



Families First Coronavirus Response Act (FFCRA)

April 1-December 31, 2020

Questions & Answers

What are the new benefits under the Families First Coronavirus Response Act?

There are two primary benefits offered under the Families First Coronavirus Response Act

- (1) The Family Medical Leave Act Emergency Expansion
- (2) Emergency Paid Sick Leave

Who is Eligible?

Eligible employees will be entitled to emergency paid sick leave if they have a qualifying reason for use. Employees who are a health care provider or an emergency responder are excluded from the application of these benefits.

A health care provider is “employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care.”

For example, a laboratory technician who processes test results would be providing diagnostic health care services because, although the technician does not work directly with the patient, his or her services are nonetheless an integrated and necessary part of diagnosing the patient and thereby determining the proper course of treatment. Processing that test is integrated into the diagnostic process, like performing an x-ray is integrated into diagnosing a broken bone.

What are the qualifying reasons for using the Emergency Paid Sick Leave?

The Act currently provides for six qualifying reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order
2. The employee is advised by a healthcare provider to self-quarantine
3. The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis
4. The employee is caring for an individual who is subject to an order or advised by a provider to self-quarantine
5. The employee is caring for his/her child because the school or place of care is closed, or the childcare provider is unavailable
6. The employee is experiencing any other substantially similar conditions as specified by the Secretary of Health and Human Services.

Is the new Emergency Paid Sick Leave in addition to the employer provided leave benefits employees currently accrue?

Yes. The eighty (80) hours of Emergency Paid Sick Leave will be in addition to any sick leave the employee has already accrued.

Can the employer require employees to use other paid leave before using the new Emergency Paid Sick Leave?

No. Employers cannot require employees to use other paid leave before using the new Emergency Paid Sick Leave. Employees can choose whether to use sick leave accrued under the state's leave program or use the Emergency Paid Sick Leave.

If an employee elects to use sick leave already accrued under the State's leave program and save their Emergency Paid Sick Leave for another time, they will still need to meet all eligibility requirements at the time of use.

For example, the employee will need to have one of the six qualifying reasons for the leave at the time of use. Agency human resources staff should be prepared to discuss appropriate leave options with their employees depending on the employees' specific circumstances and continue to follow their standard policies regarding the utilization of other paid leaves.

If an employee uses the full amount of the Emergency Paid Sick Leave, can the employee use their other accrued leave to extend their leave period?

Yes. Employees can choose when to use the new Emergency Paid Sick Leave. For example, an employee who chooses to exhaust this leave first, may then use ordinary sick leave accrued under the State's leave program in order to cover an absence. Alternatively, some employees may wish to use their already accrued sick leave under the State's leave program first since there are no monetary caps on the accrued sick leave. Agency human resources staff should be prepared to discuss appropriate leave options with their employees depending on the employees' specific circumstances and continue to follow their standard policies regarding the utilization of other paid leaves.

If the Emergency Paid Sick Leave is not used by an employee, will the employee be able to receive a cash payment for any unused Emergency Paid Sick Leave?

No. The new Emergency Paid Sick Leave will not have a cash value, so employees will not be able to convert the leave to cash. Any unused leave at the end of the 2020 calendar year will expire and no longer be available for use

Can an employee use Emergency Paid Sick Leave to cover the disability-waiting period or supplement disability pay?

Yes. If the employee otherwise meets the eligibility criteria, they can use Emergency Paid Sick Leave to cover the waiting period or supplement during disability, but the rate of pay for the Emergency Paid Sick Leave is still subject to the monetary caps discussed above.

The Emergency Paid Sick Leave was not used by an employee, will they be able to carry the hours over into the next calendar year?

No. If the Emergency Paid Sick Leave is not used by an employee, the leave will not carry over into the next year. The Act expires on December 31, 2020 and any remaining leave will no longer be available for use.

For employees using FMLA due to the new qualifying event, can they use that leave on an intermittent basis?

Generally, yes. The Act allows an employer and an employee to agree to use the expanded FMLA leave on an intermittent basis so long as the employee works with the employer to establish a schedule that could combine intermittent leave usage, work, and/or working remotely. For example, an employee may have access to childcare two days a week but may need to use leave for the remainder of the week.

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

It depends on why you are taking paid sick leave and whether your employer agrees. Unless you are working remotely, 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:

- 1) You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2) You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- 3) You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- 4) 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 •
- 6) You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless you are working remotely, 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 (qualifying reason 5) 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 of Labor 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.

Can the Employer require employees to use their accrued leave concurrently with their unpaid FMLA leave?

No. The Employer cannot require an employee to run accrued leave concurrently as they normally would with other qualifying events under the FMLA. However, the employee may choose to supplement the first unpaid ten (10) days with their existing leave benefits.

Can an Employee use Emergency Paid Sick Leave to cover the first ten (10) unpaid days of FMLA leave taken pursuant to the expansion?

Yes. If an employee has a qualifying event under the FMLA expansion (i.e. the employee is unable to work because they need to care for a dependent whose childcare is closed or otherwise unavailable), then they would also qualify for Emergency Paid Sick Leave

If an employee has already used some or all their 12-weeks under FMLA, is the FMLA Expansion an additional 12-weeks?

No. The Act does not expand an eligible employee's FMLA leave entitlement to greater than 12 workweeks during any 12-month period regardless of the number of qualifying events an employee may have. If an employee has otherwise exhausted their 12 weeks of FMLA leave, they are not entitled to an additional 12 weeks of leave for the new qualifying event.