

## Families First Coronavirus Response Act (FFCRA)

### Definitions:

1. **Emergency Paid Sick Leave (EPSL)** is to care for an employee’s or someone else’s coronavirus related issues.
2. **Emergency Family Medical Leave (EFMLA)** is paid leave that is provided when parents cannot work because their children’s schools or child care services are closed due to the pandemic. The child must be younger than 18.
3. **Personal Time Off (PTO)** is the use of earned time such as sick, personal and vacation leave.
4. The **Families First Coronavirus Response Act (FFCRA)** is in effect from April 1, 2020 through December 31, 2020.
5. The hourly employees, the calculation of hours is based on the employee’s schedule hours. If the scheduled hours are irregular, a two-week average is used.

### Timeline:

Week	2 Weeks		Up to 10 Weeks									
	1	2	3	4	5	6	7	8	9	10	11	12
	May Use EPSL (Unpaid)		Paid at 2/3 of employee’s regular rate of pay capped at \$200/day or \$10,000 in total for the entire leave.									

- \*All employees are eligible for EPSL regardless of how long an employee has been employed.*
- \*Paid at 100% of an employee’s regular rate of pay. Capped at \$511/day (or \$5,110 in total)*
- \*Paid at 2/3 of an employee’s regular rate of pay. Capped at \$200/day (or \$2,000 in total)*
- \*The total number of hours paid under the EPSL Act is capped at 80 during the two-week period.*

At the end of the 12-week period, the employee is restored to a position.

**Scenario 1: An employee is sick with symptoms of COVID-19.**

Employee is seeking a medical diagnosis for COVID-19	
YES	NO
The employee is eligible for up to 80 hours of EPSL for time spent making, waiting for or attending an appointment for COVID-19. Paid at "regular rate" up to \$511/day.	No EPSL or EFMLA. Employee can use existing PTO.

WPS employees may use earned sick, personal or vacation leave to cover the difference between the federal maximum "regular rate" and an employee's actual rate. For example, an employee whose daily rate is \$600/day may use 1.11 hours of earned time:

1. Difference between daily rate \$600 and maximum FFCRA rate of \$511 = \$89
2. Employees hourly rate (\$600/7.5 hours) = \$80/hour
3. Shortfall of \$89 / Employees Actual Hourly rate (\$80) results in 1.11 hours of unpaid leave that can be covered by an employee's accrual.

**After the 2 week period the employee may use their sick accruals, if they are still ill.**

**Scenario 2: An employee has been advised to stay home.**

Is the advice from a "health care provider" or is the employee prevented from coming to work by a governmental order (e.g. shelter in place, stay at home, quarantine)?	
YES	NO
Can an employee work remotely?	No EPSL or EFMLA. Employee should apply for unemployment insurance.
<b>Yes</b>	<b>No</b>
The employee should work remotely.	The employee may use up to 80 hours of EPSL as long as the employee could perform work "but for" the advice of the health care provider or governmental order. Paid at "regular rate" up to \$511/day.

WPS employees may use earned sick, personal or vacation leave to cover the difference between the federal maximum "regular rate" and an employee's actual rate. For example, an employee whose daily rate is \$600/day may use 1.11 hours of earned time:

1. Difference between daily rate \$600 and maximum FFCRA rate of \$511 = \$89
2. Employees hourly rate ( $\$600/7.5$  hours) = \$80/hour
3. Shortfall of \$89 / Employees Actual Hourly rate (\$80) results in 1.11 hours of unpaid leave that can be covered by an employee's accrual.

**Scenario 2: An employee is scared of contracting COVID-19 and refuses to come to work.**

Employees who are afraid to come to work are not eligible for EPSL or EFMLA leave.

**Scenario 3: An employee is caring for someone else.**

Has the cared-for person been advised by a health care provider to self-quarantine or is the person subject to a governmental isolation order?		
YES	NO	
<p>The employee may use up to 80 hours of EPSL if there is a “genuine need” to care for the individual <u>and</u> the individual is an immediate family member, roommate, or someone else with whom the employee has a personal relationship. Paid at 2/3 “regular rate” up to \$200/day for 2 weeks.</p>	<p>Is the cared-for person the employee’s child <u>and</u> is their school or daycare closed <u>or</u> is their “child care provider” unavailable because of COVID-19?</p>	
	Yes	No
	<p>The employee may use up to a total of 12 weeks paid at 2/3 “regular rate” up to \$200/day to care for their child. The maximum amount received over the 12 week period is \$12,000. The employee must actually be caring for the child and another suitable individual is not available. (e.g. co-parent, co-guardian, or usual child care provider)</p>	<p>No EPSL or EFMLA. Employee should apply for unemployment insurance.</p>

WPS employees may use up to 15 family sick days, personal or vacation leave to cover the difference between the federal maximum “regular rate” and an employee’s actual rate. For example, an employee whose daily rate is \$600/day may use 5.00 hours of earned time:

1. Difference between daily rate \$600 and maximum FFCRA rate of \$200 = \$400
2. Employees hourly rate (\$600/7.5 hours) = \$80/hour
3. Shortfall of \$400 / Employees Actual Hourly rate (\$80) results in 5.00 hours of unpaid leave that can be covered by an employee’s accrual.

**Scenario 4: An employee is sent home because of a cough, fever, etc.**

Employee is seeking a medical diagnosis for COVID-19	
YES	NO

<p>The employee is eligible for up to 80 hours of EPSL for time spent making, waiting for or attending an appointment for COVID-19. Paid at "regular rate" up to \$511/day.</p>	<p>No EPSL or EFMLA. Employee can use existing PTO.</p>
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WPS employees may use earned sick, personal or vacation leave to cover the difference between the federal maximum "regular rate" and an employee's actual rate. For example, an employee whose daily rate is \$600/day may use 1.11 hours of earned time:

1. Difference between daily rate \$600 and maximum FFCRA rate of \$511 = \$89
2. Employees hourly rate (\$600/7.5 hours) = \$80/hour
3. Shortfall of \$89 / Employees Actual Hourly rate (\$80) results in 1.11 hours of unpaid leave that can be covered by an employee's accrual.

**After the 2 week period the employee may use their sick accruals, if they are still ill.**

**Questions and Answers (copied from the Department of Labor website):**

1. **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.
2. **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.

3. **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.
4. **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.

**5. 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>.

**6. 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.

**7. 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.

**8. 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.