

Families First Coronavirus Response Act – Frequently Asked Questions

PRELIMINARY ISSUES

Eligibility and Coverage – In General

Q. What does it mean to be unable to work, including telework, for the Families First Coronavirus Response Act?

A. It means the employee cannot work, including telework, due to one of the six qualifying reasons listed in the policy, even though the employer has work available to be performed.

Q. If an employee is unable to telework is the employee entitled to EPSLA or E-FMLA?

A. EPSLA. Yes. If the employer has offered work, including telework, and the employee is unable to perform the work required due to one of the qualifying reasons for EPSLA, the employee is entitled to use EPSLA.

E-FMLA. If the employer has offered work, including telework, and the employee is unable to perform the work required because the employee needs to care for their child whose school or place of care is closed, or a child care provider is unavailable for COVID-19 reasons, the employee is entitled to take E-FMLA.

Q. If more than one guardian works for the state, and their child's school is closed, are both employees eligible to receive the leave?

A. Yes, both would be eligible for EPSLA and E-FMLA but generally the leave must be used separately. While both employees can take leave, the leave cannot generally be taken on the same day.

Q. Are intermittent time base employees who are working eligible for EPSLA and E-FMLA?

A. Intermittent time base employees, including temporary (seasonal), permanent and retired annuitants who are working and scheduled to work, are eligible to take leave. Intermittent employees who are not scheduled to work or who are not teleworking are not eligible for this leave. Time paid is counted towards the employee's applicable hours worked maximums.

Q. Can a department deny an eligible employee's leave request under the Families First Coronavirus Response Act for operational need?

A. The law permits limited exemptions for emergency responders and persons employed by a health care provider, as defined. (See Department Exemptions, discussed below.) Except for these exemptions, departments cannot deny an eligible employee's leave request based on operational need.

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DEPARTMENT EXEMPTIONS

Q. How is it determined that some employees are exempt from FFCRA coverage?

A. Federal law permits the state to exclude employees who work for “health care providers” or who work as “emergency responders,” as defined. As explained in the policy, departments are directed to provide CalHR with a list of classifications that meet the definitions provided by the U.S. Department of Labor, which are referenced in the policy.

Q. Are employees who have been identified as exempt from FFCRA eligible to receive Administrative Time Off (ATO) if they are quarantined?

A. Yes. Employees exempt from FFCRA are eligible to receive up to 14 calendar days of ATO if they are unable to work or telework because they are subject to a quarantine by federal, state, local quarantine or isolation order or as advised by a local health care provider to self-quarantine, due to COVID-19. If additional leave is required, the employee may use their available leave credits.

Q. Are employees who have been identified as exempt from FFCRA eligible to receive ATO to care for a family member who is subject to a federal, state, local quarantine or isolation order, or who has been told to self-quarantine by a health care provider due to COVID-19?

A. No. Employees may use their available leave credits to care for a family member.

Although the employee may not be eligible for paid leave under FFCRA, they may still be eligible for regular Family Medical Leave Act/California Family Rights Act leave. If departments become aware of this need, they should provide the appropriate paperwork to the employee. Employees should be reminded this is an unpaid leave and it is only paid if they use leave credits or if they qualify for a wage replacement benefit under a disability program.

EMERGENCY PAID SICK LEAVE ACT

Q. The state allows full payment for paid sick leave, while the federal law has a lesser benefit. Which benefit applies?

A. Departments must follow the state policy, as outlined in CalHR’s policy, for eligible employees. Per state policy the employee will receive full sick leave pay for all qualifying EPSLA reasons for the first two-weeks.

Q. Can an employee have more than two-weeks of EPSLA? For example, the employee used their 80 hours to quarantine and now their child has been told to quarantine?

A. No. Employees are only entitled to two-weeks of EPSLA. Employees may be able to take additional leave under the California Family Rights Act (CFRA), FMLA, or E-FMLA, if eligible. Additionally, an employee may be able to collect a wage replacement under Paid Family Leave

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or Nonindustrial Disability Insurance Family Care Leave, if eligible. Finally, an employee may be able to use available leave credits to cover the quarantine period of the child.

Q. Does the “order” to quarantine or self-isolate need to come from a local public health agency to qualify for EPSLA?

A. The order must come from a federal or state order, or a health care provider to quarantine due to qualifying reasons 1, 2, 3, 4 and 6 that specifically prevents the employee from being able to work, including telework.

Q. Are employees who have COVID-19 symptoms and are seeking medical attention eligible to take EPSLA while they are awaiting test results?

A. Yes. Under qualifying reason number 3, the employee is entitled to EPSLA. If the diagnosis is negative, the eligibility for EPSLA stops.

Q. Are employees who are 65 years and older or who have underlying health conditions that make them more vulnerable to COVID-19 able to use EPSLA for these reasons?

A. No, it must be used for one of the six reasons specified in the policy.

Q. When is an employee eligible for paid sick leave to self-quarantine?

A - Employees are eligible for paid sick leave if a health care provider directs or advises them to stay home or otherwise quarantine because the health care provider believes they may have COVID-19 or are particularly vulnerable to COVID-19, and quarantining themselves based upon that advice prevents them from working (or teleworking).

Q. What is considered “any other” “substantially similar condition” specified by U.S. Department of Health and Human Services?

A. Specific conditions identified by U.S. Department of Health and Human Services. Per the U.S. Department of Labor, as of this date, the U.S. Department of Health and Human Services has not identified any substantially similar conditions.

Q. What documentation is required for EPSLA?

A. Departments may require a doctor’s note as long as it complies with the Memorandum of Understanding (MOU). However, CalHR also recommends looking at what the county requires. For example, Los Angeles County Public Health has very clear instructions for anyone who has been exposed or has the virus to self-isolate and/or quarantine. Departments should check the local jurisdiction public health website and consider the impact on the health system if employees are required to provide a doctor’s note when the county has already issued very specific guidance about documentation.

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EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Q. If more than one guardian works for the state, do they both qualify to take paid leave under the Emergency Family and Medical Leave Expansion Act (E-FMLA)?

A. Leave taken under E-FMLA is not a shared amount. The parents may switch back and forth intermittently taking leave to care for their children due to school or child care closures.

Q. Who is considered a child care provider?

A. A child care provider can be anyone who cares for the child, including paid and non-paid individuals, including grandparents, aunts, uncles, or neighbors.

Q. Can an employee take E-FMLA to care for a child other than their own?

A. No. This leave is available to care for the employee's own son or daughter. The definition of son or daughter includes a biological, adopted, foster child, stepchild, a legal ward, or a child who the employee is standing in loco parentis ("in place of the parent") who has the day-to-day responsibility to care for or financially support the child. The child must be under the age of 18, or if over the age of 18, be unable to provide self-care because of a mental or physical disability.

OTHER ISSUES

Q. What record retention is required?

A. The same as for any other pay and Family Medical Leave Act and California Family Rights Act documentation retention.

Q. Is CalHR planning to come out with its own poster to clarify the difference between the federal law and state policy?

A. No. The federal poster should be posted as required. Departments should communicate CalHR policy through their normal channels.

Last revised: April 9, 2020