

Q&A: Families First Coronavirus Response Act

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

The effective date of these leave entitlements begins on April 1, 2020 and ends on December 31, 2020.

- 2. Can these leaves be used retroactively?**

No, the leaves must be taken between April 1, 2020, and December 31, 2020.

- 3. How does the EPSLA and the EFLMEA impact those employees who have already taken leave pursuant to 5-248(a)?**

The leaves in the FFCRA are independent of any other leaves offered to employees, therefore there is no impact to employees who have taken leave under 5-248(a).

- 4. Can an employee elect to take leave under 5-248(a) first and then EPSLA and EFMLEA?**

Yes, an employee can elect to use leave entitlements under 5-248(a) and then entitlements under the FFCRA, however leave under 5-248(a) cannot run simultaneously with that of the FFCRA. The only exception to the overlapping of leaves would be when an employee is requesting to use leave under the EPLSA during the first ten (10) days of EFMLE, which are unpaid.

- 5. Who qualifies for leave under the EPSLA?**

All employees are immediately eligible to use leave under the EPSLA. Entitlement begins on day 1 of employment; there are no length of service or hours worked requirements.

- 6. Who qualifies for leave under the EFMLEA?**

An employee is qualified for the leave once they have been employed by the State for 30 calendar days.

- 7. If an employee has used some/all of their Federal FMLA entitlements for their federal FMLA leave year, are they entitled to take leave under the EFMLEA?**

Leave entitlement under the EFMLEA is not in addition to the regular FMLA entitlements. Therefore, HR will need to determine how much federal FMLA leave time an employee has used within their current federal FMLA leave year and reduce this time from the 12 weeks allowed under the EFMLEA.

- 8. Are there any employees who are exempt from these leaves?**

Certain health care providers and emergency responders may be excluded.

- 9. For what reasons would an employee qualify for leave under the EPSLA?**

An employee qualifies for leave under the EPSLA if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

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);

5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19*; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

*Employees requesting leave due to caring for a son or daughter whose school or place of care is closed, or the child care provider is unavailable, due to COVID-19, are also eligible for the EFMLEA.

10. What documentation is required to request leave under the FFCRA?

Employees are required to complete Form FFCRA HR-1 to request leave under the FFCRA.

EPSLA:

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

It is understood that it may be difficult for an employee to provide documentation in the event he or she is experiencing symptoms of COVID-19 and seeking a medical diagnosis, as not everyone is being provided access to testing and some medical facilities are telling patients with less severe symptoms to remain home. In this regard, we advise that you request a written statement from the employee stating the reason for leave in the event an employee is not able to provide documentation as well as advising the employee that the we reserve the right to request documentation at a later date.

EFMLEA:

Employees must provide documentation in support of their need to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. For example, this requirement may be satisfied with a notice of closure or unavailability from the 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 the employee by an employee/official of the school, place of care, or child care provider. You must retain this notice or documentation in support of EFMLEA leave.

For both leaves under the FFCRA, employees should be made aware that they may be subject to disciplinary action, up to and including termination, in connection with abuse of the policy.

Please also note that all existing certification requirements under the FMLA remain in effect if the employee is taking leave for one of the existing qualifying reasons under the FMLA. For example, if the employee is taking leave beyond the two weeks of EPSLA because of their medical condition for COVID-19-related reasons rises to the level of a serious health condition, they must continue to provide medical certifications under the FMLA.

11. Can an employee take up to 80 hours of leave to quarantine themselves and then another amount of leave for another reason provided under the EPSLA?

No. An employee may take up to two weeks—or ten days—(up to 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 is scheduled to work over a two-week period) of paid sick leave for any combination of qualifying reasons.

12. If an employee is home with a child because his or her school or place of care is closed, or child care provider is unavailable, does the employee get EPSLA, EFMLEA, or both—how do they interact?

Employees may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. They may take both EPSLA and EFMLEA to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The EPSLA 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 EFMLEA unless the employees elects to use accrued leave. After the first ten workdays have elapsed, the employee will receive 2/3 of their regular rate of pay for the hours they would have been scheduled to work in the subsequent ten weeks under the EFMLEA.

Please note that an employee can only receive the additional ten weeks of expanded family and medical leave under the EFMLEA for leave to care for their child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

13. Can an employee take either of these leaves on an intermittent basis?

Teleworking:

Agencies can permit the use of leave under ESPLA or EFMLEA on an intermittent basis while an employee is teleworking. The Department of Labor is encouraging employers to collaborate with employees to achieve flexibility and meet mutual needs throughout this pandemic.

Working On-Site (no telework):

It would depend on why the employee is requesting leave. Leave cannot be taken intermittently to work on-site if the reason for leave is because the employee is:

- subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- being advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- 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
- experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless the employee is teleworking, once they begin taking paid sick leave for one or more of these qualifying reasons, they must continue to take paid sick leave each day until they 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 they 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 them from spreading the virus to others. If they no longer have a qualifying reason for taking EPSLA before exhausting their paid sick leave time, they may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

In contrast, if the Agency and employee agree, they may take the leave intermittently and work on-site only if they are taking the leave to care for a 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 the 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, the employee may take paid sick leave on Mondays, Wednesdays, and Fridays to care for your child, but work at their normal worksite on Tuesdays and Thursdays.

14. 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 EFMLEA 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.