

Families First Coronavirus Response Act FAQs

Please note the Families First Coronavirus Response Act is effective April 1, 2020 through December 31, 2020

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

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

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

2) Are any employees excluded from these benefits?

An employer of an employee who is a health care provider or an emergency responder could potentially elect to exclude such employee from the application of these benefits. Please note, additional guidance on the potential exemptions is not fully developed. The Department of Labor has authority to issue regulations that may address these exclusions more fully.

Employees that are not specifically excluded must meet all eligibility criteria in order to receive the new benefits.

3) Are employees required to provide documentation/verification in order to be eligible for Emergency Paid Sick Leave or expanded FMLA leave?

Depending on the type of leave and the reason for the use, an employer may be able to require certain types of documentation to verify leave usage. For additional information on what documentation employers should require for Emergency Paid Sick Leave or leave under the FMLA please see frequently asked questions from the DOL (questions #15 and #16). Please note, the DOL does not require an employee have a positive test result for COVID-19 in order to be eligible.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Emergency Paid Sick Leave

4) Who is eligible for Emergency Paid Sick Leave under the Act?

Except as explained above in Question 2, all individuals employed by the state, unless under the above exclusion, will be entitled to the new Emergency Paid Sick Leave.

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

The Act currently provides for six qualifying reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order

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

6) What is included in the new Emergency Paid Sick Leave benefit for employees?

Full-time employees will receive an additional eighty (80) hours of paid sick leave. The amount of sick leave provided to part time employees and other temporary employees will be calculated based on the average number of hours worked in a two (2) week period. If the part time or temporary employee's hours vary then the average can be taken over a six (6) month period.

The payment amount for the sick leave benefit will be the employee's regular rate of pay but is capped at \$511 per day (\$5,110 per employee total), or 2/3 of the employee's regular rate of pay capped at \$200 per day (\$2,000 per employee total). The higher cap applies if you are caring for yourself, and the lower cap applies if the employee is caring for someone else.

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

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

8) Do employees need to provide a doctor's note and/or any other form of verification in order to be eligible for Emergency Paid Sick Leave?

Depending on the type of leave and the reason for the use, an employer may be able to require certain types of documentation to verify leave usage. For additional information on what documentation employers should require for Emergency Paid Sick Leave or leave under the FMLA please see frequently asked questions from the DOL (questions #15 and #16). Please note, the DOL does not require an employee have a positive test result for COVID-19 in order to be eligible.

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

No. Employers cannot require employees to use other paid leave before using the new Emergency Paid Sick Leave. Employees can choose whether to use sick leave accrued under the state's leave program or use the Emergency Paid Sick Leave. If an employee elects to use sick leave already accrued under the State's leave program and save their Emergency Paid Sick Leave for another time, they will still need to meet all eligibility requirements at the time of use. For example, the employee will need to have one of the six qualifying reasons for the leave at the time of use. Agency human resources staff should be prepared to discuss appropriate leave options with their employees depending on the employees' specific circumstances and continue to follow their standard policies regarding the utilization of other paid leaves.

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

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

11) Can an employee use already accrued sick leave to supplement Emergency Paid Sick Leave if they reach the monetary cap?

Yes. Employees can use already accrued sick leave to supplement the Emergency Paid Sick Leave to receive their total rate of pay if they reach the monetary cap based on the reason for the leave.

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

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

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

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

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

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

Emergency Family and Medical Leave Expansion Act

15) What is the new qualifying event under the FMLA Emergency Expansion?

There is one new qualifying event under the FMLA Emergency Expansion. An employee is eligible if they are unable to work or telework, due to a need to care for the employee's child (who is under 18 years of age) because the child's school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency.

16) Who is eligible for the new qualifying event under the Family and Medical Leave Act Emergency Expansion?

In order to be eligible under the new qualifying event, an employee must have been employed for at least 30 calendar days. This is different from the requirements under traditional FMLA provisions that require the employee to have been employed for a year and worked at least 1,250 hours.

17) Does the new qualifying event under the FMLA Expansion apply to children over 18 if they are still considered dependents for other medical reasons?

Yes. The normal definitions under the Family and Medical Leave Act, which includes coverage for dependents over the age of 18, still apply.

18) How much FMLA leave are employees entitled to under the new qualifying event?

Eligible employees are entitled to a total of twelve (12) weeks of leave for the qualifying event.

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

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

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

Generally, yes. The Act allows an employer and an employee to agree to use the expanded FMLA leave on an intermittent basis so long as the employee works with the employer to

establish a schedule that could combine intermittent leave usage, work, and/or teleworking. For example, an employee may have access to childcare two days a week but may need to use leave for the remainder of the week.

21) Are the twelve (12) weeks of leave for the new qualifying event paid or unpaid?

The first ten (10) days of FMLA leave will be unpaid. After the first ten (10) days, any FMLA leave used for the new qualifying event must be paid. Employees are entitled to pay at 2/3 their regular rate, up to \$200 per day (for a total of no more than \$10,000 per employee). (Please note: separate calculations are necessary for part time employees and employees with varying weekly schedules.)

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

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

23) If any employee is receiving paid leave under the expanded FMLA, can they use other accrued leave to supplement to 100% of their pay?

Yes. Employees can use already accrued leave to supplement their pay under the expanded FMLA if they reach the monetary cap.

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

Yes. If an employee has a qualifying event under the FMLA expansion (i.e. the employee is unable to work because they need to care for a dependent whose childcare is closed or otherwise unavailable), then they would also qualify for Emergency Paid Sick Leave (see Question 5).