

# **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 (or the “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. An employer can also choose to exclude health care providers or emergency responders from only one benefit or both. Only certain agencies will have positions that fit these definitions. Please contact the Office of Collective Bargaining if you have question about whether there are positions in your agency that meet this definition.

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

## **Emergency Paid Sick Leave**

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

Except for the exclusions explained above in Question 2, all individuals employed by the state will be entitled to the new Emergency Paid Sick Leave.

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

The Act currently provides 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.

**5) What type of order constitutes a “quarantine” or “isolation order?”**

“Quarantine” or “isolation orders” include a broad range of governmental orders, including, but not limited to, orders that advise some or all citizens to shelter in place, stay at home, quarantine, or otherwise restrict their own mobility. However, even where such an order exists, an employee is not entitled to emergency paid sick leave unless the order causes the employee to be unable to work. In other words, paid sick leave is only available in a circumstance where an employer has work that the employee could perform “but for the order”. Please note that certain orders, including Ohio’s Stay at Home Order, have exceptions and do not restrict mobility for certain functions, including essential businesses and employees that must travel to perform those functions.

**6) What does it mean to be “advised by a health care provider to self-quarantine?”**

To be “advised by a health care provider” means the advice to self-quarantine must be based on the health care provider’s belief that the employee has COVID-19, may have COVID-19, or is particularly vulnerable to COVID-19.

Also, self-quarantining must prevent the employee from working. If an employee who is self-quarantining is able to telework, they may not take paid sick leave for this reason. An employee is generally able to telework where: (a) his or her employer has work for the employee to perform; (b) the employer permits the employee to perform that work from the location where the employee is self-quarantining; and (c) there are no extenuating circumstances, such as serious COVID-19 symptoms, that prevent the employee from performing that work.

**7) What constitutes “seeking a medical diagnosis” for purposes of Emergency Paid Sick Leave?**

If an Employee is experiencing any of the following symptoms: (i) fever; (ii) dry cough; (iii) shortness of breath; or (iv) any other COVID-19 symptoms identified by the U.S. Centers for Disease Control and Prevention and is “taking affirmative steps to obtain the medical diagnosis, such as making, waiting for, or attending an appointment for a test for COVID-19.”

The employee may not take paid sick leave to self-quarantine without seeking a medical diagnosis **if they have indicated they are also experiencing symptoms of COVID-19.**

**8) Is “individual” defined for purposes of using Emergency Paid Sick Leave to care for another person?**

“Individual” means an Employee’s immediate family member, a person who regularly resides in the Employee’s home, 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 were quarantined or self-quarantined. For this purpose, “individual” does not include persons with whom the Employee has no personal relationship.

**9) Is “son or daughter” defined for purposes of using Emergency Paid Sick Leave or expanded FMLA to care for a child?**

Yes, the Act adopted the FMLA’s definition of the term “Son or Daughter”. “Son or Daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability.

**10) 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.

**11) 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.

**12) What type of notice and documentation do employees need to provide in order to use Emergency Paid Sick Leave?**

Employees are required to provide the Employer documentation containing the following information prior to taking Emergency Paid Sick Leave: (1) Employee's name; (2) Date(s) for which leave is requested; (3) Qualifying reason for the leave; and (4) Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

If an employee is taking Emergency Paid Sick Leave due to a quarantine or isolation order, the employee must additionally provide the Employer with the name of the government entity that issued the Quarantine or Isolation Order.

If an employee is taking Emergency Paid Sick Leave due to a health care provider's advisement, the employee must additionally provide the Employer with the name of the health care provider who advised the Employee to self-quarantine due to concerns related to COVID-19.

If an employee is taking Emergency Paid Sick Leave to care for another individual, the employee must additionally provide the Employer with either: (1) the name of the government entity that issued the Quarantine or Isolation Order to which the individual being cared for is subject; or (2) the name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.

If an employee is taking Emergency Paid Sick Leave to care for a son or daughter because the school or place of care has been closed, or the child care provider is unavailable, the employee must additionally provide: (1) the name of the son or daughter being cared for; (2) the name of the school, place of care, or child care provider that has closed or become unavailable; and (3) a representation that no other suitable person will be caring for the son or daughter during this period.

If an employee is taking Emergency Paid Sick Leave because the employee is experiencing symptoms of COVID-19 and is seeking medical diagnosis from a health care provider, please note, the DOL does not require an employee have a positive test result for COVID-19 in order to be eligible. Any leave granted under this section should be limited to time the employee is unable to work because they are taking affirmative steps to: (1) obtain a medical diagnosis, or (2) making, waiting for, or attending an appointment for a test for COVID-19.

If an employee is taking Emergency Paid Sick Leave because the employee has a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor, please note, the DOL does not require an employee have a positive test result for COVID-19 in order to be eligible. Any leave granted under this section should be limited to time the employee is unable to work

because they are taking affirmative steps to: (1) obtain a medical diagnosis, or (2) making, waiting for, or attending an appointment for a test for COVID-19.

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

**13) Can an employee use Emergency Paid Sick Leave on an intermittent basis?**

Employees who are teleworking may take Emergency Paid Sick Leave intermittently with the agreement of the employer. They may take such leave for any of the six reasons listed in the Act, so long as they are teleworking.

If the nature of the employee's job still requires them to physically be working at their worksite, employees may NOT use Emergency Paid Sick Leave intermittently, even with the agreement of the employer, unless it is for the childcare qualifying reason. The other five qualifying reasons under the Act require the employee to take the leave consecutively until the employee exhausts the leave or no longer has a qualifying reason to take paid sick leave.

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

No. Unless an employee is exempted from the leave benefits under the Act, 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.

**15) 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.

**16) 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, along with vacation, and/or personal 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.

**17) 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.

**18) Can an employee use Emergency Paid Sick Leave to cover the disability waiting period?**

Yes. If the employee meets the eligibility criteria for Emergency Paid Sick Leave during the waiting period (one of the six qualifying reasons listed in question #12), then the employee would be able to use Emergency Paid Sick Leave to cover the disability waiting period, but the rate of pay for the Emergency Paid Sick Leave is still subject to the monetary caps discussed above.

**19) Can an employee use Emergency Paid Sick Leave to supplement disability pay?**

No. Once an employee has been approved for disability, they cannot use Emergency Paid Sick Leave to supplement their disability pay.

**20) 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**

**21) 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 (see Question 9 above) because the child's school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency.

**22) 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.

**23) Does the new qualifying event under the FMLA Expansion apply to adult children with a physical or mental disability who are incapable of self-care?**

Yes. The definition of "son or daughter" under the Family and Medical Leave Act applies.

**24) 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.

**25) 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.

**26) 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.

However, please note that while the Emergency Paid Sick Leave can be used by an employee who is teleworking from home on an intermittent basis with the employer's agreement for the initial 2 weeks of unpaid FMLA. At the end of the 2 weeks, the employee must switch over to the expanded FMLA. Any

remaining unused Emergency Paid Sick Leave would remain in the employee's bank. At the end of the employee's expanded FMLA leave, the employee can use any remaining Emergency Paid Sick Leave for any qualifying reason under the Act through December 31, 2020).

**27) 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) unless the employee is using accrued paid leave concurrently (see question 29 below). (Please note: separate calculations are necessary for part time employees and employees with varying weekly schedules.)

**28) What type of notice and documentation do employees need to provide in order to use Expanded FMLA?**

Employees are required to provide the Employer documentation containing the following information prior to taking Expanded FMLA: (1) Employee's name; (2) Date(s) for which leave is requested; (3) Qualifying reason for the leave; and (4) Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

If an employee is taking FMLA to care for a son or daughter because the school or place of care has been closed, or the child care provider is unavailable, the employee must additionally provide: (1) the name of the son or daughter being cared for; (2) the name of the school, place of care, or child care provider that has closed or become unavailable; and (3) a representation that no other suitable person will be caring for the son or daughter during this period.

**29) Can the Employer require employees to use their accrued leave concurrently with the unpaid portion (i.e. the first 10 days/first two weeks) of their expanded FMLA leave?**

Yes, but only if the employee is NOT using their Emergency Paid Sick Leave during this first two-week period. The employer cannot require an employee to use their accrued leave concurrently with their Emergency Paid Sick Leave.

**30) Can the Employer require employees to use their accrued leave concurrently with the paid portion (i.e. the 10 weeks that follow the 10-day unpaid portion) of their expanded FMLA leave?**

Yes, an eligible employee may elect to use, or an employer may require an employee to use other paid, accrued leave, *concurrently* with the paid portion of the expanded FMLA Leave. Consistent with how we treat FMLA for other

qualifying conditions, **appropriate paid leave should be run concurrently with the expanded FMLA.** The paid/accrued leave must be a type of leave that would otherwise be appropriate for use when an employee is caring for a child who is not ill (e.g. vacation or personal leave). This is limited to vacation, personal leave, and where appropriate, compensatory time.

The Employer must pay the employee the full amount to which the employee is entitled under the employee's preexisting paid and accrued leave policy for the period of leave taken. If an employee does not have paid, accrued leave to run concurrently (or the leave is exhausted) for all or portion of the expanded FMLA, then the employee will receive pay at 2/3 of their regular rate up to \$200 per day, and, may choose to supplement as discussed below in question 31.

**31) 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 who are not running any paid leave concurrently, can use already accrued leave to supplement their pay under the expanded FMLA if they reach the monetary cap. Any type of accrued paid leave can be used to supplement.

**32) 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 their child whose childcare is closed or otherwise unavailable), then they would also qualify for Emergency Paid Sick Leave (see Question 4).

**33) If an employee is using Emergency Paid Sick Leave to cover the first ten (10) unpaid days of expanded FMLA but only using the leave intermittently based on the schedule agreed to with the employer, what happens at the end of the ten (10 days)? Does the employee continue to use the Emergency Paid Sick Leave or are they paid pursuant to the expanded FMLA (2/3 their rate of pay)?**

The Emergency Paid Sick Leave can be used by an employee who is teleworking from home on an intermittent basis with agreement for the initial ten (10) days of unpaid FMLA leave. However, at the end of the 2 weeks, the employee must switch over to the expanded FMLA. Any remaining unused Emergency Paid Sick Leave would remain in the employee's bank. At the end of the employee's expanded FMLA leave, the employee can use any remaining Emergency Paid Sick Leave for any qualifying reason under the Act through December 31, 2020).

## Application FAQs

**34) Does utilization of the Emergency Paid Sick Leave or expanded FMLA impact an employee's health care coverage?**

No. An employee currently on the state's health plan will not be impacted by the use of Emergency Paid Sick Leave or expanded FMLA. The Act provides that an Employer must continue to maintain an employee's coverage under the same conditions they would have if the employee was at work.

**35) When an employee uses Emergency Paid Sick leave or takes leave under the expanded FMLA (paid or unpaid) are they considered in active pay status?**

Yes. Employees are in active pay status.

**36) Are an employee's leave accruals impacted by using Emergency Paid Sick Leave or taking leave under the expanded FMLA (paid or unpaid)?**

No, time taken as Emergency Paid Sick Leave or expanded FMLA will accrue leave at the same rate as any other paid leave. For example, a full-time employee's leave accruals will not be impacted as long as eighty hours of leave and/or work are reported for the pay period.

**37) How are an employee's and employer's Retirement System contributions impacted (if at all) by the use of Emergency Paid Sick Leave or expanded FMLA?**

Emergency Paid Sick Leave and expanded FMLA are considered "earnable salary". As such, Retirement System contributions for these payments are required. In periods where employees use Emergency Paid Sick Leave and/or expanded FMLA, Retirement System contributions for these employees may fluctuate in order to correspond to the amounts paid to them for these leaves.

**38) What time reporting codes will be used for Emergency Paid Sick leave?**

For Emergency Paid Sick Leave, there are two new time reporting codes, depending on the reason for the leave.

- **FCSLO**: used when an employee is caring for another and is capped at up to \$200 per day.
- **FCSLS**: used when an employee is caring for themselves and is capped at up to \$511 per day.

**39) If an employee has been approved for FMLA leave under the new qualifying event, what code will be used to track the leave?**

A new tracking code has been created for this purpose. For those employees that have been approved for FMLA leave under the new qualifying event, the new **FNFFC** code will be used for the duration of the leave, regardless of whether it is paid or unpaid. This code is different than the code that is normally used to track FMLA for other qualifying conditions.

**40) The Act states that the employees are to be paid while they are out on FMLA for the new qualifying event, what time reporting code should be used for the paid portion of the leave?**

After the first ten (10) days, agencies will use new a time reporting code created for this purpose. The **FMFFC** code will be used to pay employees for the remainder of FMLA leave.

If an employee elects, or is required to run their leave concurrently, the **FMFFC** should not be used and the employee will be receiving 100% of their regular pay while running leave concurrently with the expanded FMLA leave time. Please note, in this situation, agencies should continue using the **FNFFC** code to continue tracking the leave used.

If an employee is not running any leave concurrently (either because they are not required to, do not elect to, or because they do not have any applicable leave), they still have the ability to supplement the paid FMLA time to reach 100%. In this instance, agencies should use the FMFFC code and will need to calculate the number of leave hours needed to reach 100% and apply appropriate time reporting codes.

**41) What is the process for using both FLMA based codes for the new qualifying event?**

If the employee is on FLMA for the new qualifying event, agencies should use the **FNFFC** for the duration of the leave. After the initial ten (10) days of unpaid leave, in addition to continuing to code with **FNFFC**, agencies will need to use the **FMFFC** code for the duration of the leave that is paid. Please note, if an employee chooses to use other accrued leave during the unpaid portion of the FMLA, traditional time reporting codes will be used in conjunction with the **FNFFC** tracking code. Also, if an employee elects, or is required to use other paid leaves concurrently with the expanded FMLA, agencies should follow the process outlined in question 39 above.

Please note, even if an employee has no other accrued paid leave to supplement or to run concurrently, the employee is still entitled to 2/3 of their regular rate of pay after the first ten unpaid days and agencies should use the FMFFC code for that time.

**42) If any employee has exhausted all (or is not eligible for) Emergency Paid Sick Leave, expanded FMLA, and any other appropriate accrued leave and is in a no pay status, is there a way to continue to track the time?**

Yes. A time reporting code has been created for this purpose. The new time reporting code is **COVNP** (COVID-19 NO Pay). This code should be used when an employee is not at work, in a no pay status, due to a COVID-19 related issue.