

Frequently Asked Questions Regarding COVID-19 and the Workplace



1. What if we have employees designated as Emergency Responders? Are they exempt from EFMLA?

According to the language in both of the new laws, an employer of an employee who is an emergency responder may elect to exclude such employee from the application of these laws. But do so with caution that the employee is not engaging in Emergency Response activities.

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 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. To minimize the spread of the virus, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

2. Can employees receive both?

Yes, eligible employees can receive Emergency Sick Pay (80 hours) then EFMLA.

3. How long does the emergency FMLA provision stay in place?

April 1, 2020 through December 31, 2020.

4. How many weeks is allowed by the EFMLA?

Twelve weeks unless employee has taken previous FMLA leave in the current year you are tracking. Then the 12 weeks is reduced by weeks previously taken.

5. Does this expansion of FMLA apply to temporary workers, paid interns, etc.?

Yes, as long as they have been employed at least 30 days. With regard to part time employees, they receive the average amount of hours they work in a two week period.

6. If they have the ability to work from home but they say that it's hard to work with children at home, does the FMLA leave apply?

Yes, and can be taken intermittently if employee can only work a few hours per day. This is irrelevant if you are fully paying staff.

7. What if we have a High Risk Employee who does not want to stay home, can we force them to? Should we have them sign something if they insist on working, that confirms they understand the risks?

Unless the employee is exhibiting signs of illness, they should not be forced to stay home. The best alternative is giving them the ability to work from home so they don't have to come in. But if they are necessary to the operations and want to come in, no need to have them sign a waiver. Give clear instructions that they are not required to be there and if they feel any symptoms to stay home.

8. Is the California Shelter at Home considered an isolation order and are our employees, which are exempt from the order allowed these benefits?

No it is not considered an isolation order. The DOL has issued a guidance memo that states that the California SAHO was a recommendation to individuals and not an order directed to all businesses to shut down. Therefore, it does not trigger the EPSL in and of itself.

9. Is the Emergency Sick Leave and E-FMLA leave subject to PERS?

Yes, all wages earned here are PERS-able.

10. I have heard that you have to exhaust the emergency paid sick leave before you can allow the FMLA to be used. Is that true?

The Sick Pay will pay the first 10 days of EFMLA so it provides a bridge for the employee. It is not required that Sick Pay be exhausted, though can't image why someone would not use it.

11. Can we require employees returning after an illness to bring a work release from a doctor?

Yes.

12. We have an essential employee who is pregnant and does not want to work, can we require she come in?

Requiring someone who is fearful about exposure to come to work is not a good idea. She can take sick leave or vacation time and stay home. Hopefully, you have a backup to this person. If not, you will have to figure it out.

13. The FEMA Employee Rights Poster references "certain public employers" are subject to these provisions, but you are saying ALL public employers are subject - can you explain the difference?

Some federal agencies are exempt.

14. Would someone qualify for the EFMLA if they are still able to work even an hour or so a day, checking emails, running reports, etc.? Basically a drastic and substantial reduction in work that is able to be done from home.

Only if it was to care for a child whose school or day care is closed. This would be part of the accommodation discussion.

Telework is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.

15. Can you be on both Paid Sick Leave and Emergency FMLA? If so, how does the pay cap work?

Yes, PSL covers the first 80 hours of leave, then EFMLA kicks in. The pay cap has to do with how much the employee is able to receive depending on the leave and the reason for the leave.

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

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

Covered Reason For Sick Leave Benefit	Rate of Pay	Cap on Payments
(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19	The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).	\$511 per day and \$5,110 in the aggregate
(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19	The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).	\$511 per day and \$5,110 in the aggregate
(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.	The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).	\$511 per day and \$5,110 in the aggregate
(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$2,000 in the aggregate
(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$2,000 in the aggregate
(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$2,000 in the aggregate

16. Do employees have to exhaust all their leave accrued before they get the 80 hours?

No. They must be given the 80 hours first. If they do not use any or all of the 80 hours, it simply disappears – it is not added to their personal leave accruals.

17. Is there an age limit for the "caring for a child" whose school or daycare is closed?

Yes, child must be under 18. It is important to note that the child must be home from a school or approved day care provider. This cannot be used because Grandma or the neighbor is not available.

18. Can an employee take the 80 hours of Emergency Sick Pay while sheltering at home, and take another 80 hours if a covered issue (in chart above) arises later?

No. Maximum benefit is 80 hours.

19. 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. You may take intermittent leave in any increment, provided that you and your employer agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking. The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

20. 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 of reasons 1-4 and 6 in above chart. Unless you are teleworking, once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

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

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

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

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

No. If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility.

23. 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 (see chart above) prevents you from working your full schedule.

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

No. If you are eligible to take paid sick leave or expanded family and medical leave under the FFCRA, as well as paid leave that is already provided by your employer, unless your employer agrees you must choose one type of leave to take. You may not simultaneously take both, unless your employer agrees to allow you to supplement the amount you receive from paid sick leave or expanded family and medical leave under the FFCRA, up to your normal earnings, with preexisting leave.