

COMPLIANCE ALERT

DOL RELEASES ADDITIONAL FFCRA Q&A

April 3, 2020

The Families First Coronavirus Response Act (FFCRA), which generally became effective April 1, 2020, provides for Emergency Paid Sick Leave and Emergency Expanded FMLA Leave to help lessen the financial severity of the COVID-19 outbreak in certain critical areas relating to employment and health coverage. The U.S. Department of Labor has released additional [FAQs](#) that provide more details around the many questions employers have raised as they work to comply with the law's new compliance requirements.

The current FAQs are now up to 79 questions, but we present here the newly released FAQs that pertain to the inquiries we have received most often in daily practice. We have added subtopic headings to help navigate to your most urgent needs:

Employer Size (Under 500 Employees) Clarification

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. 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.

Paid Sick Leave Clarification

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.

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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 it, and quarantining yourself based on the advice prevents you from working (or teleworking).

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.*

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, 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. Also, 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 cannot 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 doesn't expect or rely on you during quarantine or self-quarantine.

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 providing care to him or her keeps you from working (or teleworking).

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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.”

Caring for Children or Family Members Clarification

Can more than one guardian take paid sick leave or expanded FMLA 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 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.

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.

Leave Coordination Clarifications

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

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reason prevents you from working, you may take paid sick leave or expanded family and medical leave, as the situation warrants.

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 check [here](#).

Conclusion

These are extraordinary times, and the ramifications of COVID-19 will continue to evolve rapidly in the coming weeks. We will continue to monitor developments, including further departmental and agency guidance as we receive them and will provide the latest updates as they become available.

We express to all of our clients and friends our deep appreciation for our ongoing relationships, and we look forward to strengthening those ties as we work through this shared adversity. Stay safe and be well.

EPIC Employee Benefits Compliance Services

For further information on this or any other topics, please contact your EPIC benefits consulting team.

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