



# *Office of Congressional Workplace Rights*

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## **Families First Coronavirus Response Act: Questions & Answers\***

### **DEFINITIONS**

**“Paid sick leave”** – means paid leave under the Emergency Paid Sick Leave Act (EPSLA).

**“Expanded family and medical leave”** – means paid leave under the Emergency Family and Medical Leave Expansion Act (EFMLEA).

### **QUESTIONS & ANSWERS**

- 1. Are all employing offices under the Congressional Accountability Act (CAA) covered by paid sick leave and expanded family and medical leave provisions of the Families First Coronavirus Response Act (FFCRA)?**

Yes.

- 2. What is the effective date of the FFCRA, which includes the EPSLA and the Emergency Family and Medical Leave Expansion Act?**

The FFCRA’s paid leave provisions are effective in the Legislative Branch no later than April 2, 2020, and apply to leave taken until December 31, 2020.

- 3. How do I count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?**

A part-time employee is entitled to leave for his or her average number of work hours in a 2-week period. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee’s schedule varies, you may use a 6-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a 2-week period, and may take expanded family and medical leave for the same number of hours per day up to 10 weeks after that.

If this calculation cannot be made because the employee has not been employed for at least 6 months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may

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\* This document was last updated on **May 20, 2020**. It provides general guidance only and does not constitute legal advice.

calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

**4. When calculating pay due to employees, must overtime hours be included?**

Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for the hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

However, the EPSLA requires that paid sick leave be paid only up to 80 hours over a 2-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the EPSLA is capped at 80.

If the employee's schedule varies from week to week, please see the answer to Question 2, because the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee.

Please keep in mind the daily and aggregate caps placed on any pay for paid sick leave and expanded family and medical leave as described in the answer to Question 5.

Please note that pay does not need to include a premium for overtime hours under either the EPSLA or the EFMLEA.

**5. As an employee, how much will I be paid while taking paid sick leave or expanded family and medical leave under the FFCRA?**

It depends on your normal schedule as well as why you are taking leave.

If you are taking paid sick leave because you are unable to work or telework due to a need for leave because you (1) are subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) have been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) are experiencing symptoms of COVID-19 and are seeking medical diagnosis, you will receive for each applicable hour the greater of:

- your regular rate of pay, or
- the federal minimum wage in effect under the Fair Labor Standards Act.

In these circumstances, you are entitled to a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period.

If you are taking paid sick leave because you are (1) caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (2) caring for your child whose school or place

of care is closed, or whose child care provider is unavailable due to COVID-19 related reasons; or (3) experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, you are entitled to compensation at 2/3 of the greater of the amounts above.

Under these circumstances, you are subject to a maximum of \$200 per day, or \$2,000 over the entire 2-week period.

If you are taking expanded family and medical leave, you may take paid sick leave for the first 2 weeks of that leave period, or you may substitute any accrued vacation leave, personal leave, or medical or sick leave you have under your employer's policy. For the following 10 weeks, you will be paid for your leave at an amount no less than 2/3 of your regular rate of pay for the hours you would be normally scheduled to work. If you take paid sick leave during the first 2 weeks of unpaid expanded family and medical leave, you will not receive more than \$200 per day or \$12,000 for the 12 weeks that include both paid sick leave and expanded family and medical leave 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. If you take employer-provided accrued leave during those first 2 weeks, you are entitled to the full amount for such accrued leave, even if that is greater than \$200 per day.

To calculate the number of hours for which you are entitled to paid leave, please see the answers to Questions 3-4 that are provided in this guidance.

#### **6. What is my regular rate of pay for purposes of the FFCRA?**

For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your regular rate over a period of up to 6 months prior to the date on which you take leave. If you have not worked for your current employing office for 6 months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employing office.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

#### **7. 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 EPSLA?**

No. You may take up to 2 weeks—or 10 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 part-time employee works over a typical 2-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 EPSLA.

#### **8. If I am home with my child and unable to work or telework because his or her school or place of care is closed, or the 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 12 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 whose child care provider is unavailable, due to COVID-19 related reasons. The EPSLA provides for an initial 2 weeks of paid leave. Generally, this period covers the first 10 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 employing office's policy. After the first 10 workdays have elapsed, if have been employed for at least 30 days by the employing office with respect to whom leave is requested, you will receive 2/3 of your regular rate of pay for the hours you would have been scheduled to work in the subsequent 10 weeks under the Emergency and Family Medical Leave Expansion Act.

Under certain circumstances, a covered employee may be eligible to receive a full 2 weeks of emergency paid sick leave and a full 12 weeks of expanded family medical leave, such as when a newly-hired employee takes 2 weeks of emergency paid sick leave prior to having been employed with the employing office for 30 days. If that employee later sought leave to care for her child whose school or place of care was closed, or whose child care provider was unavailable, due to COVID-19 related reasons, the use of emergency paid sick leave prior to the date of her FMLA eligibility cannot be counted against the employee's expanded family leave entitlement. However, the first 2 weeks of expanded family and medical leave would be unpaid (unless the employee elected to substitute other accrued vacation, personal, medical or sick leave), and her expanded family leave entitlement for the following 10 weeks would be capped at \$200 per workday and \$10,000 in the aggregate.

Please note that you can only receive the additional 10 weeks of expanded family and medical leave under the EFMLEA for 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 (see Question 32).

**9. Can my employing office deny me paid sick leave if my employing office gave me paid leave for a reason identified in the EPSLA prior to the Act going into effect?**

No. The EPSLA imposes a new leave requirement on employing offices that is effective in the Legislative Branch no later than April 2, 2020.

**10. Is all leave under the Family and Medical Leave Act (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 EFMLEA when such leave exceeds 10 days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons.

**11. Are the paid sick leave and expanded family and medical leave requirements retroactive?**

No.

**12. How do I know whether I have “been employed for at least 30 days by the employing office” for purposes of expanded family and medical leave?**

You are considered to have been employed by your employing office for at least 30 calendar days if your employing office had you on its payroll for the 30 calendar days immediately prior to the day your leave would begin. For example, if you want to take leave on April 2, 2020, you would need to have been on your employing office’s payroll as of March 3, 2020.

An employee will be considered employed for at least 30 calendar days, and therefore eligible for leave under FFCRA, if the employee was (1) laid off by the employer not earlier than March 1, 2020; (2) had worked for the employer for not less than 30 of the last 60 calendar days prior to the employee’s layoff; and (3) was rehired by the employer thereafter.

If you have been working as a temporary employee, and the employing office subsequently hires you on a full-time basis, you may count any days you previously worked as a temporary employee toward this 30-day eligibility period.

**13. What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?**

Regardless of whether you grant or deny a request for paid sick leave or expanded family and medical leave, you must document the following:

- The name of your employee requesting leave;
- The date(s) for which leave is requested;
- The reason for leave; and
- A statement from the employee that he or she is unable to work because of the reason.

If your employee requests leave because he or she is subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally document the name of the government entity that issued the order. If your employee requests 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 document the name of the health care provider who gave advice.

If your employee requests leave to care for his or her child whose school or place of care is closed, or whose child care provider is unavailable, you may also document:

- The name of the child being cared for;

- The name of the school, place of care, or child care provider that has closed or become unavailable; and
- A statement from the employee that no other suitable person is available to care for the child.

#### **14. When must employees provide notice of their need for leave?**

Employing offices may require employees planning to take EFMLEA leave to follow reasonable notice procedures as soon as practicable after the first workday for which leave is taken in order to continue to receive such leave. The OCWR notes that while advance notice is not required, employees are encouraged to notify employing offices of their request for EPSLA or EFMLEA leave as soon as practicable. It is generally reasonable for an employing office to require oral notice providing sufficient information in order to determine coverage under the EPSLA or EFMLEA. Employing offices should allow employees who fail to give proper notice an opportunity to provide required documentation before denying the request.

#### **15. What documents do I need to give my employing office 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 employing office 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 whose child care provider is unavailable, you may 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.

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 2 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 employing office.

**16. When am I able to telework under the FFCRA?**

You may telework when your employing office permits or allows you to perform work while you are at home or at a location other than your normal workplace. Telework is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.

**17. What does it mean to be unable to work, including telework for COVID-19 related reasons?**

You are unable to work if your employing office has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of telework.

If you and your employing office agree that you will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

**18. If I am or become unable to telework, am I entitled to paid sick leave or expanded family and medical leave?**

If your employing office permits teleworking—for example, allows you to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then you are entitled to take paid sick leave.

Similarly, if you are unable to perform those teleworking tasks or work the required teleworking hours because you need to care for your child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave if you have been employed for at least 30 days by the employing office with respect to whom leave is requested. Of course, to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.

**19. May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?**

Yes, if your employing office allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the EPSLA. In that situation, you and your employing office may agree that you may take paid sick leave intermittently while teleworking. Similarly, if you are prevented from teleworking

your normal schedule of hours because you need to care for your child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons, you and your employing office may agree that you can take expanded family medical leave intermittently while teleworking.

You may take intermittent leave in any increment, provided that you and your employing office agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

The OCWR encourages employing offices and covered employees to collaborate to achieve flexibility and meet mutual needs, and the OCWR is supportive of such voluntary arrangements that combine telework and intermittent leave.

**20. May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?**

It depends on why you are taking paid sick leave and whether your employing office agrees. Unless you are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

- You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- You are caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless you are teleworking, once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if you are sick or possibly sick with COVID-19 or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

If you no longer have a qualifying reason for taking paid sick leave before you exhaust your paid sick leave, you may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

In contrast, if you and your employing office agree, you may take paid sick leave intermittently if you are taking paid sick leave to care for your child whose school or



place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if your child is at home because his or her school or place of care is closed, or the child care provider is unavailable, because of COVID-19 related reasons, you may take paid sick leave on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite on Tuesdays and Thursdays.

The OCWR encourages employers and employees to collaborate to achieve maximum flexibility. Therefore, if employing offices and employees agree to intermittent leave on less than a full workday for employees taking paid sick leave to care for their child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons, the OCWR is supportive of such voluntary arrangements.

**21. May I take my expanded family and medical leave intermittently while my child's school or place of care is closed, or the child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?**

Yes, but only with your employing office's permission. Intermittent expanded family and medical leave should be permitted only when you and your employing office agree upon such a schedule. For example, if your employing office and you agree, you may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while your child is at home because your child's school or place of care is closed, or the child care provider is unavailable, due to COVID-19 related reasons, for the duration of your leave.

The OCWR encourages employing offices and employees to collaborate to achieve flexibility. Therefore, if employing offices and employees agree to intermittent leave on a day-by-day basis, the OCWR supports such voluntary arrangements.

**22. If my employing office reduces my scheduled work hours, can I use paid sick leave or expanded family and medical leave for the hours that I am no longer scheduled to work?**

No. If your employing office reduces your work hours because it does not have work for you to perform, you may not use paid sick leave or expanded family and medical leave for the hours that you are no longer scheduled to work. This is because you are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19.

You may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents you from working your full schedule. If you do, the amount of leave to which you are entitled is computed based on your work schedule before it was reduced (see Question 3).

**23. May an employing office use the paid sick leave mandated under the FFCRA with the EPSLA to satisfy paid leave entitlements that an employee may have under its paid leave policy?**

No, unless your employee agrees. Paid sick leave under the EPSLA is in addition to your employee's other leave entitlements. You may not require your employee to use provided or accrued paid vacation, personal, medical, or sick leave before the paid sick leave. You also may not require your employee to use such existing leave concurrently with the paid sick leave under the EPSLA. But if you and your employee agree, your employee may use preexisting leave entitlements to supplement the amount he or she receives from paid sick leave, up to the employee's normal earnings. You are free to amend your own policies to the extent consistent with applicable law.

#### **24. Which of an employing office's employees are eligible for paid sick leave and expanded family and medical leave?**

For purposes of both provisions, the FFCRA defines the term "employee" to include a covered employee, as defined in section 101 of the CAA (2 U.S.C. 1301), other than an applicant for employment. However, if you employ a health care provider or an emergency responder you are not required to pay such employee paid sick leave or expanded family and medical leave on a case-by-case basis. (See Questions 36-37).

There is one difference regarding a covered employee's eligibility for paid sick leave versus expanded family and medical leave. While a covered employee is eligible for paid sick leave regardless of length of employment, the employee must have been employed for at least 30 calendar days with the employing office with respect to whom leave is requested in order to qualify for expanded family and medical leave. For example, if a covered employee requests expanded family and medical leave on April 10, 2020, he or she must have been employed by the employing office since March 11, 2020.

#### **25. Who is a son or daughter?**

Under the FFCRA, a "son or daughter" is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child.

In light of Congressional direction to interpret definitions consistently, the Department of Labor has clarified that under the FFCRA a "son or daughter" is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability. For additional information, contact the OCWR using the information below.

Under the FFCRA, the term "qualifying need related to a public health emergency," with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

## **26. What do I do if my employing office refuses to provide me paid sick leave?**

If you believe that your employing office is improperly refusing you paid sick leave under the EPSLA (EPSLA), the OCWR encourages you to raise and try to resolve your concerns with your employing office. The OCWR administers a process to resolve claims alleging violations of this law as applied to the Legislative Branch by the CAA. Confidential advising is available at no cost. A claim alleging violations of this law must be filed with the OCWR within 180 days of the violation. For more information or to file a claim, contact the OCWR using the information below.

## **27. What do I do if my employing office refuses to provide me expanded family and medical leave to care for my own son or daughter whose school or place of care has closed, or whose child care provider is unavailable, for COVID-19 related reasons?**

If you believe that your employing office is improperly refusing you expanded family and medical leave or otherwise violating your rights under the EFMLEA, the OCWR encourages you to raise and try to resolve your concerns with your employing office. Regardless of whether you discuss your concerns with your employing office, if you believe your employing office is improperly refusing you expanded family and medical leave, OCWR administers a process to resolve claims alleging violations of this law as applied to the Legislative Branch by the CAA. Confidential advising is available at no cost. A claim alleging violations of this law must be filed with the OCWR within 180 days of the violation. For more information or to file a claim, contact the OCWR using the information below.

## **28. Do I have a right to return to work if I am taking paid sick leave or expanded family and medical leave under the EPSLA or the EFMLEA?**

Generally, on return from EPSL or EFML, an employee has a right to be restored to the same or an equivalent position. However, an employee is not protected from employment actions, such as layoffs, that would have affected the employee regardless of whether he or she took leave. An employing office must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.

## **29. 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 EPSLA regardless of how much leave you have taken under the FMLA.

However, your eligibility for expanded family and medical leave depends on how much leave you have already taken during the 12-month period that your employing office 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, of the 12 workweeks of your leave under FMLA during the

current 12-month period determined by your employing office, 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 2 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. The 10 weeks of expanded family and medical leave would begin with 10 unpaid days unless you substitute emergency paid leave or any existing vacation, personal, or medical or sick leave under your employing office's policy. And any expanded family and medical leave you take would count against your entitlement to preexisting FMLA leave.

**30. May I take leave under the FMLA over the next 12 months if I used some or all of my expanded family and medical leave under the EFMLEA?**

It depends. You may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the EFMLEA. 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 4 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 8 weeks of FMLA leave.

However, you are entitled to paid sick leave under the EPSLA 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 2 weeks of expanded family and medical leave, which may otherwise be unpaid, then those 2 weeks do count towards the 12 workweeks in the 12-month period.

**31. If I take paid sick leave under the EPSLA, does that count against other types of paid sick leave to which I am entitled?**

No. Paid sick leave under the EPSLA is in addition to other leave provided under Federal law; an applicable collective bargaining agreement; or your employing office's existing policy.

**32. May I use the paid leave provided by the EFMLEA expanded family and medical leave for any reason other than needing to care for my child whose school or place of care is closed, or whose care provider is unavailable, due to COVID-19 related reasons?**

No. The EFMLEA 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 up to 80 hours of paid sick leave under the EPSLA for this and numerous other COVID-19 related reasons. You may also be able to take unpaid FMLA leave or other types of paid leave if the reason for your leave request would make you eligible for this type of leave and you meet the other qualifying conditions.

**33. What is a full-time employee under the EPSLA?**

For purposes of the EPSLA, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week.

In contrast, the EFMLEA does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week will affect the amount of pay the employee is eligible to receive.

**34. What is a part-time employee under the EPSLA?**

For purposes of the EPSLA, a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week.

In contrast, the EFMLEA does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week affects the amount of pay the employee is eligible to receive.

**35. Who is a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave?**

The term “health care provider,” as used to determine individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

**36. Who is a “health care provider” who may be excluded by their employing office from paid sick leave and/or expanded family and medical leave?**

For the purposes of employees who may be exempted from Paid Sick Leave or Expanded Family and Medical Leave by their employing office under the FFCRA, a health care provider is anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement

facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employing office, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of these institutions described above to provide services or to maintain the operation of the facility where that individual's services support the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.

To minimize the spread of the virus associated with COVID-19, the OCWR encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

### **37. Who is an emergency responder?**

For the purposes of employees who may be excluded from Paid Sick Leave or Expanded Family and Medical Leave by their Employer under the FFCRA, an emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

To minimize the spread of the virus associated with COVID-19, the OCWR encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

### **38. 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.

### **39. 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 COVID-19, and quarantining yourself based upon that advice prevents you from working (or teleworking).

### **40. I am a covered employee. I become ill with COVID-19 symptoms, decide to quarantine myself for 2 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 2 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. Note that you may not take paid sick leave under the FFCRA if you become ill with an illness not related to COVID-19. Depending on your employing office's expectations and your condition, however, you may be able to telework during your period of quarantine.

### **41. 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.

Furthermore, 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 may not 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 does not expect or depend on your care during his or her quarantine or self-quarantine.

### **42. Can I take paid sick leave to care for any individual who is subject to a quarantine or isolation order or who has been advised to self-quarantine?**

No. You may take paid sick leave under the FFCRA to care for an immediate family member or someone who regularly resides in your home. You may also take paid sick leave under the FFCRA to care for someone where your relationship creates an

expectation that you 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.

However, you may not take paid sick leave under the FFCRA to care for someone with whom you have no relationship. Nor can you take paid sick leave under the FFCRA to care for someone who does not expect or depend on your care during his or her quarantine or self-quarantine due to COVID-19.

**43. 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 provision of care to that individual prevents you from working (or teleworking).

**44. May I take paid sick leave or expanded family and medical leave to care for my child who is 18 years old or older?**

It depends. Under the FFCRA, paid sick leave and expanded family and medical leave include leave to care for one (or more) of your children when his or her school or place of care is closed or child care provider is unavailable, due to COVID-19 related reasons. This leave may only be taken to care for your non-disabled child if he or she is under the age of 18. 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.

In addition, paid sick leave is available to care for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. If you have a need to care for your child age 18 or older who needs care for these circumstances, you may take paid sick leave if you are unable to work or telework as a result of providing care. But in no event may your total paid sick leave exceed 2 weeks.

**45. What is a “place of care”?** A “place of care” is a physical location in which care is provided for your child. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

**46. Who is my “child care provider”?** A “child care provider” is someone who cares for your child. This includes individuals paid to provide child care, like nannies, au pairs, and babysitters. It also includes individuals who provide child care at no cost and



without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.

**47. Can more than one guardian take paid sick leave or expanded family and medical leave simultaneously to care for my child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related 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. See Question 18 for more details.

**48. 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.

**49. May I take paid sick leave to care for a child other than my child?**

It depends. The paid sick leave that is provided under the FFCRA to care for one (or more) of your children when their place of care is closed (or child care provider is unavailable), due to COVID-19 related reasons, may only be taken to care for your own “son or daughter.” For an explanation of the definition of “son or daughter” for purposes of the FFCRA, please refer to Question 26.

However, paid sick leave is also available to care for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. If you have a need to care for a child who meets these criteria, you may take paid sick leave if you are unable to work or telework as a result of providing care. But in no event may your total paid sick leave exceed 2 weeks.

**50. May I take expanded family and medical leave to care for a child other than my child?**

No. Expanded family and medical leave is only available to care for your own “son or daughter.” For an explanation of the definition of “son or daughter” for purposes of the FFCRA, please refer to Question 26.

**51. 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 OCWR will issue guidance explaining when you may take paid sick leave on the basis of a “substantially similar condition.”

**52. May I take paid sick leave or expanded family and medical leave if I am receiving workers’ compensation or temporary disability benefits?**

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

**53. 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).

**54. Will the OCWR begin enforcing FFCRA immediately?** The OCWR will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employing office has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, “good faith” exists when violations are remedied and the employee is made whole as soon as practicable by the employing office, the violations were not willful, and the OCWR receives a written commitment from the employing office to comply with the Act in the future.

**55. Does the non-enforcement position mean employing offices do not need to comply with the FFCRA during the non-enforcement period?**

No, the FFCRA’s paid leave provisions are effective no later than April 2, 2020.

**56. How do I compute the number of hours of paid sick leave for my employee who has irregular hours?**

Generally, under the FFCRA, you are required to provide an employee with paid sick leave equal to the number of hours that employee is scheduled to work, on average, over a 2-week period, up to a maximum of 80 hours.

If your employee works an irregular schedule such that it is not possible to

determine what hours he or she would normally work over a 2-week period, you must estimate the number of hours. The estimate must be based on the average number of hours your employee was scheduled to work per calendar day (not workday) over the 6-month period ending on the first day of paid sick leave. This average must include all scheduled hours, including both hours actually worked and hours for which the employee took leave.

Consider the examples below involving two employees with irregular schedules who take leave on April 13, 2020. For both employees, the 6-month period used for estimating average hours consists of 183 calendar days from October 14, 2019, to April 13, 2020. During that 6-month period, the first employee worked 1,150 hours over 130 workdays, and took a total of 50 hours of personal and medical leave. The total number of hours the employee was scheduled to work, including all leave taken, was 1,200 hours. The number of hours per calendar day is computed by dividing 1,200 hours by the 183 calendar days, which results in 6.557 hours per calendar day. The 2-week average is computed by multiplying the per calendar day average by 14, which results in 91.8 hours. Since this is greater than the statutory maximum of 80 hours, the first employee, who works full-time, is therefore entitled to 80 hours of paid sick leave.

The second employee, in contrast, worked 550 hours over 100 workdays, and took a total of 100 hours of personal and medical leave. The total number of hours the employee was scheduled to work, including all leave taken, was 650 hours. The number of hours per calendar day is computed by dividing 650 hours by the 183 calendar days, which is 3.55 hours per calendar day. The 2-week average is computed by multiplying the per calendar day average by 14, which results in 49.7 hours. The second employee, who works part-time, is therefore entitled to 49.7 hours of paid sick leave.

For each hour of paid sick leave taken, you are required to pay the employee an amount equal to at least that employee's regular rate (see Question 57).

**57. How do I compute the number of hours I must pay my employee who has irregular hours for each day of expanded family and medical leave taken?**

Generally, under the FFCRA, you are required to pay your employee for each day of expanded family and medical leave taken based on the number of hours the employee was normally scheduled to work that day. If your employee works an irregular schedule such that it is not possible to determine the number of hours he or she would normally work on that day, and the employee has been employed for at least 6 months, you must determine the employee's average workday hours, including any leave hours. The average must be based on the number of hours your employee was scheduled to work per workday (not calendar day) divided by the number of workdays over the 6-month period ending on the first day of your employee's paid expanded family and medical leave. This average must include all scheduled hours, including both hours actually worked and hours for which the employee took leave.

Consider the examples below involving two employees with irregular schedules who take leave on April 13, 2020. For both employees, the 6-month period would consist of 183 calendar days from October 14, 2019, to April 13, 2020. The first employee worked 1,150 hours over 130 workdays, and took a total of 50 hours of personal and medical leave. The total number of hours the employee was scheduled to work (including all leave taken) was 1,200 hours. The number of hours per workday is computed by dividing 1,200 hours by the 130 workdays, which is 9.2 hours per workday. You must therefore pay the first employee for 9.2 hours per workday times  $\frac{2}{3}$  his or her regular rate for each day of expanded family and medical leave taken, subject to a \$200 per day cap and \$10,000 maximum (see Question 5).

The second employee, in contrast, worked 550 hours over 100 workdays, and took a total of 100 hours of personal and medical leave. The total number of hours the employee was scheduled to work, including all leave taken, was 650 hours. The number of hours per workday is computed by dividing 650 hours by the 100 workdays, which is 6.5 hours per workday. You must therefore pay the second employee for 6.5 hours per workday times  $\frac{2}{3}$  his or her regular rate for each day of expanded family and medical leave taken, subject to a \$200 per day cap and \$10,000 maximum (see Question 5).

**58. How do I compute my employee's average regular rate for the purpose of the FFCRA?**

As an employing office, you are required to pay your employee based on his or her average regular rate for each hour of paid sick leave or expanded family and medical leave taken. The average regular rate must be computed over all full workweeks during the 6-month period ending on the first day that paid sick leave or expanded family and medical leave is taken.

If during the past 6 months, you paid your employee exclusively through a fixed hourly wage or a salary equivalent, the average regular rate would simply equal the hourly wage or the hourly-equivalent of their salary.

**59. How do I compute the average regular rate of my employee who is paid a fixed salary each workweek?**

Generally, if you pay your employee exclusively through a fixed salary that is understood to be compensation for a specific number of hours of work in each workweek, the employee's average regular rate would simply be the hourly equivalent of that salary.

**60. May I round when computing the number of hours of paid sick leave I must provide an employee with an irregular schedule or the number of hours I must pay such an employee for each day of expanded family and medical leave taken?**

As an employing office, generally, yes. It is common and acceptable for employing offices to round to the nearest tenth, quarter, or half hour when determining an employee's hours worked. But if you choose to round, you must use a consistent

rounding principle. You may not, for instance, round for some employees who request leave but not others. For the purposes of computing hours under the FFCRA, you may round to the nearest time increment that you customarily use to track the employee's hours worked. For instance, if you typically track work time in quarter-hour increments, you may round to the nearest quarter hour. But you may not round to the nearest quarter hour if you typically track time in tenth-of-an-hour increments.

**61. What 6-month period is used to calculate the regular rate under the FFCRA when, for example, my employee takes paid sick leave, gets better, and then 1 week (or 1 month or 3 months) later, takes expanded family and medical leave? Or perhaps the employee takes intermittent leave throughout several months in 2020? In other words, do I have to determine and review a new 6-month period every time my employee takes leave?**

No. As an employing office, you should identify the 6-month period to calculate each employee's regular rate under the FFCRA based on the first day the employee takes paid sick leave or expanded family and medical leave. That 6-month period will be used to calculate all paid sick leave and expanded family and medical leave the employee takes under the FFCRA. If your employee has been employed for less than 6 months, you may compute the average regular rate over the entire period during which the employee was employed.

**62. Under what circumstances may an employing office require an employee to use his or her accrued leave and when does the choice belong to the employee?**

Paid sick leave under the EPSLA is in addition to any form of paid or unpaid leave provided by an employer, law, or an applicable collective bargaining agreement. An employing office may not require employer-provided paid leave to run concurrently with—that is, cover the same hours as—paid sick leave under the EPSLA. (See also Question 23.)

In contrast, an employing office may require that any paid leave available to an employee under the employing office's policies to allow an employee to care for his or her child or children because their school or place of care is closed (or child care provider is unavailable) due to a COVID-19 related reason run concurrently with paid expanded family and medical leave under the EFMLEA. In this situation, the employing office must pay the employee's full pay during the leave until the employee has exhausted available paid leave under the employing office's plan—including vacation and/or personal leave (typically not sick or medical leave). If the employee exhausts available paid leave under the employing office's plan, but has more paid expanded family and medical leave available, the employee will receive any remaining paid expanded family and medical leave in the amounts and subject to the daily and aggregate limits in the EFMLEA. Additionally, provided both an employing office and employee agree, and subject to federal law, paid leave provided by an employing office may supplement 2/3 pay under the EFMLEA so that the employee may receive the full amount of the employee's normal compensation.

Finally, an employee may elect—but may not be required by the employing office—to take paid sick leave under the EPSLA or paid leave under the employing office’s plan for the first 2 weeks of unpaid expanded family and medical leave, but not both. If, however, an employee has used some or all paid sick leave under the EPSLA, any remaining portion of that employee’s first 2 weeks of expanded family and medical leave may be unpaid. During this period of unpaid leave under the EFMLEA, the employee may choose—but the employing office may not require the employee—to use paid leave under the employing office’s policies that would be available to the employee to take in order to care for the employee’s child or children because their school or place of care is closed or the child care provider is unavailable due to a COVID-19 related reason concurrently with the unpaid leave.

**63. Are stay-at-home and shelter-in-place orders the same as quarantine or isolation orders? If so, when can I take leave under the FFCRA for reasons relating to one of those orders?**

Yes, as explained in Question 38, for purposes of the FFCRA, a Federal, State, or local quarantine or isolation order includes shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority. However, in order for such an order to qualify you for leave, being subject to the order must be the reason you are unable to perform work (or telework) that your employing office has for you. You may not take paid leave due to such an order if your employing office does not have work for you to perform as a result of the order or for other reasons.

For example, if you are prohibited from leaving a containment zone and your employing office remains open outside the containment zone and has work you cannot perform because you cannot leave the containment zone, you may take paid leave under the FFCRA. Similarly, if you are ordered to stay at home by a government official for 14 days because you were on a cruise ship where other passengers tested positive for COVID-19, and your employing office has work for you to do, you are also entitled to paid sick leave if you cannot work (or telework) because of the order.

**64. If my employing office unlawfully refuses to provide paid sick leave or refuses to compensate me for taking paid sick leave, am I entitled to recover just the federal minimum wage of \$7.25 per hour of leave, or can I recover the entire amount due under the FFCRA?**

Under these circumstances, you are entitled to recover the full amount due under the FFCRA (see Question 5), which is the greater of your regular rate (see Question 6) or the applicable minimum wage for each hour of uncompensated paid sick leave taken, in each case, subject to the applicable FFCRA maximums (see Question 5). The FFCRA states that an employing office who does not compensate you for taking paid sick leave is “considered to have failed to pay the minimum wage . . . and shall be subject to the enforcement provisions” of the Fair Labor Standards Act. Those enforcement provisions state that the employing office “shall be liable to the employee or employees affected in the amount of their unpaid minimum wages.”

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For the purposes of the FFCRA, the “amount of unpaid minimum wages” does not refer to the federal minimum wage of \$7.25 per hour, but rather to the hourly wage at which the employing office must compensate you for taking paid sick leave, which is, generally, the greater of your regular rate or the applicable minimum wage.

Thus, your recovery against an employing office that refuses to compensate you for taking paid sick leave would not be limited to the federal minimum wage of \$7.25 per hour if your regular rate were higher. For example, if your regular rate were \$30 per hour and you lawfully took 20 hours of paid sick leave to self-quarantine based on the advice of a health care provider, you may recover \$600 (\$30 per hour times 20 hours) from your employing office. However, you may not recover more than the amount due under the FFCRA. For instance, if your employing office initially agreed to pay your full hourly rate of \$30 per hour to allow you to take paid sick leave to care for your child whose school is closed, but then pays you only 2/3 of your hourly rate, as required by the FFCRA, you may not recover the unpaid portion of the initially agreed amount because your employing office was not required by the FFCRA to pay that portion.

**65. My employees have been teleworking productively since mid-March without any issues. Now, several employees claim they need to take paid sick leave and expanded family and medical leave to care for their children, whose school is closed because of COVID-19, even though these employees have been teleworking with their children at home for 4 weeks. Can I ask my employees why they are now unable to work or if they have pursued alternative child care arrangements?**

You may require that the employee provide the qualifying reason he or she is taking leave, and submit an oral or written statement that the employee is unable to work because of this reason, and provide other relevant documentation. While you may ask the employee to note any changed circumstances in his or her statement as part of explaining why the employee is unable to work, you should exercise caution in doing so, lest it increase the likelihood that any decision denying leave based on that information is a prohibited act. The fact that your employee has been teleworking despite having his or her children at home does not mean that the employee cannot now take leave to care for his or her children whose schools are closed for a COVID-19 related reason. For example, your employee may not have been able to care effectively for the children while teleworking or, perhaps, your employee may have made the decision to take paid sick leave or expanded family and medical leave to care for the children so that the employee’s spouse, who is not eligible for any type of paid leave, could work or telework. These (and other) reasons are legitimate and do not afford a basis for denying paid sick leave or expanded family and medical leave to care for a child whose school is closed for a COVID-19 related reason.

This does not prohibit you from disciplining an employee who unlawfully takes paid sick leave or expanded family and medical leave based on misrepresentations, including, for example, to care for the employee’s children when the employee, in fact, has no children and is not taking care of a child.

**66. My employee claims to have tiredness or other symptoms of COVID-19 and is taking leave to seek a medical diagnosis. What documentation may I require from the employee to document efforts to obtain a diagnosis? When can it be required?**

In order for your employee to take leave under the FFCRA, you may require the employee to identify his or her symptoms and a date for a test or doctor's appointment. You may not, however, require the employee to provide further documentation or similar certification that he or she sought a diagnosis or treatment from a health care provider in order for the employee to use paid sick leave for COVID-19 related symptoms. The minimal documentation required to take this leave is intentional so that employees with COVID-19 symptoms may take leave and slow the spread of COVID-19.

Please note, however, that if an employee were to take unpaid leave under the Family and Medical Leave Act, the FMLA's documentation requirements are different and apply. Further, if the employee is concurrently taking another type of paid leave, any documentation requirements relevant to that leave still apply.

**67. I took paid sick leave and am now taking expanded family and medical leave to care for my children whose school is closed for a COVID-19 related reason. After completing distance learning, the children's school closed for summer vacation. May I take paid sick leave or expanded family and medical leave to care for my children because their school is closed for summer vacation?**

No. Paid sick leave and emergency family and medical leave are not available for this qualifying reason if the school or child care provider is closed for summer vacation, or any other reason that is not related to COVID-19. However, the employee may be able to take leave if his or her child's care provider during the summer—a camp or other programs in which the employee's child is enrolled—is closed or unavailable for a COVID-19 related reason.