

**FAMILIES FIRST
CORONAVIRUS
RESPONSE ACT**

Employee Handbook

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅔ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days* prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

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| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. 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; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
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▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



U.S. Department of Labor

Wage & Hour Division
Washington D.C. 20210

March 24, 2020

MEMORANDUM FOR:

Regional Administrators
Deputy Regional Administrators
Directors of Enforcement
District Directors

FROM:

Cheryl M. Stanton
Administrator

SUBJECT:

Temporary Non-Enforcement Period Applicable to the Families First Coronavirus Response Act (FFCRA)

This Field Assistance Bulletin provides guidance to WHD field staff regarding the temporary non-enforcement period applicable to the FFCRA.

Background

President Donald J. Trump signed the FFCRA on March 18, 2020. The FFCRA is designed to help both employees and their employers by providing, for private employers, paid sick and family leave that is dollar-for-dollar reimbursed through a refundable tax credit.^[1] To enable public and private employers who are covered by the Act to come into compliance with the new statute, WHD will observe a temporary period of non-enforcement of the FFCRA for the period of March 18 through April 17, 2020.

Enforcement Guidance

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 April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the Act. For purposes of this non-enforcement position, an employer who is found to have violated the FFCRA acts “reasonably” and “in good faith” when all of the following facts are present:

1. The employer remedies any violations, including by making all affected employees whole as soon as practicable. As explained in a Joint Statement by the Department, the Treasury Department and the Internal Revenue Service (IRS) issued on March 20, 2020, [2] this program is designed to ensure that all covered employers have access to sufficient resources to pay required sick leave and family leave wages.[3]
2. The violations of the Act were not “willful” based on the criteria set forth in *McLaughlin v. Richland Shoe*, 486 U.S. 128, 133 (1988) (the employer “either knew or showed reckless disregard for the matter of whether its conduct was prohibited...”).
3. The Department receives a written commitment from the employer to comply with the Act in the future.

If the public or private employer either (i) violates the Act willfully, (ii) fails to provide a written commitment to future compliance with the Act, or (iii) fails to remedy the violation upon notification by Department, the employee seeking payment, or a representative of that employee, including by making all affected employees whole as soon as practicable, the Department reserves its right to exercise its enforcement authority.

After April 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.

[1] This tax credit, provided for in Division G of the FFCRA, does not apply to the Government of the United States, the government of any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

[2] <https://www.dol.gov/newsroom/releases/osec/osec20200320>

[3] For purposes of this non-enforcement policy, employers who are eligible for tax credits but who have insufficient cash flow should make payment of sick leave or family leave wages as soon as possible, but not later than seven 7 calendar days after the employer has withdrawn an amount equal to the required paid sick leave and expanded family and medical leave wages from the employer’s Federal payroll tax deposits or, to the extent such deposits are not sufficient, has received a refund of the credit amount from the IRS to cover the required wages.

Families First Coronavirus Response Act

The Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, 2020 and goes into effect today, April 1.

The Department of Labor has provided [additional guidance](#) on the new law, which we strongly encourage employers to read. We also encourage you to see our COVID-19 guidance and resources on the HR Support Center, which you can find by searching *COVID-19*.

Summary

For certain circumstances related to COVID-19, employees will be eligible for

- Up to two weeks of sick leave (full pay for self, 2/3 pay for family care) for illness, quarantine, or school closures
- Up to 12 weeks of Family and Medical Leave Act (FMLA) leave for school closures (10 days unpaid and then up to 10 weeks at 2/3 pay)

Effective Date of Law

The FMLA and Paid Sick Leave sections discussed below went into effect on April 1, 2020 and expire December 31, 2020. Leave benefits and payroll credits will not be retroactive.

Key Elements for Employers

- Payroll Tax Credit
- FMLA expansion
- Paid sick leave
- Documentation

Payroll Tax Credit

- Applies to both the emergency FMLA expansion and the emergency sick leave.
- Dollar for dollar credit for sick leave and paid FMLA wages against the employer portion of Social Security taxes.
- Refund is possible for amounts that exceed what is available as a credit.
- Limits on what can be claimed mirror the caps for what must be paid.

Emergency FMLA Expansion

Covered Employers

Employers with fewer than 500 employees are covered.

Covered Employees

Any employee who has been employed for at least 30 calendar days, though employers may be able to exclude employees who are health care providers or emergency responders. See our COVID-19 FAQ on the HR Support Center for details on how the FFCRA defines health care providers and emergency responders.

Covered Leave Purpose: To care for a child under 18 of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency, defined as an emergency with respect to the coronavirus declared by a federal, state, or local authority.

Duration:

- Up to 12 weeks of job-protected leave.

Compensation:

- No pay for first 10 days of leave (other paid time off, and emergency sick leave under the FFCRA, may be applied).
- After 10 days, employers must pay two thirds of the employee's regular rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 total.

Reinstatement to Position after Leave:

The same reinstatement provisions apply as under traditional FMLA. However, restoration to position does not apply to employers with fewer than 25 employees if certain conditions are met:

- The job no longer exists because of changes affecting employment caused by an economic downturn or other operating conditions that affect employment caused by a public health emergency;
- The employer makes reasonable efforts to return the employee to an equivalent position; and

- The employer makes efforts to contact a displaced employee if anything comes up within a year of when they would have returned to work.

Emergency Paid Sick Leave

Covered Employers

Employers with fewer than 500 employees.

Covered Employees

All employees (no matter how long they have been employed), though employers may be able to exclude employees who are health care providers or emergency responders. See our COVID-19 FAQ on the HR Support Center for details on how the FFCRA defines health care providers and emergency responders.

Covered Leave Purposes:

1. When quarantined or isolated subject to federal, state, or local quarantine/isolation order;
2. When advised by a health care provider to self-quarantine (due to concerns related to COVID-19);
3. When experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. When caring for an individual doing #1 or #2 (2/3 pay);
5. When caring for a child whose school or place of care is closed due to COVID-19 (2/3 pay); or
6. When the employee is experiencing any other substantially similar condition (2/3 pay).

Duration of Leave:

- Full time employees are entitled to 80 hours of paid sick leave.
- Part time employees are entitled to sick leave equal to the number of hours worked on average over a typical two-week period.

Rate of Pay:

- Sick leave must be paid at the employee's regular rate of pay for leave used for the employee's own illness, quarantine, or care.

- Sick leave must be paid at two-thirds of the employee's regular rate if taken to care for a family member or to care for a child whose school has closed, or if the employee's childcare provider is unavailable due to the coronavirus.
- Pay is capped at \$511/day and \$5,110 total for reasons 1, 2, and 3 described above.
- Pay is capped at \$200/day and \$2,000 total for reasons 4, 5, and 6 described above.

Small Business Exemption

Employers with fewer than 50 employees may be eligible for an exemption from the childcare leave provisions if at least one of the three statements below are true:

- Providing leave would result in the small business's expenses and **financial obligations exceeding available business revenues** and cause it **to cease operating at a minimal capacity**;
- The absence of the employee or employees requesting 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
- There are **not sufficient workers** who are able, willing, and qualified, and who will be available at the time and place needed, and these labor or services are needed for the small business **to operate at a minimal capacity**.

Documentation and Additional Guidance

Required FFCRA Poster

The Department of Labor (DOL) has released a mandatory [employee rights poster](#) for the FFCRA. It should be posted or distributed to employees electronically (via email or online portal) by April 1. More information on the requirements can be found [here](#).

Enforcement of FFCRA

The DOL will not bring enforcement actions against employers for violations of the FFCRA prior to April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the Act. You can read more about the brief non-enforcement period [here](#).

Documentation Required to Substantiate Leave Payments

(From the IRS) An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

1. The employee's name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

How to Apply for Tax Credits

The IRS has released DRAFT instructions on how to access and administer payroll tax credits. The draft document is available [here](#). Employers should regularly check back [at this link](#) for the final instructions.

Guidance from the DOL on Administering FFCRA Leaves

We strongly suggest that employers read through the entire [Questions and Answers document](#), so they have an understanding of how the leaves work. The following are some highlights from the updated guidance:

- These leaves are not available to employees with reduced hours, furloughed employees, or employees whose workplaces are closed. See questions 23-28.
- These leaves are not available to employees whose workplaces are closed due to a federal, state, or local shelter-in-place or stay-at-home orders, or due to business slowdowns. See question 23.
- These leaves (and payroll tax credit) are not retroactive. Employees are not entitled to pay under these leaves if they were absent or out of work (for any reasons) prior to April 1. See question 13.
- Both emergency paid sick leave (EPSL) and emergency Family and Medical Leave (EFMLA) can be taken on an intermittent basis in certain situations. See Questions 20-22 for explanations about when intermittent leave is allowed.
- Employees may not be required to use other forms of paid leave prior to or concurrently with EPSL or EFMLA. See questions 32 and 33.
- Employers should keep documentation to show that employees who received leave were actually in need of leave. The documentation requirements are outlined in IRS guidance as discussed above. See Questions 15 and 16.

Families First Coronavirus Response Act Notice – Frequently Asked Questions

- 1. Where do I post this notice? Since most of my workforce is teleworking, where do I electronically “post” this notice?**

Each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

- 2. Do I have to post this notice in other languages that my employees speak? Where can I get the notice in other languages?**

You are not required to post this notice in multiple languages, but the Department of Labor (Department) is working to translate it into other languages.

- 3. Do I have to share this notice with recently laid-off individuals?**

No, the FFCRA requirements explained on this notice apply only to current employees.

- 4. Do I have to share this notice with new job applicants?**

No, the FFCRA requirements apply only to current employees. Employers are under no obligation to provide the notice of those requirements to prospective employees.

- 5. Do I have to give notice of the FFCRA requirements to new hires?**

Yes, if you hire a job applicant, you must convey this notice to them, either by email, direct mail, or by posting this notice on the premises or on an employee information internal or external website.

- 6. If my state provides greater protections than the FFCRA, do I still have to post this notice?**

Yes, all covered employers must post this notice regardless of whether their state requires greater protections. The employer must comply with both federal and state law.

- 7. I am a small business owner. Do I have to post this notice?**

Yes. All employers covered by the paid sick leave and expanded family and medical leave provisions of the FFCRA (i.e., certain public sector employers and private sector employers with fewer than 500 employees) are required to post this notice.

- 8. How do I know if I have the most up-to-date notice? Will there be updates to this notice in the future?**

The most recent version of this notice was issued on March 25, 2020. Check the [Wage and Hour Division's website](#) or sign up for [Key News Alerts](#) to ensure that you remain current with all notice requirements.

9. Our employees must report to our main office headquarters each morning and then go off to work at our different worksite locations. Do we have to post this notice at all of our different worksite locations?

The notice needs to be displayed in a conspicuous place where employees can see it. If they are able to see it at the main office, it is not necessary to display the notice at your different worksite locations.

10. Do I have to pay for notices?

No. To obtain notices free of charge, contact the Department's Wage and Hour Division at 1-866-4-USWAGE (1-866-487-9243). Alternatively, you may download and print the notice yourself from <https://www.dol.gov/agencies/whd/posters>

11. I am running out of wall space. Can I put the required notices in a binder that I put on the wall?

No, you cannot put federal notices in a binder. Generally, employers must display federal notices in a conspicuous place where they are easily visible to all employees—the intended audience.

12. We have break rooms on each floor in our building. Do I have to post notices in each break room on each floor or can I just post them in the lunchroom?

If all of your employees regularly visit the lunchroom, then you can post all required notices there. If not, then you can post the notices in the break rooms on each floor or in another location where they can easily be seen by employees on each floor.

13. Our company has many buildings. Our employees report directly to the building where they work, and there is no requirement that they first report to our main office or headquarters prior to commencing work. Do I have to post this notice in each of our buildings?

Yes. Where an employer has employees reporting directly to work in several different buildings, the employer must post all required federal notices in each building, even if the buildings are located in the same general vicinity (e.g., in an industrial park or on a campus).

14. By when do I have to post the notice?

April 1, 2020.

Families First Coronavirus Response Act: Questions and Answers

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

DEFINITIONS

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

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

QUESTIONS & ANSWERS

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

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

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

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

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

In general, two or more entities are separate employers unless they meet the integrated employer test under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of 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.^[1]

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

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

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

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

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

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

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

However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50

hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

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

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

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

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

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

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

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

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

If you are taking paid sick leave because you are: (1) caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (2) caring for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or (3) experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, you are entitled to compensation at 2/3 of the greater of the amounts above.

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

If you are taking expanded family and medical leave, you may take paid sick leave for the first 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 ten weeks, you will be paid for your leave at an amount no less than 2/3 of

your regular rate of pay for the hours you would be normally scheduled to work. 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 twelve weeks that include both paid sick leave and expanded family and medical leave when you are on leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. 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.^[2] If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.

If you are paid with commissions, tips, or piece rates, these amounts will be incorporated into the above calculation to the same extent they are included in the calculation of the regular rate under the FLSA.

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

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

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

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

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless 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.

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

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

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

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

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

No.

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

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

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

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

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.

If one of your employees takes expanded family and medical leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, you may also require your employee to provide you with any additional documentation in support of such leave, to the extent permitted under the certification rules for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider.

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

You must provide to your employer documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information.

Your employer may also require you to provide additional in support of your expanded family and medical leave taken to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. For example, this may include a notice of closure or unavailability from your child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider. Your employer must retain this notice or documentation in support of expanded family and medical leave, including while you may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No, not while your worksite is closed. If your employer closes your worksite, even for a short period of time, you are not entitled to take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State, or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>. If your employer reopens and you resume work, you would then be eligible for paid sick leave or expanded family and medical leave as warranted.

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

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

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

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

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

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

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

If you do not return to work at the end of your expanded family and medical leave, check with your employer to determine whether you are eligible to keep your health coverage on the same terms (including contribution rates). If you are no longer eligible, you may be able to continue your coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA, which generally applies to employers with 20 or more employees, allows you and your family to continue the same group health coverage at group rates. Your share of that cost may be higher than what you were paying before but may be lower than what you would pay for private individual health insurance coverage. (If your employer has fewer than 20 employees, you may be eligible to continue your health insurance under State laws that are similar to COBRA. These laws are sometimes referred to as “mini COBRA” and vary from State to State.) Contact the Employee Benefits Security Administration at <https://www.dol.gov/agencies/ebsa/workers-and-families/changing-jobs-and-job-loss> to learn about health and retirement benefit protections for dislocated workers.

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

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

During the first two weeks of unpaid expanded family and medical leave, you may not simultaneously take paid sick leave under the EPSLA 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 EFMLEA, 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 2/3 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 EPSLA 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 EPSLA 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 EPSLA. 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 EPSLA. 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 EFMLEA?

Yes. After the first two workweeks (usually 10 workdays) of expanded family and medical leave under the EFMLEA, 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 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 2/3 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 2/3 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. But you cannot claim, and will not receive tax credit for, those amounts in excess of the FFCRA's statutory limits.

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

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

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

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

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

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

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 Fair Labor Standards Act, thus 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 such employee paid sick leave or expanded family and medical leave on a case-by-case basis. And 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 in order to qualify for expanded family and medical leave. For example, if your employee requests expanded family and medical leave on April 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 (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 on requirements relating to an adult son or daughter, see [Fact Sheet #28K](#) and/or call our 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 me paid sick leave?

If you believe that your employer is covered and is improperly refusing you paid sick leave under the Emergency Paid Sick Leave Act, the Department 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 provisions. If you have questions or concerns, you can contact WHD by phone or visit 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 me expanded family and medical leave 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 you expanded family and medical leave or otherwise violating your rights under the Emergency Family and Medical Leave Expansion Act, the Department 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. 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 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.

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 Family and Medical Leave Act (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 such 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 Family and Medical Leave Act 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 December 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 December 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 such 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. But please note 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?

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 for 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 taking certain kinds of paid sick leave. If you are a Federal employee, the Department 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.

But 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 Office of Management and Budget (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 Department 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 me paid sick leave or expanded family and medical leave?

If you believe that your public sector employer is covered and is improperly refusing you paid sick leave under the Emergency Paid Sick Leave Act or expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act, the Department 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. 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 such 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.

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 the 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 these institutions described above to provide services or to maintain the operation of the facility where that individual's services support 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 or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department 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 anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to 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, child welfare workers and service providers, 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 whom the highest official of a State or territory, including the District of Columbia, determines is an emergency responder necessary for that State's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department 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:

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 such 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 Department 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 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.

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](#).

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
- 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 April 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 April 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 April 1, 2020 through April 17, 2020?

No, the FFCRA's paid leave provisions are effective April 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 April 17, 2020. Once the Department fully enforces the Act, it will retroactively enforce violations back until the effective date of April 1, 2020, if employers have not remedied the violations.

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

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

Note: *The draft you are looking for begins on the next page.*



Caution: DRAFT—NOT FOR FILING

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information. **Do not file draft forms** and do **not** rely on draft forms, instructions, and publications for filing. We do **not** release draft forms until we believe we have incorporated all changes (except when explicitly stated on this coversheet). However, unexpected issues occasionally arise, or legislation is passed—in this case, we will post a new draft of the form to alert users that changes were made to the previously posted draft. Thus, there are never any changes to the last posted draft of a form and the final revision of the form. Forms and instructions generally are subject to OMB approval before they can be officially released, so we post only drafts of them until they are approved. Drafts of instructions and publications usually have some changes before their final release.

Early release drafts are at [IRS.gov/DraftForms](https://www.irs.gov/DraftForms) and remain there after the final release is posted at [IRS.gov/LatestForms](https://www.irs.gov/LatestForms). All information about all forms, instructions, and pubs is at [IRS.gov/Forms](https://www.irs.gov/Forms).

Almost every form and publication has a page on IRS.gov with a friendly shortcut. For example, the Form 1040 page is at [IRS.gov/Form1040](https://www.irs.gov/Form1040); the Pub. 501 page is at [IRS.gov/Pub501](https://www.irs.gov/Pub501); the Form W-4 page is at [IRS.gov/W4](https://www.irs.gov/W4); and the Schedule A (Form 1040/SR) page is at [IRS.gov/ScheduleA](https://www.irs.gov/ScheduleA). If typing in a link above instead of clicking on it, be sure to type the link into the address bar of your browser, not a Search box.

If you wish, you can submit comments to the IRS about draft or final forms, instructions, or publications at [IRS.gov/FormsComments](https://www.irs.gov/FormsComments). We cannot respond to all comments due to the high volume we receive and may not be able to consider many suggestions until the subsequent revision of the product.

If you have comments on reducing paperwork and respondent (filer) burden, with respect to draft or final forms, please respond to the relevant information collection through the Federal Register process; for more info, click [here](#).

Advance Payment of Employer Credits Due to COVID-19

▶ Go to www.irs.gov/Form7200 for instructions and the latest information.

Name (not your trade name)		Employer identification number (EIN)
Trade name (if any)		Applicable calendar quarter (check one) (2) <input type="checkbox"/> April, May, June (3) <input type="checkbox"/> July, August, September (4) <input type="checkbox"/> October, November, December
Number, street, and apt. or suite no. If a P.O. box, see instructions.		
City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.)		
Foreign country name	Foreign province/county	Foreign postal code
Does a third-party payer file your employment tax return? (See instructions.) If "Yes," enter its name.		Third-party payer's EIN (if applicable)

Tip: File Form 7200 if you can't reduce your employment tax deposits to fully account for these credits that you expect to claim on your employment tax return for the applicable quarter. Don't reduce your employment tax deposits and request advanced credits for the same expected credits. You will need to reconcile your advanced credits and reduced deposits on your employment tax return. You can't request an advance payment of the credit for sick and family leave for self-employed individuals.

Part I Tell Us About Your Employment Tax Return

- A** Check the box to indicate which employment tax return form you file (or will file for 2020):
(1) 941, 941-PR, or 941-SS **(2)** 943 or 943-PR **(3)** 944 or 944(SP) **(4)** CT-1
- B** Is this a new business started on or after January 1, 2020? ▶ Yes No
 If "Yes," skip line C unless you've already filed Form 941, Form 941-PR, or Form 941-SS for at least one quarter of 2020.
- C** Amount reported on line 2 of your most recently filed Form 941 (or wages reported on Schedule R (Form 941), column (c), by your third-party payer (see instructions)). If you file a different employment tax return, see instructions ▶ _____
- D** Enter the total number of employees you have. See instructions ▶ _____

Part II Enter Your Credits and Advance Requested

1 Total employee retention credit for the quarter	1	
2 Total qualified sick leave wages eligible for the credit and paid this quarter. See instructions	2	
3 Total qualified family leave wages eligible for the credit and paid this quarter. See instructions	3	
4 Add lines 1, 2, and 3	4	
5 Total amount by which you have already reduced your federal employment tax deposits for these credits for this quarter	5	
6 Total advanced credits requested on previous filings of this form for this quarter	6	
7 Add lines 5 and 6	7	
8 Advance requested. Subtract line 7 from line 4. If zero or less, don't file this form	8	

Third-Party Designee Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details. Yes. Complete below. No

Designee's name ▶ _____ and phone number ▶ _____

Select a 5-digit personal identification number (PIN) to use when talking to the IRS ▶ _____

Sign Here Under penalties of perjury, I declare that I have examined this form, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Printed title
Printed name	Best daytime phone	

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	PTIN	Check <input type="checkbox"/> if self-employed
Firm's name ▶	Firm's EIN ▶			
Firm's address ▶	Phone no.			

How To File Fax your completed form to 855-248-0552.

Families First Coronavirus Response Act (FFCRA or Act)

I have received my copy of Families First Coronavirus Response Act (FFCRA or Act). I understand and agree that it is my responsibility to read and familiarize myself with the FFCRA.

I understand that the Company is committed to providing a safe and healthy work environment during these challenging times to protect the public and staff. My signature certifies that I understand that I must conform to and abide by the rules and requirements described in this protocol policy.

Employee's Signature _____

Employee's Printed Name _____

Date _____