



Families First Coronavirus Response Act (FFCRA) –Temporary Regulation FAQ

On March 18, Congress passed, and President Trump signed into law, the Families First Coronavirus Response Act (FFCRA). Among other things the act provides for two new types of paid leave: Emergency Paid Sick Leave (EPSL) for up to 10 days or 80 hours of employees who experience one of six qualifying events, and paid emergency FMLA (EMFLEA) for up to 12 weeks for employees who are unable to work or telework because their child’s school or childcare provider is closed due to COVID-19.

Question	Answer
What happens if an employer fails to comply with FFCRA?	An employer may be held liable for fines, penalties, liquidated damages, and attorney’s fees. There may also be personal liability for the decision makers and owners.
When will the DOL begin enforcing FFCRA?	The Department will not bring enforcement actions 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.
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. 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.
Is an employer required to continue an employee’s group health plan coverage at active employee rates when an employee is out on EPSL and/or the EFMLA?	<p>Yes. all employers subject to the EPSLA and EFMLEA (not just to those that are normally subject to the FMLA, e.g. 50 or more employees) are required to continue an employee’s group health plan coverage during the protected leave as if they had remained actively at work.</p> <p>What group health plans are required to continue?</p> <p>Medical/surgical/hospital care insurance, dental insurance, vision insurance mental health counseling, substance abuse treatment if the employer provides such benefits. This requirement also applies to benefits provided through a supplement to a group health plan, whether or not the supplement is provided through a flexible spending account or other component of a cafeteria plan.</p> <p>Note: As with the FMLA, the employee has the right to drop health plan coverage during EPSL and EFMLA and then be reinstated in the health plan coverage without re-satisfying the waiting period upon return from the protected leave.</p>

<p>What does “is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;” mean? Does a state/local stay at home orders qualify as a "quarantine or isolation order"</p>	<p>Quarantine or isolation orders include a broad range of governmental orders, including orders that advise some or all citizens to shelter in place, stay at home, quarantine, or otherwise restrict their own mobility.</p>
<p>If there is a Federal/State/Local stay at home order, does that mean that my employees are entitled to emergency paid sick leave (EPSL) benefits under the Families First Coronavirus Response Act?</p>	<p>No. An employee is only entitled if their employer remains open for business (i.e. has work for the employee to do) and the employee is required to be at home due to the stay at home order but the employee cannot perform any of his/her duties and responsibilities from home (i.e., teleworking), then FFCRA benefits are generally available. If their employer’s business closes, or there is no work for an employee, they are not entitled to benefits under FFCRA and may apply for unemployment insurance benefits through their State Unemployment Compensation Department.</p> <p>Examples:</p> <ul style="list-style-type: none"> * AG Grocery store is an essential business that is open even though the county where it is located has issued stay at home orders, however, employees who work at essential businesses are allowed to travel to and from their homes to work during the stay-at-home order. Mary, a cashier doesn’t want to work because of the county’s stay-at-home order. The stay-at-home order is not causing Mary to be unable to work, rather she is not wanting to work even though her work is open and there is work for her to do. Mary’s request does not qualify for EPSL. * Best Barber Shop is located in a city that has issued stay-at-home orders. Getting a haircut is not considered an essential business, the barber shop must close its doors (i.e. there is no work for the employees to do.) Best Barber Shop employees are not eligible for EPSL. * Lucky Legal Office is located in a state where stay-at-home orders were issued. Lucky Legal is not an essential business able to keep the firm main office open however, most Lucky Legal employees are able to work from home via telework so they are not eligible for EPSL. However, Betty, is unable to perform work due to a power outage and unable to access the internet. Betty is eligible for EPSL.
<p>What is the definition of an “individual” under qualifying reason #4?</p>	<p>Individual “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.</p>
<p>If an employee’s child’s school or place of care is closed, may an employee take EPSL?</p>	<p>Yes, if they are caring for their child and are unable to work or telework but their employer does have work for them to do. It must be when the employee needs to, and actually is caring for his or her child. Generally, an employee does not need to take such leave if another suitable individual— such as a co-parent, co-guardian, or the usual childcare provider—is available to provide the care the employee’s child needs.</p>
<p>May an employee use their employer’s preexisting leave entitlements and FFCRA paid sick leave and expanded family and medical leave concurrently for the same hours?</p>	<ul style="list-style-type: none"> * If an employer agrees, an employee during the first 2 weeks may supplement the amount they receive from EPSL with their preexisting paid leave up to their normal earnings. After the first two weeks, an employee may elect, or an employer may require, an employee to use any existing paid sick leave under an employer’s current policies (e.g. personal leave, PTO) concurrently with the remaining EFMLA. * If an employee is required to take existing leave at the same time as their remaining EFMLA, the employee must be paid the full amount they are entitled to under their existing paid leave policy for the period of leave taken. Once preexisting paid leave is exhausted, if the employee is still entitled to additional EFMLA, the employer must pay the employee at least 2/3 of the employee’s pay for subsequent periods of EFMLA, up to \$200 per workday and \$10,000 in the aggregate, for expanded family and medical leave.

<p>May EPSL be used by an employer to satisfy paid leave entitlements (e.g. accrued paid vacation, personal, medical, or sick leave) that an employee may have under the employer's existing paid leave policy?</p>	<ul style="list-style-type: none"> * No, unless the employee agrees. Paid sick leave under the EPSLA is in addition to an employee's existing other leave entitlements. * If the employee agrees, preexisting leave entitlements may be used to supplement the amount he or she receives from paid sick leave, up to the employee's normal earnings. Note, however, employers 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. An employer is able to amend their own policies to the extent consistent with applicable law.
<p>May an employer require an employee take paid leave he or she may have under existing paid leave policies concurrently with EFMLA?</p>	<p>After the first two workweeks of EFMLA, an employer may require an employee to take existing leave that, under their policies, would be available to the employee in that circumstance (e.g. personal leave or paid time off) concurrently with EFMLA for the same hours.</p>
<p>If an employee had exhausted all 12 weeks of regular FMLA prior to April 1, are they entitled to EFMLA?</p>	<p>No. FMLA + EFMLA may not exceed a total of 12 weeks. However, 2 weeks of EPSL is still available to the employee.</p>
<p>Are all requests for benefits under EPSL or EFMLA required to be provided in writing to the employer?</p>	<p>No, the request may be oral, however, certain information based on the reason leave is requested must be provided to the employer prior to taking leave and the employer is required to document and maintain such information in its records for four years regardless of whether the request was granted or denied.</p>
<p>Is it permissible to take EPSL intermittently?</p>	<ul style="list-style-type: none"> * If the employee is working at the employer's physical place of business, intermittent leave must be taken in full-day increments until the employee no longer has a qualifying reason to take EPSL, or the leave is exhausted unless leave is being taken for qualifying reason #5. If intermittent leave is needed to care for a child whose school or place of care is closed due to COVID-19 then it may be taken intermittently, if the employer & employee agrees. Absent an agreement, no leave under FFCRA may be taken intermittently. * If the employee is teleworking, if the employer and employee agree, the employee may take paid sick leave or expanded family and medical leave intermittently, in any agreed increment of time.
<p>If an employee can telework while caring for a child, are they eligible for EPSL and EFMLA?</p>	<p>No. An employee must be "unable to work or telework" for COVID-19 related reasons to be eligible for benefits under FFCRA.</p>
<p>If an employee's hours are reduced due to lack of business, can they use EPSL or EFMLA?</p>	<p>No. Their reduction in hours may possibly be related to COVID-19, they are not prevented from working their regular work hours due to one of the 6 qualifying COVID-19 reasons.</p>
<p>Must an employee take EPSL prior to taking EFMLEA?</p>	<p>No. There is no requirement for an employee to use EPSL for the first 2 weeks of the unpaid portion of EFMLEA. In other words, an employee could take EPSLA after EFMLEA is exhausted.</p>
<p>If an employee changes employers are they eligible for an additional 80 hours of EPSLA?</p>	<p>No. an employee is not entitled to additional EPSLA under a new employer, if all 80 hours were previously used. However, an employee may use the remaining hours if the full 80 hours were not used at their previous employer. An employer who has hired someone after 4/15, prior to granting leave should ask the new employee if they previously took leave, prior to their date of hire. There is no guidance in the regulations regarding EFMLEA in similar circumstances.</p>

<p>Is an employee eligible for EPSL to self-quarantine if they don't have COVID-19?</p>	<p>Yes, if a health care provider directs or advises the employee to stay home or otherwise quarantine because the health care provider believes the employee is particularly vulnerable to COVID-19, and quarantining based upon that advice prevents an employee from working (or teleworking), they are eligible for EPSL.</p>
<p>If an employee doesn't seek a medical diagnosis or advice of a health care provider but decides to self-quarantine because they have COVID-19 symptoms, are they eligible for EPSL?</p>	<p>Generally, no. An employee may not take paid sick leave under the FFCRA if they unilaterally decide to self-quarantine for an illness without medical advice, even if they have COVID-19 symptoms. Note that the employee may not take paid sick leave under the FFCRA if they become ill with an illness not related to COVID-19. Depending on the employer's expectations and the employee's condition, however, they may be able to telework during their period of quarantine.</p>
<p>May an employee take paid sick leave or expanded family and medical leave to care for their child who is 18 years old or older?</p>	<p>It depends. 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.</p>
<p>Can more than one guardian take paid sick leave or expanded family and medical leave simultaneously to care for their child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons?</p>	<p>An employee may only take paid sick leave or expanded family and medical leave when they actually are caring for their child and are unable to work or telework as a result of providing care. Generally, if another person, such as a co-parent, co-guardian, or their usual childcare provider is available to provide the care their child needs they would not be eligible for the leave. It may be possible to take leave intermittently however, for times when another person was not available to care for their child.</p>
<p>If a 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"?</p>	<p>Yes. If the physical location where the 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," the child is still expected or required to complete assignments.</p>
<p>What does "Is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services" mean?</p>	<p>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."</p>
<p>Is an employee eligible for paid sick leave or expanded family and medical leave if they are receiving workers' compensation or temporary disability benefits through their employer or state-provided plan?</p>	<p>In general, no, unless they were able to return to light duty before taking leave. However, if they were able to return to light duty and a qualifying reason prevents them from working, they may take paid sick leave or expanded family and medical leave, as the situation warrants.</p>
<p>May an employee take paid sick leave or expanded family and medical leave under the FFCRA if they are on an employer-approved leave of absence?</p>	<p>It depends on whether their leave of absence is voluntary or mandatory. If their leave of absence is voluntary, they may end their leave of absence and begin taking paid sick leave or expanded family and medical leave under the FFCRA if a qualifying reason prevents them from being able to work (or telework). However, if the leave of absence is mandatory, they are not eligible for benefits under FFCRA however, they may be eligible for unemployment insurance benefits.</p>