

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) FAQs

*These FAQs address the implementation of Emergency Paid Sick Leave and Expanded Family Medical Leave Act (FMLA) provisions created under the Families First Coronavirus Response Act (FFCRA).*

### 1. When are these leave programs available?

*These programs become effective April 1, 2020 and are available through December 31, 2020. **The FFCRA expired on December 31, 2020 and therefore this leave is no longer available.***

### 2. What leave is available under the FFCRA?

*The FFCRA provides:*

- *Two weeks (up to 80 hours) of emergency paid sick leave when you are unable to work because you:*
  - *Are quarantined (pursuant to Federal, State, or local government order or advice of a health care provider)*
  - *Are experiencing COVID-19 symptoms and seeking a medical diagnosis*
  - *Need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider)*
  - *Need to care for a “son or daughter” whose school or childcare provider is closed or unavailable for reasons related to COVID-19*
- *Up to 12 weeks of expanded family medical leave to care for a son or daughter whose school or daycare provider is closed or unavailable for reasons related to COVID-19.*

### 3. How much leave time can I receive under the FFCRA?

*Full-time employees are eligible for up to 80 hours of federal emergency sick leave and 12 weeks for care of a son or daughter due to school closure under the expanded FMLA. Please note that these 12 weeks are the standard amount of time permitted for FMLA, no additional time was added under the new law.*

*Part-time employees will receive an amount equal to the average number of hours worked over a two-week period.*

*Health care providers and emergency responders throughout state government are generally excluded from using this provision except for use of the federal emergency sick leave (up to 80 hours) to care for themselves in the event they become ill from COVID-19 or develop symptoms and may need a medical diagnosis.*

### 4. Are all employees eligible for leave under the FFCRA?

*As permitted under the FFCRA, employees identified as health care providers and emergency responders by their agencies are eligible for emergency paid sick leave for their own COVID-related illness if unable to work, but are not eligible for emergency paid sick leave for the family and childcare reasons. In addition, employees identified as health care providers and emergency responders by their agencies will not be eligible for expanded FMLA leave. Employees should contact their agency human resources contact to determine whether they are considered a health care provider or emergency responder.*

*Employees must work for the state for 30 days to be eligible for leave under the expanded FMLA. A new employee is not initially eligible for expanded FMLA benefits, but once employed for 30 days, the employee becomes eligible.*

*Elected officials are not eligible for the emergency paid sick leave.*

### 5. Who is a “health care provider”? – Updated 9/16/2020

*For the purposes of determining which employees may be exempted from emergency paid sick leave or expanded family and medical leave, per the Department of Labor, health care provider includes two groups.*

The first group is anyone who is a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue certification for [purposes of the FMLA](#).

The second group is Any other person who is employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care. (See list below this paragraph for more detailed definitions of these terms.) This group includes employees who provide direct diagnostic, preventive, treatment, or other patient care services, such as nurses, nurse assistants, and medical technicians. It also includes employees who directly assist or are supervised by a direct provider of diagnostic, preventive, treatment, or other patient care services. Finally, employees who do not provide direct health care services to a patient but are otherwise integrated into and necessary to the provision of those services—for example, a laboratory technician who processes medical test results to aid in the diagnosis and treatment of a health condition—are health care providers.

Diagnostic: Includes taking or processing samples, performing or assisting in the performance of x-rays or other diagnostic tests or procedures, and interpreting test or procedure results.

Preventative: Includes screenings, check-ups, and counseling to prevent illnesses, disease, or other health problems.

Treatment: Includes performing surgery or other invasive or physical interventions, prescribing medication, providing or administering prescribed medication, physical therapy, and providing or assisting in breathing treatments.

Integrated: Those services that are “integrated with and necessary to diagnostic, preventive, or treatment services and, if not provided, would adversely impact patient care, including bathing, dressing, hand feeding, taking vital signs, setting up medical equipment for procedures, and transporting patients and samples.”

An employee is not a health care provider merely because their agency provides health care services or because the person provides a service that affects the provision of health care services. For example, IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers are not health care providers, even if they work at a hospital or a similar health care facility.

## **6. Who is an “emergency responder”?**

For the purposes of determining which employees may be exempted from emergency paid sick leave or expanded family and medical leave, per the Department of Labor, 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.”

Finally, the Secretary, or Agency Head, is also able to make an individual determination to identify an employee as a health care provider essential to our response to COVID-19. Agencies are in the process of making these determinations now and will communicate directly with agency staff regarding who is included as a health care provider at each agency.

## **7. How much do I get paid if I use leave under these programs?**

Under the Emergency Paid Sick Leave program:

Employees will receive their regular rate of pay, subject to a daily maximum of \$511, if the employee is unable to work or telework because they:

- Are subject to a Federal, State, or local quarantine or isolation order related to COVID-19
- Have been advised by a health care provider to self-quarantine due to concerns related to COVID-19
- Are experiencing symptoms of COVID-19 and are seeking medical diagnosis

Employees will receive 2/3 of their regular rate of pay, subject to a daily maximum of \$200, if the employee is unable to work or telework because they are:

- *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*
- *Caring for your son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons*

*\*\*Employees who are receiving 2/3 pay when using the emergency paid sick leave may choose to supplement the additional one-third of their pay by using their own available state leave, but not state-provided paid administrative leave.*

*Under the Expanded FMLA program:*

*The first 10 days of expanded family and medical leave for childcare, due to school or day care closure are unpaid. Employees may substitute any available state leave (e.g., vacation, personal leave, sick leave) or emergency paid sick leave. For the following ten weeks, employees will be paid 2/3 of their regular pay rate, subject to a daily maximum of \$200. Paid FMLA for weeks 3-12 cannot be supplemented. However, employees can use their own leave as substitute while using expanded FMLA.*

**8. Do I have to use other leave before using either federal leave type?**

*No. Employees are not required to use their own accrued leave prior to accessing the available federal leave balances.*

**9. Is all leave under the FMLA now paid leave?**

*No. Only weeks 3-12 of leave for childcare due to school or day care closure is paid for eligible employees.*

**10. Are the federal emergency paid sick leave and expanded FMLA retroactive?**

*No. the provisions are effective beginning April 1, 2020.*

**11. What documents are needed to request federal emergency paid sick leave or expanded FMLA?**

*Employees will be asked to fill out a short form to access either leave program. This is primarily to ensure usage is accurately tracked and submitted to the HR/payroll teams. Additional information\* may be required as follows:*

*If the employee has been advised by a health care provider\*\* to self-quarantine due to concerns related to COVID-19:*

- *The employee's name*
- *The name of health care provider who advised*
- *A statement that the employee is unable to work, including telework, for that reason*
- *The date(s) for which leave is requested*

*If employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis:*

- *The employee's name*
- *The name of health care provider who has been contacted*
- *A statement that the employee is unable to work, including telework, for that reason*
- *The date(s) for which leave is requested*

*If the employee is caring for a sick family member:*

- *Employee's name*
- *The name of the individual the employee is caring for*
- *The applicable order (e.g. safer at home order) or name of health care provider\*\* who ordered the individual being cared for to self-quarantine (depending on the reason)*
- *A statement that the employee is unable to work, including telework, for that reason*
- *The date(s) for which leave is requested is all that is required.*

*If the employee is caring for a son or daughter because the school or place of care has been closed, or the childcare provider is unavailable, due to COVID-19 precautions:*

- The employee's name
- The name of son or daughter and name of the school or day care that is closed.

**\*Note:** Medical Coordinators, or supervisors when appropriate, are authorized to request further documentation of the information provided in each scenario listed above when needed.

**\*\*** "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 emergency 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.

## **12. Will I continue to earn benefits (health insurance, vacation, etc.) while using the federal programs?**

Permanent and project employees will continue to earn continuous service, WRS contributions (by both the employee and employer) and creditable service, annual leave, and sick leave when using the paid emergency sick leave or expanded family and medical leave.

For limited term employees, there will be no benefit accrual except as qualifying hours for initial WRS eligibility or creditable service for LTEs who are already WRS-eligible.

## **13. Can I use my sick leave or other state paid leave and FFCRA paid sick leave or expanded FMLA concurrently for the same hours? (Updated 7/13/2020)**

Employees who are receiving 2/3 pay when using the emergency paid sick leave may choose to supplement the additional one-third of their pay by using their own available state leave, but not state-provided paid administrative leave. For example, a full-time employee could receive eight hours of emergency paid sick leave at the two-thirds rate of pay and also use two and two-thirds hours of vacation or sick leave to receive a full paycheck for eight hours at the employee's regular rate of pay.

Employee's cannot use other leave to supplement the 2/3 pay received for weeks three through 12 of expanded FMLA for childcare due to school or day care closure. However, employees can use their own leave as substitute while using expanded FMLA.

## **14. Who is considered 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. Son or daughter also includes an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability. For additional information about in loco parentis or requirements relating to an adult son or daughter, see DOL [Fact Sheet #28B](#) or [Fact Sheet #28K](#) respectively.

## **15. 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.

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

If you have been approved to telework and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for emergency paid sick leave, then you are entitled to take emergency 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 son or daughter 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 son or daughter, emergency paid sick leave and expanded family and medical leave is not available.

#### **17. How do I record these leave times in STAR? (Updated 11/12/2020)**

Employees should review the [Employee Guide to Paid Leave Available due to COVID-19](#) to confirm what leave types are available for their specific situation. There are two job aids available to help employees enter Federal Emergency Paid Sick Leave or EFMLA in STAR ([Guide for Non-Healthcare Providers or Essential Workers](#) / [Guide for Healthcare Providers & Essential Workers](#)).

Supervisors should review the [Manager Self-Service COVID-19 Leave Review, Entry & Approval Job Aid](#) for details.

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

*It depends on why you are taking emergency paid sick leave and whether your employer agrees. In general, unless you are teleworking, emergency 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 other than the safer at home order*
- *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*

*Unless you are teleworking, once you begin taking emergency paid sick leave for one or more of these qualifying reasons, you must continue to take emergency paid sick leave each day until you either (1) use the full amount of emergency paid sick leave or (2) no longer have a qualifying reason for taking emergency 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 emergency paid sick leave as necessary to keep you from spreading the virus to others.*

*For employees who are subject to the safer at home order, have been deemed nonessential by their agency and do not have the ability to telework, subject to agreement between the employee and supervisor, emergency paid sick leave may be taken intermittently.*

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

*In contrast, if you and your supervisor agree, you may take emergency paid sick leave intermittently if you are taking emergency paid sick leave to care for your son or daughter 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 son or daughter 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 emergency paid sick leave on Mondays, Wednesdays, and Fridays to care for your son or daughter, but work at your normal worksite on Tuesdays and Thursdays.*

#### **19. May I take my emergency paid sick leave intermittently while teleworking?**

*If you are teleworking and become unable to do so for qualifying reasons related to COVID-19 (i.e. you feel unwell enough to work or are required to care for another), emergency paid sick leave must be taken in full-day increments. However, the leave may be taken intermittently over the course of your normally scheduled days.*

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

*Yes, but only with your supervisor'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 son or daughter is at home because their 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.*

**Emergency Paid Sick Leave (EPSL) or Expanded FMLA (EFMLA) Considerations for Fall 2020**

**21. My school has made the decision to do a virtual only reopening to the school year and no in person classes. Does this count as a closure and meet the threshold under EFMLA?**

*Yes. The Department of Labor has determined that when "the physical location where your child received instruction or care is now closed, the school or place of care is 'closed' for purposes of [emergency] 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."*

**22. My school is doing 2 days a week of in-person instruction and the other 3 days are done virtually. While I am able to work the days my children are in school, am I able to use the EFMLA for the other 3 days of the week?**

*As long as the physical location is closed to your child, eligible employees may use emergency paid sick leave and EFMLA on days of closure due to COVID-19. This is true even if other children are attending the school on those days as a result of rotating in-person instruction (Group A attends Monday and Wednesday while Group B attends Tuesday and Thursday).*

**23. My school is offering a blended reopening where parents can choose in-person or virtual attendance for their children. If I choose the virtual only option that is offered, does this qualify for the child care expansion of EFMLA that is valid through 12/31/2020?**

*When the school's physical location is open for attendance, it cannot be considered closed for the purposes of emergency paid sick leave and EFMLA. Therefore, you will not be able to use emergency paid sick leave or EFMLA if you choose the virtual option.*

**24. I am only choosing to send my children to school 2 days per week and having them attend virtual school the other 3 days a week. Does my choice affect the ability to qualify for the leave and the pay?**

*Because the school is open, neither emergency paid sick leave nor EFMLA can be used for 3 virtual days each week.*

**25. My child is attending in-person instruction and I was notified that there was a positive case in the classroom. Am I able to use EFMLA while I keep my child home to monitor for symptoms?**

*If the school "closes" your child's classroom and directs children to remain at home, emergency paid sick leave and EFMLA are available for those days. If you choose to keep your child home, you are not eligible to use emergency paid sick leave or EFMLA. Additionally, if the local health department directs quarantine of your child due to exposure, emergency paid sick leave could be used as is normally permitted.*

**26. I have hired someone to watch/teach/tutor my child on the days they are participating in virtual learning. Am I still able to use EFMLA during this time?**

*In order to be eligible for emergency paid sick leave or EFMLA, there must be no other suitable person available to care for the child. If a tutor or teacher has been hired, you will not be eligible to take leave. However, if there are multiple children requiring care, you may be eligible to take leave to care for children that are not receiving care from the tutor or teacher.*