



## OVERVIEW

The Families First Coronavirus Response Act (FFCRA) requires certain employers (including public agencies) to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. These provisions apply from April 1, 2020, through December 31, 2020.

Generally, the Act provides:

- Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

A covered employer must provide to employees that it has employed for at least 30 days:

- Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

**Qualifying Reasons for Leave:**

Under the FFCRA, an employee qualifies for paid sick leave if the employee is unable to work (or unable to telework) due to a need for leave because of the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

**Duration of Leave:**

- **For reasons (1)-(4) and (6):** A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.
- **For reason (5):** A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

**Calculation of Pay:**

- **For leave reasons (1), (2), or (3):** employees taking leave shall be paid at their regular rate up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).
- **For leave reasons (4) or (6):** employees taking leave shall be paid at 2/3 their regular rate, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).
- **For leave reason (5):** employees taking leave shall be paid at 2/3 their regular rate, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

## QUESTIONS AND ANSWERS

## DEFINITIONS

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

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

## A. STANDARD QUESTIONS

**1. What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act?**

The FFCRA’s paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

**2. What records do agencies need to keep when an employee takes paid sick leave or expanded family and medical leave?**

Regardless of whether the agency grants or denies a request for paid sick leave or expanded family and medical leave, they must document the following:

- The name of the 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 the 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, the agency should additionally document the name of the government entity that issued the order. If the 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, the agency should additionally document the name of the health care provider who gave advice.

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

- The name of the child being cared for;
- The name of the school, place of care, or childcare 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.

All requests for leave, whether granted or not, must be documented and retained for four years.

**3. Is there an official form employees need to fill out to request this leave?**

There is not an official form however, a template form has been provided for agencies to use if they choose to. The template form is available on the HR Contacts Teams site under Files.

**4. Should each request be reviewed by HRMS to ensure we have the employee in the correct category for leave and pay?**

No, it is not required to have HRMS review the requests. However, HRMS can provide guidance if needed to review a request and determine the correct category for leave and pay. If needed, please contact your HRMS Officer.

**5. An agency has teachers on staff; are they exempt from having to provide this leave to those educators as those educators are involved with ensuring online distance learning can continue?**

No, they are not exempt from being able to utilize this leave if they have a qualifying reason. They would only be exempt from this leave based on a determination from the Governor that they are necessary to the Pandemic response.

**6. We have several temporary hourly, part-time employees that are employed year-round. Are they eligible for any leave under the FFCRA?**

Yes, they are eligible for the 80 hours of paid sick leave at a pro-rated amount based on their hours worked and if they have been on the payroll for at least 30 days before April 1st for expanded family medical leave at a pro-rated amount.

**7. If the employee is or becomes unable to telework, are they entitled to paid sick leave or expanded family and medical leave?**

If the agency permits teleworking and the employee is unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then the employee is entitled to take paid sick leave. Similarly, if they are unable to perform those teleworking tasks or work the required teleworking hours because they need to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then they are entitled to take expanded family and medical leave. Of course, to the extent, they can telework while caring for their child, paid sick leave and expanded family and medical leave is not available.

**8. May an employee take paid sick leave or expanded family and medical leave intermittently while teleworking?**

Yes, if the agency allows it and if the employee is unable to telework their normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, the agency and employee may agree that the employee may take paid sick leave intermittently while teleworking. Similarly, if they are prevented from teleworking their normal schedule of hours because they need to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the agency and employee may agree that the employee can take expanded family medical leave intermittently while teleworking.

The agency and employee should collaborate to achieve flexibility and meet mutual needs, and the agency should be supportive of such voluntary arrangements that combine telework and intermittent leave.

**9. Does an employee qualify for leave for a COVID-19 related reason even if they have already used some or all of my leave under the Family and Medical Leave Act (FMLA)?**

If they are an eligible employee, they are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave they have taken under the FMLA.

However, their eligibility for expanded family and medical leave depends on how much leave they have already taken during the 12-month period that the agency uses for FMLA leave. They may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period.

If they have taken some, but not all, 12 workweeks of their leave under FMLA during the current 12-month period determined by the agency, they may take the remaining portion of leave available. If they have already taken 12 workweeks of FMLA leave during this 12-month period, they may not take additional expanded family and medical leave. For example, assume an employee is eligible for preexisting FMLA leave and took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. They, therefore, have 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, they would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave they take would count against their entitlement to preexisting FMLA leave.

**10. How does an agency 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 two-week period. Therefore, the agency calculates 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, the agency may use a six-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 two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that. If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours the employee was expected to work upon hiring. And if there was no such expectation, an agency may 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.

**11. If an agency is open but furloughs an employee on or after April 1, 2020 (the effective date of the FFCRA), can the employee receive paid sick leave or expanded family and medical leave?**

No. If the agency furloughs an employee because it does not have enough work or business for them, they are not entitled to then take paid sick leave or expanded family and medical leave. However, they may be eligible for unemployment insurance benefits.

**12. If an agency reduces an employee's scheduled work hours, can they use paid sick leave or expanded family and medical leave for the hours that they are no longer scheduled to work?**

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

They may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents them from working their full schedule. If they do, the amount of leave to which they are entitled is computed based on their work schedule before it was reduced.

**13. May an employee refuse to come to work because they are afraid of contracting the virus.**

No, unless pursuant to an order by the employer or directed to self-quarantine by a health care provider. Beyond those reasons, the employee must report to work.

**14. If an employee is utilizing the emergency paid sick leave and/or expanded family medical leave will it affect their health insurance benefits or other benefits?**

No, if the employee is active and not on an unpaid leave status, the employee will continue to receive their health insurance benefits and elected benefits. If the employee is within a few years of retirement, utilizing the emergency paid sick leave or expanded family medical leave at 2/3 their regular rate of pay may impact the employee's final average salary for computation of their retirement benefits.

**15. What confidentially aspects should we be aware of in an employee tested positive for COVID-19?**

If the employee tested positive for COVID-19, you would treat this information just like any other confidential medical information you have for an employee. The ND Department of Health will contact the individual who has COVID-19 and as part of that process, contact family members, co-workers, etc. who may have been exposed. In addition, communication has been put together regarding if an employee tests positive within an agency. Please contact Lisa Kudelka for this specific communication.

**16. If the employee does not take annual leave to get to their full rate of pay in the leave scenarios (if they are only receiving 2/3 rate of pay), would their leave accrual need to be pro-rated as they are not working full-time?**

No, their regular annual or sick leave accrual should not be pro-rated if they are utilizing emergency paid sick leave and/or the expanded family and medical leave. The employee would receive their regular annual or sick leave accrual rate in this situation.

**17. How will agencies pay for the leave through the Families First Coronavirus Response Act?**

Agencies should use their existing budget authority to pay for this leave. If you have questions, contact your OMB budget analyst.

**B. EMERGENCY PAID SICK LEAVE ACT****18. Do the 80 hours of paid sick leave accrue or is it available immediately?**

The 80 hours of paid sick leave is available immediately for qualifying reasons under the Act.

**19. May an employee take 80 hours of paid sick leave for their self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?**

No. They may take up to two weeks—or ten days—(80 hours for a full-time employee, or a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which the employee receives paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

**C. CARING FOR CHILDREN DUE TO DAYCARE/SCHOOL CLOSURE****20. An employee has been teleworking from home while caring for their children due to a daycare/school closure. Now that the leave is available, can they request to only use leave and not perform work?**

Per the US Department of Labor, to the extent an employee can telework while caring for their child, paid sick leave and expanded family and medical leave are not available. An employee is not simply eligible because they have a child at home due to a school or childcare closure. Rather, leave must be based upon a need to care for the child. The need for leave must make the employee unable to work or telework. Leave under the Emergency Paid Sick Leave Act and the Expanded Family Medical Leave Act is not simply an employee election. With the implementation of the law, an employee currently teleworking would need to demonstrate a change of circumstances or a new need for leave, to be eligible for that leave. This should be reviewed on a case-by-case basis by the agency and consider the age of the children at home.

**21. If any employee is home with their child because his or her school or place of care is closed, or childcare provider is unavailable, do they get paid sick leave, expanded family and medical leave, or both—how do the two interact?**

The employee may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. The employee may take both paid sick leave and expanded family and medical leave to care for their child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless they elect to use existing vacation, personal, or medical or sick leave under their employer's policy. After the first ten workdays have elapsed, the employee will receive 2/3 of their regular rate of pay for the hours they would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that an employee can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for their child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. If the employee had used already used FMLA leave during the 12-month period as measured by the agency, the employee's leave under the expanded family and medical leave act would need to be reduced. An employee is only eligible for twelve weeks total in that 12-month time frame.

**22. The child's school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. Students are permitted to attend school only on their allotted in-person attendance days. May the employee take paid leave under the FFCRA in these circumstances?**

The employee is eligible to take paid leave under the FFCRA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as the employee needs the leave to actually care for the child during that time and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively "closed" to the child on days that they cannot attend in person. The employee may take paid leave under the FFCRA on each of the child's remote-learning days.

**23. The child's school is giving the choice between having the child attend in person or participate in a remote learning program for the fall. The employee signed their child up for the remote learning alternative because, for example, the employee worries that their child might contract COVID-19 and bring it home to the family. Since the child will be at home, may the employee take paid leave under the FFCRA in these circumstances?**

The employee is not eligible to take paid leave under the FFCRA because the child's school is not "closed" due to COVID-19 related reasons; it is open for their child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If the child is home not because his or her school is closed, but because the employee has chosen for the child to remain home, the employee is not entitled to FFCRA paid leave. However, if, because of COVID-19, the child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, the employee may be eligible to take paid leave to care for him or her.

**24. The child's school is beginning the school year under a remote learning program out of concern for COVID-19, but has announced it will continue to evaluate local circumstances and make a decision about reopening for in-person attendance later in the school year. May the employee take paid leave under the FFCRA in these circumstances?**

The employee is eligible to take paid leave under the FFCRA while the child's school remains closed. If the child's school reopens, the availability of paid leave under the FFCRA will depend on the particulars of the school's operations.

**25. Does evidence of daycare closures need to be submitted to verify eligibility?**

The name of the daycare that has closed or is unable to provide care should be provided by the employee. If abuse of the paid sick leave or expanded family leave is suspected, you can contact the provider for more information but not necessarily require more documentation.

**26. If an employee's daycare has not closed, can the employee still utilize leave?**

The DOL rules are not written in a way that requires strict closure. The daycare may not be closed but may only be available to certain groups of employees, such as healthcare providers and emergency responders. In that case, the daycare may not be available to the employee's child and they may need to utilize the leave.

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

Yes, but only with the agency's permission. Intermittent expanded family and medical leave should be permitted only when the agency and employee agree upon such a schedule.

**D. ADDITIONAL RESOURCES**

**OMB Payroll Document relating to FFCRA (provides more information on calculating pay, supplementing with accrued annual leave and COVID-19 payroll codes):** [Linked under Files in Tm-OMB-HR-Contacts](#)

**Required Employer Poster from the Department of Labor:**

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_No-n-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_No-n-Federal.pdf)

**Department of Labor website:**

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

**Department of Labor Families First Coronavirus Response Act Q & A**

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

**Department of Labor webinar (will need to download Adobe Connect; speak with your IT contact)**

<https://dolwhd.cosocloud.com/pm4jv دنب4sch/?proto=true>

**Department of Labor webinar slides:**

[https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/FFCRA\\_webinar.pdf](https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/FFCRA_webinar.pdf)

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