# 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 By Category

Expand All

- Definitions
- Eligibility
- Coverage
- Application
- Enforcement

## Questions & Answers By Number

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?**
    Regardless of whether you grant or deny a request for paid sick leave or expanded family and medical leave, you must document the following:

    - The name of your employee requesting leave;
    - The date(s) for which leave is requested;
    - The reason for leave; and
    - A statement from the employee that he or she is unable to work because of the reason.

    If your employee requests leave because he or she is subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally document the name of the government entity that issued the order. If your employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should additionally document the name of the health care provider who gave advice.

    If your employee requests leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, you must also document:

    - The name of the child being cared for;
    - The name of the school, place of care, or child care provider that has closed or become unavailable; and
    - A statement from the employee that no other suitable person is available to care for the child.

    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.

16. **What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?**
    When requesting paid sick leave or expanded family and medical leave, you must provide your employer either orally or in writing the following information:

    - Your name;
    - The date(s) for which you request leave;
    - The reason for leave; and
    - A statement that you are unable to work because of the above reason.

    If you request leave because you are subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally provide the name of the government entity that issued the order. If you request leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should additionally provide the name of the health care provider who gave advice.

    If you request leave to care for your child whose school or place of care is closed, or child care provider is unavailable, you must also provide:

    - The name of your child;
    - The name of the school, place of care, or child care provider that has closed or become unavailable; and
    - A statement that no other suitable person is available to care for your child.

    In addition to the above information, you must also provide to your employer written documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information.

    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.

    For more information related to federal employers and employees, please consult the Office of Personnel Management's COVID-19 guidance portal, linked here.

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.

    For more information related to federal employers and employees, please consult the Office of Personnel Management's COVID-19 guidance portal, linked here.

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).

    For more information related to federal employers and employees, please consult the Office of Personnel Management's COVID-19 guidance portal, linked here.

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. For example, an employer may decide to exempt these employees from leave for caring for a family member, but choose to provide them paid sick leave in the case of their own COVID-19 illness.

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. For example, an employer may decide to exempt these employees from leave for caring for a family member, but choose to provide them paid sick leave in the case of their own COVID-19 illness.

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. Please note that you should exclude from this calculation off-season periods during which the employee did not work.

    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. Again, you should exclude off-season periods during which the employee did not work.

    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.

80. **How do I compute the number of hours of paid sick leave for my employee who has irregular hours?**
    Generally, under the FFCRA, you are required to provide an employee with paid sick leave equal to the number of hours that employee is scheduled to work, on average, over a two-week period, up to a maximum of 80 hours.

    If your employee works an irregular schedule such that it is not possible to determine what hours he or she would normally work over a two-week period, you must estimate the number of hours. The estimate must be based on the average number of hours your employee was scheduled to work per calendar day (not workday) over the six-month period ending on the first day of paid sick leave. This average must include all scheduled hours, including both hours actually worked and hours for which the employee took leave.

    Consider the examples below involving two employees with irregular schedules who take leave on April 13, 2020. For both employees, the six-month period used for estimating average hours consists of 183 calendar days from October 14, 2019, to April 13, 2020.

    During that six-month period, the first employee worked 1,150 hours over 130 workdays, and took a total of 50 hours of personal and medical leave. The total number of hours the employee was scheduled to work, including all leave taken, was 1,200 hours. The number of hours per calendar day is computed by dividing 1,200 hours by the 183 calendar days, which results in 6.557 hours per calendar day. The two-week average is computed by multiplying the per calendar day average by 14, which results in 91.8 hours. Since this is greater than the statutory maximum of 80 hours, the first employee, who works full-time, is therefore entitled to 80 hours of paid sick leave.

    The second employee, in contrast, worked 550 hours over 100 workdays, and took a total of 100 hours of personal and medical leave. The total number of hours the employee was scheduled to work, including all leave taken, was 650 hours. The number of hours per calendar day is computed by dividing 650 hours by the 183 calendar days, which is 3.55 hours per calendar day. The two-week average is computed by multiplying the per calendar day average by 14, which results in 49.7 hours. The second employee, who works part-time, is therefore entitled to 49.7 hours of paid sick leave.

    For each hour of paid sick leave taken, you are required to pay the employee an amount equal to at least that employee's regular rate (see Question 82).

81. **How do I compute the number of hours I must pay my employee who has irregular hours for each day of expanded family and medical leave taken?**
    Generally, under the FFCRA, you are required to pay your employee for each day of expanded family and medical leave taken based on the number of hours the employee was normally scheduled to work that day. If your employee works an irregular schedule such that it is not possible to determine the number of hours he or she would normally work on that day, and the employee has been employed for at least six months, you must determine the employee's average workday hours, including any leave hours. The average must be based on the number of hours your employee was scheduled to work per workday (not calendar day) divided by the number of workdays over the six-month period ending on the first day of your employee's paid expanded family and medical leave. This average must include all scheduled hours, including both hours actually worked and hours for which the employee took leave.

    Consider the examples below involving two employees with irregular schedules who take leave on April 13, 2020. For both employees, the six-month period would consist of 183 calendar days from October 14, 2019, to April 13, 2020.

    The first employee worked 1,150 hours over 130 workdays, and took a total of 50 hours of personal and medical leave. The total number of hours the employee was scheduled to work (including all leave taken) was 1,200 hours. The number of hours per workday is computed by dividing 1,200 hours by the 130 workdays, which is 9.2 hours per workday. You must therefore pay the first employee for 9.2 hours per workday times 2/3 his or her regular rate for each day of expanded family and medical leave taken, subject to a $200 per day cap and $10,000 maximum (see Question 7).

    The second employee, in contrast, worked 550 hours over 100 workdays, and took a total of 100 hours of personal and medical leave. The total number of hours the employee was scheduled to work, including all leave taken, was 650 hours. The number of hours per workday is computed by dividing 650 hours by the 100 workdays, which is 6.5 hours per workday. You must therefore pay the second employee for 6.5 hours per workday times 2/3 his or her regular rate for each day of expanded family and medical leave taken, subject to a $200 per day cap and $10,000 maximum (see Question 7).

82. **How do I compute my employee's average regular rate for the purpose of the FFCRA?**
    As an employer, you are required to pay your employee based on his or her average regular rate for each hour of paid sick leave or expanded family and medical leave taken. The average regular rate must be computed over all full workweeks during the six-month period ending on the first day that paid sick leave or expanded family and medical leave is taken.

    If during the past six months, you paid your employee exclusively through a fixed hourly wage or a salary equivalent, the average regular rate would simply equal the hourly wage or the hourly-equivalent of their salary. But if your employee were paid through a different compensation arrangement (such as piece rate) or received other types of payments (such as commissions or tips), his or her regular rate may fluctuate week to week, and you may compute the average regular rate using these steps:

    - First, you must compute the employee's non-excludable remuneration for each full workweek during the six-month period. Notably, commissions and piece-rate pay counts towards this amount. See 29 CFR part 778. Tips, however, count only to the extent that you apply them towards minimum wage obligations (i.e., you take a tip credit). See 29 CFR part 531.60. Overtime premiums do not count towards your employee's regular rate. Please note that, unlike when computing average hours (see Questions 5 and 8), you should not count payments your employee received for taking leave as part of the regular rate.
    - Second, you must compute the number of hours the employee actually worked for each full workweek during the six-month period. Please note that, unlike when computing average hours (see Questions 5 and 8), you do not count hours when the employee took leave.
    - Third, you then divide the sum of all non-excludable remuneration received over the six-month period by the sum of all countable hours worked in that same time period. The result is the average regular rate.

    Consider the examples below involving an employee who takes leave on April 13, 2020. The six-month period would run from Monday, October 14, 2019, to Monday, April 13, 2020. Assuming you use a Monday to Sunday workweek, there are twenty-six full workweeks in that period, which includes 182 calendar days. Please note this is one day fewer than the 183 calendar days falling between October 14, 2019, and April 13, 2020, because the date the leave is taken, April 13, 2020, is a Monday that does not fall in any of the twenty-six full workweeks.

    Suppose your employee's non-excludable remuneration and hours worked are as follows:

| Week | Non-Excludable Remuneration | Hours Worked |
|---|---|---|
| 1 | $1,100 | 50 |
| 2 | $1,300 | 60 |
| 3 | $700 | 35 |
| 4 | $700 | 35 |
| 5 | $1,100 | 50 |
| 6 | $700 | 50 |
| 7 | $600 | 30 |
| 8 | $700 | 50 |
| 9 | $1,100 | 50 |
| 10 | $700 | 50 |
| 11 | $700 | 35 |
| 12 | $1,300 | 60 |
| 13 | $700 | 35 |
| 14 | $1,300 | 60 |
| 15 | $1,100 | 50 |
| 16 | $1,300 | 60 |
| 17 | $1,100 | 50 |
| 18 | $600 | 30 |
| 19 | $700 | 35 |
| 20 | $700 | 50 |
| 21 | $1,100 | 50 |

| | | |
|---|---|---|
| 22 | $700 | 30 |
| 23 | $700 | 30 |
| 24 | $700 | 30 |
| 25 | $800 | 35 |
| 26 | $800 | 50 |
| TOTAL | $23,000 | 1,150 |

In total, the employee worked 1,150 hours and received $23,000 in non-excludable remuneration. The average regular rate is therefore $20.00 ($23,000 divided by 1,150 hours).

83. **How do I compute the average regular rate of my employee who is paid a fixed salary each workweek?**
    It depends. If you pay your employee exclusively through a fixed salary that is understood to be compensation for a specific number of hours of work in each workweek, the employee's average regular rate would simply be the hourly equivalent of that salary.

    However, if the fixed salary is understood to compensate the employee regardless of the number of hours of work in each workweek, then the regular rate may vary alongside the number of hours worked for each workweek. In this case, you would have to add up the salary you paid your employee over all full workweeks in the past six months and divide that sum by the total number of hours worked in those workweeks, as described in Question 82. If you lack records for the number of hours your employee worked, you should use a reasonable estimate.

84. **May I round when computing the number of hours of paid sick leave I must provide an employee with an irregular schedule or the number of hours I must pay such an employee for each day of expanded family and medical leave taken?**
    As an employer, generally, yes. It is common and acceptable for employers to round to the nearest tenth, quarter, or half hour when determining an employee's hours worked. But if you choose to round, you must use a consistent rounding principle. You may not, for instance, round for some employees who request leave but not others. For the purposes of computing hours under the FFCRA, you may round to the nearest time increment that you customarily use to track the employee's hours worked. For instance, if you typically track work time in quarter-hour increments, you may round to the nearest quarter hour. But you may not round to the nearest quarter hour if you typically track time in tenth-of-an-hour increments.

    As an example, the number of hours of paid sick leave for the first employee discussed in Question 81 is computed as 14 days times 1,200 hours divided by 183 calendar days, which is 91.803 hours. If you typically track time in half-hour increments, you would round to 92 hours. If you typically track time in quarter-hour increments, you would round to 91.75 hours. And if you typically track time in tenth-hour increments, you would to round to 91.8 hours.

85. **What six-month period is used to calculate the regular rate under the FFCRA when, for example, my employee takes paid sick leave, gets better, and then one week (or one month or three months) later, takes expanded family and medical leave? Or perhaps the employee takes intermittent leave throughout several months in 2020? In other words, do I have to determine and review a new six-month period every time my employee takes leave?**
    No. As an employer, you should identify the six-month period to calculate each employee's regular rate under the FFCRA based on the first day the employee takes paid sick leave or expanded family and medical leave. That six-month period will be used to calculate all paid sick leave and expanded family and medical leave the employee takes under the FFCRA. If your employee has been employed for less than six months, you may compute the average regular rate over the entire period during which the employee was employed.

86. **Under what circumstances may an employer require an employee to use his or her existing leave under a company policy and when does the choice belong to the employee under the Department's regulations, specifically 29 CFR 826.23(c), 826.24(d), 826.60(b) and 826.160(c)?**
    Paid sick leave under the Emergency Paid Sick Leave Act is in addition to any form of paid or unpaid leave provided by an employer, law, or an applicable collective bargaining agreement. An employer may not require employer-provided paid leave to run concurrently with—that is, cover the same hours as—paid sick leave under the Emergency Paid Sick Leave Act. (See also Question 32.)

    In contrast, an employer may require that any paid leave available to an employee under the employer's policies to allow an employee to care for his or her child or children because their school or place of care is closed (or child care provider is unavailable) due to a COVID-19 related reason run concurrently with paid expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act. In this situation, the employer must pay the employee's full pay during the leave until the employee has exhausted available paid leave under the employer's plan—including vacation and/or personal leave (typically not sick or medical leave). However, the employer may only obtain tax credits for wages paid at 2/3 of the employee's regular rate of pay, up to the daily and aggregate limits in the Emergency Family and Medical Leave Expansion Act ($200 per day or $10,000 in total). If the employee exhausts available paid leave under the employer's plan, but has more paid expanded and medical family leave available, the employee will receive any remaining paid expanded and medical family in the amounts and subject to the daily and aggregate limits in the Emergency Family and Medical Leave Expansion Act. Additionally, provided both an employer and employee agree, and subject to federal or state law, paid leave provided by an employer may supplement 2/3 pay under the Emergency Family and Medical Leave Expansion Act so that the employee may receive the full amount of the employee's normal compensation.

    Finally, an employee may elect—but may not be required by the employer—to take paid sick leave under the Emergency Paid Sick Leave Act or paid leave under the employer's plan for the first two weeks of unpaid expanded family and medical leave, but not both. If, however, an employee has used some or all paid sick leave under the Emergency Paid Sick Leave Act, any remaining portion of that employee's first two weeks of expanded family and medical leave may be unpaid. During this period of unpaid leave under the Emergency Family and Medical Leave Expansion Act, the employee may choose—but the employer may not require the employee—to use paid leave under the employer's policies that would be available to the employee to take in order to care for the employee's child or children because their school or place of care is closed or the child care provider is unavailable due to a COVID-19 related reason concurrently with the unpaid leave.

87. **Are stay-at-home and shelter-in-place orders the same as quarantine or isolation orders? If so, when can I take leave under the FFCRA for reasons relating to one of those orders?**
    Yes, as explained in Question 60, for purposes of the FFCRA, a Federal, State, or local quarantine or isolation order includes shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority. However, in order for such an order to qualify you for leave, being subject to the order must be the reason you are unable to perform work (or telework) that your employer has for you. You may not take paid leave due to such an order if your employer does not have work for you to perform as a result of the order or for other reasons.

    For example, if you are prohibited from leaving a containment zone and your employer remains open outside the containment zone and has work you cannot perform because you cannot leave the containment zone, you may take paid leave under the FFCRA. Similarly, if you are ordered to stay at home by a government official for fourteen days because you were on a cruise ship where other passengers tested positive for COVID-19, and your employer has work for you to do, you are also entitled to paid sick leave if you cannot work (or telework) because of the order. If, however, your employer closed one or more locations because of a quarantine or isolation order and, as a result of that closure, there was no work for you to perform, you are not entitled to leave under the FFCRA and should seek unemployment compensation through your State Unemployment Insurance Office.

88. **If my employer refuses to provide paid sick leave or refuses to compensate me for taking paid sick leave, and the Department brings an enforcement action on my behalf, am I entitled to recover just the federal minimum wage of $7.25 per hour of leave, or can I recover the entire amount due under the FFCRA?**
    If the Department brings an enforcement action on your behalf, you are entitled to recover the full amount due under the FFCRA (see Question 7), which is the greater of your regular rate (see Question 8) or the applicable minimum wage (federal, state, or local) for each hour of uncompensated paid sick leave taken, in each case, subject to the applicable FFCRA maximums (see Question 7). The FFCRA and the Department's regulations state that an employer who does not compensate you for taking paid sick leave is "considered to have failed to pay the minimum wage … and shall be subject to the enforcement provisions" of the Fair Labor Standards Act. Those enforcement provisions state that the employer "shall be liable to the employee or employees affected in the amount of their unpaid minimum wages." For the purposes of the FFCRA, the "amount of unpaid minimum wages" does not refer to the federal minimum wage of $7.25 per hour, but rather to the hourly wage at which the employer must compensate you for taking paid sick leave, which is, generally, the greater of your regular rate or the applicable minimum wage (federal, state, or local).

    Thus, if the Department brings an enforcement action on your behalf, your recovery against an employer that refuses to compensate you for taking paid sick leave would not be limited to the federal minimum wage of $7.25 per hour if your regular rate or an applicable state or local minimum wage were higher. For example, if your regular rate were $30 per hour and you lawfully took 20 hours of paid sick leave to self-quarantine based on the advice of a health care provider, you may recover $600 ($30 per hour times 20 hours) from your employer. As another example, if you were entitled to a state or local minimum wage of $15 and lawfully took 20 hours of paid sick leave for the same reason, you may recover $300 ($15 per hour times 20 hours). However, you may not recover more than the amount due under the FFCRA. For instance, if your employer initially agreed to pay your full hourly rate of $30 per hour to allow you to take paid sick leave to care for your child whose school is closed, but then pays you only 2/3 of your hourly rate, as required by the FFCRA, you may not recover the unpaid portion of the initially agreed amount because your employer was not required by the FFCRA to pay that portion.

89. **I hire workers to perform certain domestic tasks, such as landscaping, cleaning, and child care, at my home. Do I have to provide my domestic service workers paid sick leave or expanded family and medical leave?**
    It depends on the relationship you have with the domestic service workers you hire. Under the FFCRA, you are required to provide paid sick leave or expanded family and medical leave if you are an employer under the Fair Labor Standards Act (FLSA), regardless of whether you are an employer for federal tax purposes. If the domestic service workers are economically dependent on you for the opportunity to work, then you are likely their employer under the FLSA and generally must provide paid sick leave and expanded family and medical leave to eligible workers. An example of a domestic service worker who may be economically dependent on you is a nanny who cares for your children as a full-time job, follows your precise directions while working, and has no other clients.

    If, on the other hand, the domestic service workers are not economically dependent on you and instead are essentially in business for themselves, you are their customer rather than their employer for FLSA purposes. Accordingly, you are not required to provide such domestic service workers with paid sick leave or expanded family and medical leave. An example of a domestic service worker who is not economically dependent on you is a handyman who works for you sporadically on a project-by-project basis, controls the manner in which he or she performs work, uses his or her own equipment, sets his or her own hours and fees, and has several customers. Likewise, a day care provider who works out of his or her house and has several clients is not economically dependent upon you.

    Of course, you are not required to provide paid sick leave or expanded family and medical leave for workers who are employed by a third party service provider with which you have contracted to provide you with specific domestic services.

    Ultimately, the question of economic dependence can be complicated and fact-specific. As a rule of thumb, but not ultimately determinative, if you are not required to file Schedule H, Household Employment Taxes, along with your Form 1040, U.S. Individual Income Tax Return, for the amount you pay a domestic service worker because the worker is not your employee for federal tax purposes, then the worker is likely not economically dependent upon you and you are likely not the worker's employer under the FLSA. In this case, you likely would not be required to provide paid sick leave and expanded family and medical leave. If the worker is your employee for federal tax purposes, so that you are required to file Schedule H for the worker with your Form 1040, you will need to determine whether the worker is economically dependent on you for the opportunity to work. If you determine that the worker is economically dependent upon you for the opportunity to work, then you are likely required to provide that worker with paid sick leave and expanded family and medical leave.

90. **If I am employed by a temporary placement agency that has over 500 employees and am placed at a second business that has fewer than 500 employees, how does the leave requirement work? Are one or both entities required to provide me leave?**
    The temporary staffing agency is not required by the FFRCA to provide you (or any of its other employees) with paid sick leave or expanded family and medical leave because it has more than 500 employees. In contrast, the second business where you are placed will generally be required to provide its employees with paid sick leave or expanded family and medical leave because it has fewer than 500 employees (see Question 39).

    Whether that second business must provide *you* with paid sick leave or expanded family and medical leave depends on whether it is your joint employer. If the second business directly or indirectly exercises significant control over the terms and conditions of your work, then it is your joint employer and must provide you with paid sick leave or expanded family and medical leave. If the second business does not directly or indirectly exercise such control, then it is not your employer and so is not required to provide you with such leave. To determine whether the second employer exercises such control, the Department of Labor would consider whether it exercises the power to hire or fire you, supervises and controls your schedule or conditions of employment, determines your rate and method of pay, and maintains your employment records. The weight given to each factor depends on how it does or does not suggest control in a particular case.

    If the second business provides you with paid sick leave as your joint employer, the temporary staffing agency is prohibited from discharging, disciplining, or discriminating against you for taking such leave, even though it is not required to provide you with paid sick leave. Similarly, if the second business provides you with expanded family and medical leave as your joint employer, the temporary staffing agency is prohibited from interfering with your ability to take leave and from retaliating against you for taking such leave, even though it is not required to provide you with expanded family and medical leave.

91. **My employees have been teleworking productively since mid-March without any issues. Now, several employees claim they need to take paid sick leave and expanded family and medical leave to care for their children, whose school is closed because of COVID-19, even though these employees have been teleworking with their children at home for four weeks. Can I ask my employees why they are now unable to work or if they have pursued alternative child care arrangements?**
    You may require that the employee provide the qualifying reason he or she is taking leave, and submit an oral or written statement that the employee is unable to work because of this reason, and provide other documentation outlined in section 826.100 of the Department's rule applying the FFCRA. While you may ask the employee to note any changed circumstances in his or her statement as part of explaining why the employee is unable to work, you should exercise caution in doing so, lest it increase the likelihood that any decision denying leave based on that information is a prohibited act. The fact that your employee has been teleworking despite having his or her children at home does not mean that the employee cannot now take leave to care for his or her children whose schools are closed for a COVID-19 related reason. For example, your employee may not have been able to care effectively for the children while teleworking or, perhaps, your employee may have made the decision to take paid sick leave or expanded family and medical leave to care for the children so that the employee's spouse, who is not eligible for any type of paid leave, could work or telework. These (and other) reasons are legitimate and do not afford a basis for denying paid sick leave or expanded family and medical leave to care for a child whose school is closed for a COVID-19 related reason.

    This does not prohibit you from disciplining an employee who unlawfully takes paid sick leave or expanded family and medical leave based on misrepresentations, including, for example, to care for the employee's children when the employee, in fact, has no children and is not taking care of a child.

92. **My employee claims to have tiredness or other symptoms of COVID-19 and is taking leave to seek a medical diagnosis. What documentation may I require from the employee to document efforts to obtain a diagnosis? When can it be required?**
    In order for your employee to take leave under the FFCRA, you may require the employee to identify his or her symptoms and a date for a test or doctor's appointment. You may not, however, require the employee to provide further documentation or similar certification that he or she sought a diagnosis or treatment from a health care provider in order for the employee to use paid sick leave for COVID-19 related symptoms. The minimal documentation required to take this leave is intentional so that employees with COVID-19 symptoms may take leave and slow the spread of COVID-19.

    Please note, however, that if an employee were to take unpaid leave under the FMLA, the FMLA's documentation requirements are different and apply. Further, if the employee is concurrently taking another type of paid leave, any documentation requirements relevant to that leave still apply.

93. **I took paid sick leave and am now taking expanded family and medical leave to care for my children whose school is closed for a COVID-19 related reason. After completing distance learning, the children's school closed for summer vacation. May I take paid sick leave or expanded family and medical leave to care for my children because their school is closed for summer vacation?**
    No. Paid sick leave and emergency family and medical leave are not available for this qualifying reason if the school or child care provider is closed for summer vacation, or any other reason that is not related to COVID-19. However, the employee may be able to take leave if his or her child's care provider during the summer—a camp or other programs in which the employee's child is enrolled—is closed or unavailable for a COVID-19 related reason.

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[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. For more information related to federal employers and employees, please consult the Office of Personnel Management's COVID-19 guidance portal, linked here.

[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. For more information related to federal employers and employees, please consult the Office of Personnel Management's COVID-19 guidance portal, linked here.

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A to Z Index

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