded family and medical leave, your employer must pay you at least two-thirds of your pay for subsequent periods of expanded family and medical leave taken, up to \$200 per workday and \$10,000 in the aggregate, for expanded family and medical leave.

## **32. If I am an employer, may I use the paid sick leave mandated under the Emergency Paid Sick Leave Act to satisfy paid leave entitlements that an employee may have under my paid leave policy?**

No, unless your employee agrees. Paid sick leave under the Emergency Paid Sick Leave Act is in addition to your employee's (including federal employees') other leave entitlements. You may not require your employee to use provided or accrued paid vacation, personal, medical or sick leave before the paid sick leave. You also may not require your employee to use such existing leave concurrently with the paid sick leave under the Emergency Paid Sick Leave Act. But if you and your employee agree, your employee may use preexisting leave entitlements to supplement the amount he or she receives from paid sick leave, up to the employee's normal earnings. Note, however, that you are not entitled to a tax credit for any paid sick leave that is not required to be paid or exceeds the limits set forth under the Emergency Paid Sick Leave Act. You are free to amend your own policies to the extent consistent with applicable law.

## **33. If I am an employer, may I require my employee to take paid leave he or she may have under my existing paid leave policy concurrently with expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act?**

Yes. After the first two workweeks (usually 10 workdays) of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act, you may require that your employee take concurrently for the same hours expanded family and medical leave and existing leave that, under your policies, would be available to the employee in

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that circumstance. This would likely include personal leave or paid time off, but not medical or sick leave if your employee (or a covered family member) is not ill.

If you do so, you must pay your employee the full amount to which he or she is entitled under your existing paid leave policy for the period of leave taken. You must pay your employee at least two-thirds of his or her pay for subsequent periods of expanded family and medical leave taken, up to \$200 per workday and \$10,000 in the aggregate, for expanded family and medical leave. If your employee exhausts all preexisting paid vacation, personal, medical or sick leave, you would need to pay your employee at least two-thirds of his or her pay for subsequent periods of expanded family and medical leave taken, up to \$200 per day and \$10,000 in the aggregate. You are free to amend your own policies to the extent consistent with applicable law.

## **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. However, 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 (CBA). 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 CBA. This type of 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 CBA.

## **36. I am an employer that is part of a multiemployer CBA. 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 CBA. This type of 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 CBA.

## **37. Are contributions to a multiemployer fund, plan or other program the only way an employer that is part of a multiemployer CBA 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 CBA, an employer may satisfy its legal obligations under both Acts by making appropriate contributions to this type of 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 CBA.

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## 38. Assuming I am a covered employer, which of my employees are eligible for paid sick leave and expanded family and medical leave?

Both of these new provisions use the [employee definition](#) as provided by the FLSA. Therefore, all of your U.S. (including territorial) employees who meet this definition are eligible including full-time and part-time employees, and “joint employees” working on your site temporarily and/or through a temp agency. However, if you employ a health care provider or an emergency responder, you are not required to pay that employee paid sick leave or expanded family and medical leave on a case-by-case basis. Also, certain small businesses may exempt employees if the leave would jeopardize the company’s viability as a going concern. See Question 58 below.

There is one difference regarding an employee’s eligibility for paid sick leave versus expanded family and medical leave. While your employee is eligible for paid sick leave regardless of length of employment, your employee must have been employed for 30 calendar days to qualify for expanded family and medical leave. For example, if your employee requests expanded family and medical leave on Apr. 10, 2020, he or she must have been your employee since March 11, 2020.

## 39. Who is a covered employer that must provide paid sick leave and expanded family and medical leave under the FFCRA?

Generally, if you employ fewer than 500 employees, you are a covered employer that must provide paid sick leave and expanded family and medical leave. For additional information on the 500 employee threshold, see Question 2. Certain employers with fewer than 50 employees may be exempt from the Act’s requirements to provide certain paid sick leave and expanded family and medical leave. For additional information regarding this small business exemption, see Question 4 and Questions 58 and 59 below.

Certain public employers are also covered under the Act and must provide paid sick leave and expanded family and medical leave. For additional information regarding coverage of public employers, see Questions 52-54 below.

## 40. Who is a son or daughter?

Under the FFCRA, a “son or daughter” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child. For additional information about in loco parentis, see [Fact Sheet #28B: Family and Medical Leave Act \(FMLA\)](#) leave for birth, placement, bonding or to care for a child with a serious health condition on the basis of an “in loco parentis” relationship.

In light of Congressional direction to interpret definitions consistently, WHD clarifies that, under the FFCRA, a “son or daughter” is also an adult son or daughter (that is, one who is 18 years of age or older), who:

- Has a mental or physical disability; and
- Is incapable of self-care because of that disability.

For additional information on requirements relating to an adult son or daughter, see [Fact Sheet #28K](#) and/or call the DOL’s toll free information and help line available 8 am–5 pm in your time zone, 1-866-4US-WAGE (1-866-487-9243).

## 41. What do I do if my employer, who I believe to be covered, refuses to provide paid sick leave to me?

If you believe that your employer is covered and is improperly refusing paid sick leave to you under the Emergency Paid Sick Leave Act, the DOL encourages you to raise and try to resolve your concerns with your employer. Regardless of whether you discuss your concerns with your employer, if you believe your employer is improperly refusing you paid sick leave, you may call 1-866-4US-WAGE (1-866-487-9243). WHD is responsible for administering and enforcing these

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provisions. If you have questions or concerns, you can contact WHD by phone or visit [www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd). Your call will be directed to the [nearest WHD office](#) for assistance to have your questions answered or to file a complaint. In most cases, you can also file a lawsuit against your employer directly without contacting WHD. If you are a public sector employee, please see the answer to Question 54.

## **42. What do I do if my employer, who I believe to be covered, refuses to provide expanded family and medical leave to me to care for my own son or daughter whose school or place of care has closed, or whose child care provider is unavailable, for COVID-19 related reasons?**

If you believe that your employer is covered and is improperly refusing expanded family and medical leave to you or otherwise violating your rights under the Emergency Family and Medical Leave Expansion Act, the DOL encourages you to raise and try to resolve your concerns with your employer. Regardless whether you discuss your concerns with your employer, if you believe your employer is improperly refusing you expanded family and medical leave, you may call WHD at 1-866-4US-WAGE (1-866-487-9243) or visit [www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd). Your call will be directed to the [nearest WHD office](#) for assistance to have your questions answered or to file a complaint. If your employer employs 50 or more employees, you also may file a lawsuit against your employer directly without contacting WHD. If you are a public sector employee, please see the answer to Question 54.

## **43. Do I have a right to return to work if I am taking paid sick leave or expanded family and medical leave under the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act?**

Generally, yes. In light of Congressional direction to interpret requirements among the Acts consistently, WHD clarifies that the Acts require employers to provide the same (or a nearly equivalent) job to an employee who returns to work following leave.

In most instances, you are entitled to be restored to the same or an equivalent position upon return from paid sick leave or expanded family and medical leave. Thus, your employer is prohibited from firing, disciplining or otherwise discriminating against you because you take paid sick leave or expanded family and medical leave. Nor can your employer fire, discipline or otherwise discriminate against you because you filed any type of complaint or proceeding relating to these Acts, or have or intend to testify in any such proceeding.

However, you are not protected from employment actions (such as layoffs) that would have affected you regardless of whether you took leave. This means that your employer can lay you off for legitimate business reasons, such as the [closure of your worksite](#). Your employer must be able to demonstrate that you would have been laid off even if you had not taken leave.

Your employer may also refuse to return you to work in your same position if you are a highly compensated ["key" employee](#) as defined under the FMLA, or if your employer has fewer than 25 employees, and you took leave to care for your own son or daughter whose school or place of care was closed, or whose child care provider was unavailable, and all four of the following hardship conditions exist:

- Your position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of your leave;
- Your employer made reasonable efforts to restore you to the same or an equivalent position;
- Your employer makes reasonable efforts to contact you if an equivalent position becomes available; and
- Your employer continues to make reasonable efforts to contact you for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after your leave began, whichever is earlier.

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## 44. Do I qualify for leave for a COVID-19 related reason even if I have already used some or all of my leave under the FMLA?

If you are an eligible employee, you are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA.

However, if your employer was covered by the FMLA prior to April 1, 2020, your eligibility for expanded family and medical leave depends on how much leave you have already taken during the 12-month period that your employer uses for FMLA leave. You may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period. If you have taken some, but not all, 12 workweeks of your leave under FMLA during the current [12-month period determined by your employer](#), you may take the remaining portion of leave available. If you have already taken 12 workweeks of [FMLA](#) leave during this 12-month period, you may not take additional expanded family and medical leave.

For example, assume you are eligible for preexisting FMLA leave and took two weeks of FMLA leave in January 2020 to undergo and recover from a surgical procedure. You therefore have 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, you would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave you take would count against your entitlement to preexisting FMLA leave.

If your employer only becomes covered under the FMLA on April 1, 2020, this analysis does not apply.

## 45. May I take leave under the FMLA over the next 12 months if I used some or all of my expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act?

It depends. You may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the Emergency Family and Medical Leave Expansion Act. If you take some, but not all 12, workweeks of your expanded family and medical leave by Dec. 31, 2020, you may take the remaining portion of FMLA leave for a serious medical condition, as long as the total time taken does not exceed [12 workweeks in the 12-month period](#). Please note that expanded family and medical leave is available only until Dec. 31, 2020; after that, you may only take FMLA leave.

For example, assume you take four weeks of Expanded Family and Medical Leave in April 2020 to care for your child whose school is closed due to a COVID-19 related reason. These four weeks count against your entitlement to 12 weeks of FMLA leave in a 12-month period. If you are eligible for preexisting FMLA leave and need to take FMLA leave in August 2020 because you need surgery, you would be entitled to take up to eight weeks of FMLA leave.

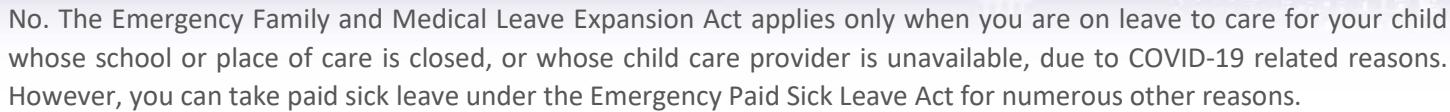
However, you are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA. Paid sick leave is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap. Please note, though, that if you take paid sick leave concurrently with the first two weeks of expanded family and medical leave, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period.

## 46. If I take paid sick leave under the Emergency Paid Sick Leave Act, does that count against other types of paid sick leave to which I am entitled under state or local law, or my employer's policy?

No. Paid sick leave under the Emergency Paid Sick Leave Act is in addition to other leave provided under federal, state or local law; an applicable collective bargaining agreement; or your employer's existing company policy.

## 47. May I use paid sick leave and expanded family and medical leave together for any COVID-19 related reasons?

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No. The Emergency Family and Medical Leave Expansion Act applies only when you are on leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons. However, you can take paid sick leave under the Emergency Paid Sick Leave Act for numerous other reasons.

## **48. What is a full-time employee under the Emergency Paid Sick Leave Act?**

For purposes of the Emergency Paid Sick Leave Act, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week.

In contrast, the Emergency Family and Medical Leave Expansion Act does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week will affect the amount of pay the employee is eligible to receive.

## **49. What is a part-time employee under the Emergency Paid Sick Leave Act?**

For purposes of the Emergency Paid Sick Leave Act, a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week.

In contrast, the Emergency Family and Medical Leave Expansion Act does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week affects the amount of pay the employee is eligible to receive.

## **50. How does the “for each working day during each of the 20 or more calendar workweeks in the current or preceding calendar” language in the FMLA definition of “employer” work under the Emergency Family and Medical Leave Expansion Act?**

The language about counting employees over calendar workweeks is only in the FMLA’s definition of “employer.” This language does not apply to the Emergency Family and Medical Leave Expansion Act for purposes of expanded family and medical leave. Employers should use the number of employees on the day the employee’s leave would start to determine whether the employer has fewer than 500 employees for purposes of providing expanded family and medical leave and paid sick leave. See Question 2 for more information.

## **51. I’ve elected to take paid sick leave and I am currently in a waiting period for my employer’s health coverage. If I am absent from work on paid sick leave during the waiting period, will my health coverage still take effect after I complete the waiting period on the same day that the coverage would otherwise take effect?**

Yes. If you are on employer-provided group health coverage, you are entitled to group health coverage during your paid sick leave on the same terms as if you continued to work. Therefore, the requirements for eligibility—including any requirement to complete a waiting period—would apply in the same way as if you continued to work, including that the days you are on paid sick leave count towards completion of the waiting period. If, under the terms of the plan, an individual can elect coverage that becomes effective after completing the waiting period, the health coverage must take effect once the waiting period is complete.

## **52. I am a public sector employee. May I take paid sick leave under the Emergency Paid Sick Leave Act?**

Generally, yes. You are entitled to paid sick leave if you work for a public agency or other unit of government, with the exceptions below. Therefore, you are probably entitled to paid sick leave if, for example, you work for the government of the United States, a state, the District of Columbia, a territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar government entity, subject to the exceptions below. The Office of Management and Budget (OMB) has the authority to exclude some categories of U.S. Government Executive Branch employees from

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taking certain kinds of paid sick leave. If you are a federal employee, the DOL encourages you to seek guidance from your respective employers as to your eligibility to take paid sick leave.

Further, health care providers and emergency responders may be excluded by their employer from being able to take paid sick leave under the Act. See Questions 56-57 below. These coverage limits also apply to public-sector health care providers and emergency responders.

## **53. I am a public sector employee. May I take paid family and medical leave under the Emergency Family and Medical Leave Expansion Act?**

It depends. In general, you are entitled to expanded family and medical leave if you are an employee of a non-federal public agency. Therefore, you are probably entitled to paid sick leave if, for example, you work for the government of a state, the District of Columbia, a territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar entity.

However, if you are a federal employee, you likely are not entitled to expanded family and medical leave. The Act only amended Title I of the FMLA; most federal employees are covered, instead, by Title II of the FMLA. As a result, only some federal employees are covered, and the vast majority are not. In addition, the OMB has the authority to exclude some categories of U.S. Government Executive Branch employees with respect to expanded and family medical leave. If you are a federal employee, the DOL encourages you to seek guidance from your respective employers as to your eligibility to take expanded family and medical leave.

Further, health care providers and emergency responders may be excluded by their employer from being able to take expanded family and medical leave under the Act. See Questions 56-57 below. These coverage limits also apply to public-sector health care providers and emergency responders.

## **54. What do I do if my public sector employer, who I believe to be covered, refuses to provide paid sick leave or expanded family and medical leave to me?**

If you believe that your public sector employer is covered and is improperly refusing paid sick leave to you under the Emergency Paid Sick Leave Act or expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act, the DOL encourages you to raise your concerns with your employer in an attempt to resolve them. Regardless whether you discuss your concerns with your employer, if you believe your employer is improperly refusing you paid sick leave or expanded family and medical leave, you may call WHD at 1-866-4US-WAGE (1-866-487-9243) or visit [www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd). Your call will be directed to the [nearest WHD office](#) for assistance to have your questions answered or to file a complaint.

In some cases, you may also be able to file a lawsuit against your employer directly without contacting WHD. Some state and local employees may not be able to pursue direct lawsuits because their employers are immune from these lawsuits. For additional information, see the WHD website at: <https://www.wagehour.dol.gov> and/or call WHD's toll free information and help line available 8am–5pm in your time zone, 1-866-4-US-WAGE (1-866-487-9243).

## **55. Who is a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave?**

The term “health care provider,” as used to determine individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave, means a licensed doctor of medicine, nurse practitioner or other health care provider permitted to issue a certification for purposes of the FMLA.

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## 56. Who is a “health care provider” who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?

For purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers or entities to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces, medical products or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state’s, territory’s or the District of Columbia’s response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the DOL encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

## 57. Who is an emergency responder?

For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes, but is not limited to, military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, 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. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state’s, territory’s or the District of Columbia’s response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the DOL encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

## 58. When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing: (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons; and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern.

A small business may claim this exemption if an authorized officer of the business has determined that:

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1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business or responsibilities; or
3. There are not sufficient workers who are able, willing and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

## **59. If I am a small business with fewer than 50 employees, am I exempt from the requirements to provide paid sick leave or expanded family and medical leave?**

A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee this leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- Employer employs fewer than 50 employees;
- Leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; and
- An authorized officer of the business has determined that at least one of the three conditions described in Question 58 is satisfied.

The DOL encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.

## **60. How do I know if I can receive paid sick leave for a federal, state or local quarantine or isolation order related to COVID-19?**

For purposes of the FFCRA, a federal, state or local quarantine or isolation order includes quarantine or isolation orders, as well as shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority that cause you to be unable to work (or to telework) even though your employer has work that you could perform but for the order. You may not take paid sick leave for this qualifying reason if your employer does not have work for you as a result of a shelter-in-place or a stay-at-home order. In the instance where your employer does not have work for you as a result of a shelter-in-place or a stay-at-home order, please see Questions 23-27.

## **61. When am I eligible for paid sick leave to self-quarantine?**

You are eligible for paid sick leave if a health care provider directs or advises you to stay home or otherwise quarantine yourself because the health care provider believes that you may have COVID-19 or are particularly vulnerable to COVID-19, and quarantining yourself based upon that advice prevents you from working (or teleworking).

## **62. I am an employee. I become ill with COVID-19 symptoms, decide to quarantine myself for two weeks, and then return to work. I do not seek a medical diagnosis or the advice of a health care provider. Can I get paid for those two weeks under the FFCRA?**

Generally no. If you become ill with COVID-19 symptoms, you may take paid sick leave under the FFCRA only to seek a medical diagnosis or if a health care provider otherwise advises you to self-quarantine. If you test positive for the virus

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associated with COVID-19 or are advised by a health care provider to self-quarantine, you may continue to take paid sick leave. You may not take paid sick leave under the FFCRA if you unilaterally decide to self-quarantine for an illness without medical advice, even if you have COVID-19 symptoms. Note that you may not take paid sick leave under the FFCRA if you become ill with an illness not related to COVID-19. Depending on your employer's expectations and your condition, however, you may be able to telework during your period of quarantine.

## **63. When am I eligible for paid sick leave to care for someone who is subject to a quarantine or isolation order?**

You may take paid sick leave to care for an individual who, as a result of being subject to a quarantine or isolation order (see [Question 53](#)), is unable to care for him or herself and depends on you for care and if providing care prevents you from working and from teleworking.

Furthermore, you may only take paid sick leave to care for an individual who genuinely needs your care. Such an individual includes an immediate family member or someone who regularly resides in your home. You may also take paid sick leave to care for someone if your relationship creates an expectation that you would care for the person in a quarantine or self-quarantine situation, and that individual depends on you for care during the quarantine or self-quarantine.

You may not take paid sick leave to care for someone with whom you have no relationship. Nor can you take paid sick leave to care for someone who does not expect or depend on your care during his or her quarantine or self-quarantine.

## **64. Can I take paid sick leave to care for any individual who is subject to a quarantine or isolation order or who has been advised to self-quarantine?**

No. You may take paid sick leave under the FFCRA to care for an immediate family member or someone who regularly resides in your home. You may also take paid sick leave under the FFCRA to care for someone where your relationship creates an expectation that you care for the person in a quarantine or self-quarantine situation, and that individual depends on you for care during the quarantine or self-quarantine.

However, you may not take paid sick leave under the FFCRA to care for someone with whom you have no relationship. Nor can you take paid sick leave under the FFCRA to care for someone who does not expect or depend on your care during his or her quarantine or self-quarantine due to COVID-19.

## **65. When am I eligible for paid sick leave to care for someone who is self-quarantining?**

You may take paid sick leave to care for a self-quarantining individual if a health care provider has advised that individual to stay home or otherwise quarantine him or herself because he or she may have COVID-19 or is particularly vulnerable to COVID-19 and provision of care to that individual prevents you from working (or teleworking).

## **66. May I take paid sick leave or expanded family and medical leave to care for my child who is 18 years old or older?**

It depends. Under the FFCRA, paid sick leave and expanded family and medical leave include leave to care for one (or more) of your children when his or her school or place of care is closed or child care provider is unavailable, due to COVID-19 related reasons. This leave may only be taken to care for your non-disabled child if he or she is under the age of 18. If your child is 18 years of age or older with a disability and cannot care for him or herself due to that disability, you may take paid sick leave and expanded family and medical leave to care for him or her if his or her school or place of care is closed or his or her child care provider is unavailable, due to COVID-19 related reasons, and you are unable to work or telework as a result.

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In addition, paid sick leave is available to care for an individual who is subject to a Federal, State, or local 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. If you have a need to care for your child age 18 or older who needs care for these circumstances, you may take paid sick leave if you are unable to work or telework as a result of providing care. But in no event may your total paid sick leave exceed two weeks.

## **67. What is a “place of care”?**

A “place of care” is a physical location in which care is provided for your child. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

## **68. Who is my “child care provider”?**

A “child care provider” is someone who cares for your child. This includes individuals paid to provide child care, like nannies, au pairs, and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.

## **69. Can more than one guardian take paid sick leave or expanded family and medical leave simultaneously to care for my child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons?**

You may take paid sick leave or expanded family and medical leave to care for your child only when you need to, and actually are, caring for your child if you are unable to work or telework as a result of providing care. Generally, you do not need to take such leave if a co-parent, co-guardian, or your usual child care provider is available to provide the care your child needs. See Question 20 for more details.

## **70. My child’s school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home. Is it “closed”?**

Yes. If the physical location where your child received instruction or care is now closed, the school or place of care is “closed” for purposes of paid sick leave and expanded family and medical leave. This is true even if some or all instruction is being provided online or whether, through another format such as “distance learning,” your child is still expected or required to complete assignments.

## **71. May I take paid sick leave to care for a child other than my child?**

It depends. The paid sick leave that is provided under the FFCRA to care for one (or more) of your children when their place of care is closed (or child care provider is unavailable), due to COVID-19 related reasons, may only be taken to care for your own “son or daughter.” For an explanation of the definition of “son or daughter” for purposes of the FFCRA, please refer to Question 40.

However, paid sick leave is also available to care for an individual who is subject to a Federal, State, or local 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. If you have a need to care for a child who meets these criteria, you may take paid sick leave if you are unable to work or telework as a result of providing care. But in no event may your total paid sick leave exceed two weeks.

## **72. May I take expanded family and medical leave to care for a child other than my child?**

No. Expanded family and medical leave is only available to care for your own “son or daughter.” For an explanation of the definition of “son or daughter” for purposes of the FFCRA, please refer to Question 40.

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## **73. When am I eligible for paid sick leave based on a “substantially similar condition” specified by the U.S. Department of Health and Human Services?**

The U.S. Department of Health and Human Services (HHS) has not yet identified any “substantially similar condition” that would allow an employee to take paid sick leave. If HHS does identify any such condition, the Department of Labor will issue guidance explaining when you may take paid sick leave on the basis of a “substantially similar condition.”

## **74. If I am a staffing company, how do I count internal workers and staffed workers under the FFCRA?**

Regardless of how you classify or count internal or staffed workers, you must provide paid sick leave and expanded family and medical leave to workers who are your “employees” for purposes of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act, as described in Question 2. As Question 2 explains, you may be a joint employer, and if so, you must include in your count all employees on your payroll, even if you provide or refer such employees to other employers.

## **75. As an employer, how much do I pay a seasonal employee with an irregular schedule for each day of paid sick leave or expanded family and medical leave that he or she takes?**

You may calculate the daily amount you must pay a seasonal employee with an irregular schedule by taking the following steps.

First, you should calculate how many hours of leave your seasonal employee is entitled to take each day. Because your employee works an irregular schedule, this is equal to the average number of hours each day that he or she was scheduled to work over the period of employment, up to the last six months.

Second, you should calculate the seasonal employee’s regular hourly rate of pay. This is calculated by adding up all wages paid over the period of employment, up to the last six months, and then dividing that sum by the number of hours actually worked over the same period.

Third, you multiply the daily hours of leave (first calculation) by your employee’s regular hourly rate of pay (second calculation) to compute the base daily paid leave amount.

Fourth, you should determine the actual daily paid leave amount, which depends on the type of paid leave taken and the reason for such paid leave.

You must pay your seasonal employee the full base daily paid leave amount, up to \$511 per day and \$5,110 in total, if the employee is taking paid sick leave for any of the following reasons:

- Your employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- Your employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- Your employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

You must pay your seasonal employee 2/3 of the base daily paid leave amount, up to \$200 per day and \$2,000 in total, if your employee is taking paid sick leave for any of the following reasons:

- Your employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- Your employee is caring for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or

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- Your employee is experiencing any other substantially similar condition, as determined by the Secretary of Health and Human Services.

You must pay your seasonal employee 2/3 of the base daily paid leave amount, up to \$200 per day and \$10,000 in total, if the employee is taking expanded family and medical leave to care for the employee's child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. Please note that if your seasonal employees are not scheduled to work, for example, because it is the off-season, then you do not have to provide paid sick leave or expanded family and medical leave.

## **76. May I take paid sick leave or expanded family and medical leave if I am receiving workers' compensation or temporary disability benefits through an employer or state-provided plan?**

In general, no, unless you were able to return to light duty before taking leave. If you receive workers' compensation or temporary disability benefits because you are unable to work, you may not take paid sick leave or expanded family and medical leave. However, if you were able to return to light duty and a qualifying reason prevents you from working, you may take paid sick leave or expanded family and medical leave, as the situation warrants.

## **77. May I take paid sick leave or expanded family and medical leave under the FFCRA if I am on an employer-approved leave of absence?**

It depends on whether your leave of absence is voluntary or mandatory. If your leave of absence is voluntary, you may end your leave of absence and begin taking paid sick leave or expanded family and medical leave under the FFCRA if a qualifying reason prevents you from being able to work (or telework). However, you may not take paid sick leave or expanded family and medical leave under the FFCRA if your leave of absence is mandatory. This is because it is the mandatory leave of absence—and not a qualifying reason for leave—that prevents you from being able to work (or telework).

In the instance of a mandatory leave of absence, 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>.

## **78. Will DOL begin enforcing FFCRA immediately?**

The Department will not bring enforcement actions against any public or private employer for violations of the Act occurring within 30 days of the enactment of the FFCRA, i.e., March 18 through Apr. 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the Act. If the employer violates the Act willfully, fails to provide a written commitment to future compliance with the Act, or fails to remedy a violation upon notification by the Department, the Department reserves its right to exercise its enforcement authority during this period. After Apr. 17, 2020, this limited stay of enforcement will be lifted, and the Department will fully enforce violations of the Act, as appropriate and consistent with the law.

## **79. Does the non-enforcement position mean businesses do not need to comply with the FFCRA from the effective date of Apr. 1, 2020 through Apr. 17, 2020?**

No, the FFCRA's paid leave provisions are effective Apr. 1, 2020. Private sector and public employers must comply with the provisions on the effective date even though the Department has a limited stay of enforcement until Apr. 17, 2020. Once the Department fully enforces the Act, it will retroactively enforce violations back until the effective date of Apr. 1, 2020, if employers have not remedied the violations.

Source: [U.S. Department of Labor](https://www.dol.gov/agencies/whd/ffcra)