## Emergency FMLA vs Emergency Paid Sick Leave

Provisions of Families First Coronavirus Response Act

<table>
<thead>
<tr>
<th>Name of Provision</th>
<th>Emergency FMLA</th>
<th>Emergency Paid Sick Leave</th>
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</thead>
<tbody>
<tr>
<td><strong>Effective Date</strong></td>
<td>April 1, 2020 – December 31, 2020</td>
<td>April 1, 2020– December 31, 2020</td>
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<tr>
<td><strong>Employer Size</strong></td>
<td>1 or more public employees</td>
<td>1 or more public employees</td>
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<tr>
<td><strong>Eligible Employee</strong></td>
<td>EE worked for ER at least 30 calendar days</td>
<td>All EEs from date of hire</td>
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<tr>
<td><strong>Purpose for Leave</strong></td>
<td>Employee must be unable to work or telework due to needing leave to care for their child under 18 because school or daycare is closed, or child care provider is unavailable, due to COVID-19 declared public health emergency.</td>
<td>To extent the Employee is unable to work or telework and needs leave due to: 1. Employee is ordered by government agency to quarantine or isolate related to COVID-19 2. Employee has been advised by health care provider to self-quarantine due to COVID-19 concerns 3. Employee is symptomatic and is seeking a medical diagnosis 4. To care for an individual who is subject to an order or recommendation such as described in (1) and (2) above 5. Care for their child if the school or daycare is closed, or the child care provider is unavailable, due to COVID-19 6. Employee is experiencing any other substantially similar condition as determined by Health and Human Services</td>
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</tbody>
</table>
| **Paid Leave** | First 10 days unpaid (Employee may use Emergency Paid Sick Leave)  
Employee may, but is not required to, use accrued available vacation, personal, or sick leave  
Thereafter, pay at 2/3 regular pay, capped at $200/day and $10,000 aggregate  
Special rules for those with varying schedules | Full time Employee: 80 hours  
Part-time Employee: hours equal to average 2 weeks of work  
Base pay is Employee’s regular rate or local minimum wage (whichever is greater)  
For reasons (1), (2), and (3) above, paid leave is 100% of base pay, capped at $511/day and an aggregate of $5,110  
For reasons (4), (5), and (6) above, pay is 2/3 base pay, capped at $200/day and $2,000 in the aggregate  
Employee can choose to use Emergency Paid Leave, or the employer’s otherwise provided paid leave |
| **Intermittent Leave Available** | Yes | If teleworking, yes  
If working on premises, yes for school closure and childcare unavailability only |
| **Request Form** | [Click here to request Emergency FMLA](#) | [Click here to request Emergency Paid Sick Leave](#) |

### Definitions

- **Unable to work or telework** - You are unable to work if your supervisor 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 at the worksite or by telework. Example: If you and your supervisor agree that you will work your normal number of hours, but outside of your normally scheduled hours (i.e., 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.

- **Child** - 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.

- **Child care provider** - a provider who receives compensation for providing child care services on a regular basis.

- **Public Health Emergency** - an emergency with respect to COVID–19 declared by a Federal, State, or local authority.

- **Government Isolation Order** – According to Department of Labor guidance, shelter-in-place and business closure orders do not appear to support the need for emergency paid sick leave. A government isolation order would need to come from a government agency, such as the Department of Health and Human Services.

- **Health Care Provider** - a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

- **Individual** – this appears to mean any person, as no family relationship was stated as a criteria.

The above is based on information released as of 4/1/20 and is subject to revision upon receipt of further guidance from the Department of Labor.