

Q&A: Families First Coronavirus Response Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 8. (REVISION ISSUED 8/27/2020 and EFFECTIVE 8/3/2020; further revised 9/16/20) Under the Federal DOL guidelines for administering the Families First Coronavirus Response Act, are there any employees who are exempt from eligibility/coverage?**

Yes. The primary exclusions fall under 2 categories.

1. Health Care Provider.

The Federal DOL guidance defined "Health Care Provider" as follows: "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.

However, on August 3, 2020, the U.S. District Court for the Southern District of New York, struck down this definition and opined that these employees or class of employees must "be capable of providing healthcare services" and that the text of the statute "requires at least a minimally role-specific determination". Therefore, agencies deemed "healthcare providers" by the Federal DOL guidance should reexamine their exemption lists in accordance with the U.S. District court's decision.

In response to the above-referenced decision of the U.S. District Court for the Southern District of New York, the U.S. Department of Labor published revised explanations and regulatory text in the Federal Register on September 16, 2020. Provided therein was a revised definition of "health care provider" which includes employees capable of providing health care services, meaning those who are employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care. Services that are integrated with and necessary to diagnostic, preventive, or treatment services and, if not provided, would adversely impact patient care, include bathing, dressing, hand feeding, taking vital signs, setting up medical equipment for procedures, and transporting patients and samples. Individuals who provide services that affect, but are not integrated into, the provision of patient care are not covered by the definition, because employees who do not provide health care services as defined in the revised regulations are not health care providers. The revised regulations specifically exclude information technology (IT) professionals, building maintenance staff, human resources personnel, cooks, food service workers, records managers, consultants, and billers from the definition of health care provider. These revisions are effective from September 16, 2020 through the expiration of the FFCRA's paid leave provisions on December 31, 2020.

2. Emergency Responder. The Federal DOL guidance for "Emergency Responder" reads as follows: "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.

In further accordance with the U.S. District Court for the Southern District of New York decision of August 3, 2020, agencies deemed "emergency responders" by the Federal DOL guidance above should reexamine their exemption lists to ensure a role-specific determination is made for such exemptions.

Therefore, as an employer with substantial health care, public health and emergency response responsibilities, as defined above, the State of Connecticut will have large groups of employees who are exempt from coverage. Each agency has conducted a review of job classes they are currently using and have determined which classifications are deemed exempt for that agency. If an entire class is not exempt for that agency, specific positions may be deemed exempt, based upon function/assignment. To minimize the spread of the virus associated with COVID-19, the Department of Labor encourages employers to be judicious when using these definitions to exempt healthcare providers and/or 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.

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

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

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19*; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

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

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

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

EPSLA:

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

It is understood that it may be difficult for an employee to provide documentation in the event he or she is experiencing symptoms of COVID-19 and seeking a medical diagnosis, as not everyone is being provided access to testing and some medical facilities are telling patients with less severe

symptoms to remain home. In this regard, we advise that you request a written statement from the employee stating the reason for leave in the event an employee is not able to provide documentation as well as advising the employee that we reserve the right to request documentation at a later date.

EFMLEA:

Employees must provide documentation in support of their need to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. For example, this requirement may be satisfied with a notice of closure or unavailability from the child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to the employee by an employee/official of the school, place of care, or child care provider. You must retain this notice or documentation in support of EFMLEA leave.

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

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

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

No. An employee may take up to two weeks—or ten days—(up to 80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee is scheduled to work over a two-week period) of paid sick leave for any combination of qualifying reasons.

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

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

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

13. If an employee is or becomes unable to telework, are they entitled to paid sick leave or expanded family and medical leave?

Yes, if the employee is permitted to telework and is unable to perform those teleworking tasks or work the required teleworking hours because of one of the qualifying reasons for paid sick leave, then they are entitled to take paid sick leave.

Similarly, if an employee is unable to perform those teleworking tasks or work the required teleworking hours because they need 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, then they are entitled to take expanded family and medical leave. Of course, to the extent the employee is able to telework while caring for their child, paid sick leave and expanded family and medical leave is not available.

14. Can an employee take paid sick leave or expanded family and medical leave intermittently while teleworking?

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

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

15. May an employee take paid sick leave intermittently while working at their usual worksite (as opposed to teleworking)?

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

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

Unless the employee is teleworking, once they begin taking paid sick leave for one or more of these qualifying reasons, they must continue to take paid sick leave each day until they either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if they are sick or possibly sick with COVID-19 or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep them from spreading the virus to others. If they no longer have a qualifying reason for taking EPFLA before exhausting their paid sick leave time, they may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

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

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

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

New Questions as of 3/31/20

Revisions have been made to the following question(s): #8.

17. How do you define a son or daughter under the FFCRA?

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. In addition, 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.

18. Will there be additional time reporting codes for FFCRA?

Yes.

19. Under the FFCRA, can an employee supplement with accrued leave time if they make more than the allotted amount we are paying?

No. Accruals can only be used during the first two (2) weeks of EFMLEA (which are unpaid), unless the employee has elected to use their EPSLA time, in which case they would not use their accruals.

20. If an employee is out on leave for another reason, are they eligible for leave under the FFCRA?

An employee is not eligible to begin leave under the FFCRA until they are cleared to return to work from the other leave currently preventing them from working.

21. Who is defined as a ‘child care provider’ under the Act?

The Department of Labor has clarified that a ‘child care provider’ is someone who cares for a 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.

22. Are employees required to share their leave entitlements under the EFMLEA if both spouses are employed by the State of Connecticut?

No.

23. An employee has been ‘self-monitoring’ for a period past the 14 calendar days under 5-248(a) due to an underlying medical condition that makes them high risk. They are unable to telework. Would the employee qualify for leave under EPSLA?

If the employee has been advised by a health care provider to self-quarantine related to COVID-19, they would be eligible.

24. Is the \$5,110 total limited to 10 work days, or the total someone can make? If the person is making \$275 per day, does that mean they receive leave until they have earned \$5,110?

No, the \$5110 is the aggregate max for the 10 days. Someone earning \$275/day would be paid a total of \$2,750 and would not earn any more under the EPSLA.

25. For job classes whose standard workweek is less than 40 hours, are they considered “part time” under this legislation?

Employees whose standard work week is less than 40 hours would be paid for their normally scheduled hours.

New Questions as of 4/7/20

Revisions have been made above to the extent that question 13 is clarified and expanded on in questions 13, 14 and 15, resulting in the renumbering of subsequent questions. Question 21 (formerly 19) has been revised as well.

26. Who is an ‘individual’ as it pertains to leave reason 4: “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”?

The individual being cared for must be an immediate family member, roommate, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined.

27. Can more than one guardian take leave under the EPSLA or EFMLEA simultaneously to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons?

An employee may take leave to care for a child only when they need to, and actually are, caring for a child and they are unable to work or telework as a result of providing care. Generally, the employee does not need to take such leave if a co-parent, co-guardian, or usual child care provider is available to provide the care the child needs.

28. When is an employee eligible for leave under the EPSLA for reason number 6 which is 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 an employee may take paid sick leave on the basis of a “substantially similar condition.”

29. The ‘Daily Limit of Pay Calculation’ spreadsheet refers to the daily total being \$299.99 for an employee receiving 2/3 pay; has the daily rate changed from \$200?

No. The daily limit is still \$200 per day. The TRC ‘EPS23’ is configured with a multiplication factor of .6667 to ensure that the code pays the employee properly; 2/3 of \$299.99 is \$200.

New Questions as of 4/8/20

Revisions have been made above to Question 8.

30. How should a holiday be coded on a timesheet when an employee is out on a leave under the FFCRA?

Holidays incurred while an employee is out on leave under the FFCRA should be coded to HOL (holiday). Time coded to HOL will not count against the amount of leave time an eligible employee is entitled to under FFCRA.

New Questions as of 8/27/20

Pursuant to a decision of the U.S. District Court for the Southern District of New York issued on August 3, 2020, revisions have been made above to Questions 8 (requiring role specific determinations for exemptions vs. agency-wide) and 15 (removed the words "if the Agency and employee agree" from the last paragraph).

31. Does there need to be work available in order for the employee to be eligible for FFCRA leave?

Yes, pursuant to the revised explanations and regulatory text published by the U.S. Department of Labor in the Federal Register that is effective from September 16, 2020 to December 31, 2020. Therefore, an employee whose worksite closed due to COVID-19 is not eligible for FFCRA leave.

32. Is documentation required to be submitted prior to the employee starting their FFCRA leave?

No. Pursuant to a decision of the U.S. District Court for the Southern District of New York on August 3, 2020, the requirement that documentation be submitted prior to starting their FFCRA leave was struck down. An employee should be provided a reasonable time frame in which to submit required documentation.

33. Can an employee take leave under the FFCRA for a child who is distance learning this academic school year?

The answer depends on the reason why the child is distance learning. See options below.

1. If a school is open for in-person learning and a child is distance learning *by choice* through an online option the school offers, the employee is not entitled to FFCRA leave. In this case, the school is not closed; its physical location is open and the parent is choosing a remote learning option.

2. If a school is requiring full-time online instruction or distance learning, the employee may qualify for child care leave under the FFCRA, provided that the employee certifies to the employer that no other suitable person will be caring for the child(ren) during the period for which the employee takes FFCRA leave.

3. If a school provides a mix of in-person and distance learning (e.g., a student attends class in-person in the morning and online from home in the afternoon, or in-person two days per week and remotely three days per week), an employee could take leave under the FFCRA intermittently.

New Question as of 9/2/20

34. If employees were previously approved for FFCRA (intermittent or block) because of school closings, would they have to re-apply since a new school year is starting and schools are now reopening?

Yes. FFCRA leaves granted due to school closures during the past school year should have only been approved through the end of that academic school year. Now that the new school year is starting, employees would need to submit a new request for leave and provide information/documentation regarding the current school situation.

Revisions as of 9/17/20

In response to the decision of the U.S. District Court for the Southern District of New York on August 3, 2020, the U.S. Department of Labor published revised explanations and regulatory text in the Federal Register on September 16, 2020. These revisions are effective from September 16, 2020 through the expiration of the FFCRA's paid leave provisions on December 31, 2020. Please see revisions made to Questions 8 and 31 above.