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FREQUENTLY ASKED QUESTIONS FOR STATE EMPLOYEES

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

PLEASE THOROUGHLY REVIEW THESE FAQ'S

1. **What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid EPSLA 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. **How do I count hours worked by a part-time employee for purposes of paid EPSLA 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, 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 six-month average to calculate the average daily hours. Such a part-time employee may take paid EPSLA 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 that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you 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.

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

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

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

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

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

4. As an employee, how much will I be paid while taking paid EPSLA 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 EPSLA 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](#),
- the federal minimum wage in effect under the FLSA, or
- the applicable State or local minimum wage.

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

If you are taking paid EPSLA 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 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 two-week period.

If you are taking expanded family and medical leave, you may take paid EPSLA leave for the first two 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 ten 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 EPSLA leave during the first two weeks of unpaid expanded family and medical leave, you will not receive more than \$200 per day or \$12,000 for the twelve weeks that include both paid EPSLA 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 child care provider is unavailable, due to COVID-19 related reasons. If you take employer-provided accrued leave during those first two weeks, you are entitled to the full amount for such accrued leave, even if that is greater than \$200 per day.

5. 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 six months prior to the date on which you take leave. If you have not worked for your current employer for six 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 employer.

6. May I take 80 hours of paid EPSLA leave for my self-quarantine and then another amount of paid EPSLA leave for another reason provided under the Emergency Paid EPSLA Leave Act?

No. You may take up to two weeks or ten 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 employee works over a typical two-week period) of paid EPSLA leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid EPSLA leave is capped at 80 hours under the EPSLA.

- 7. If I am home with my child because his or her school or place of care is closed, or childcare provider is unavailable, do I get paid EPSLA 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 twelve weeks of paid leave. You may take both paid EPSLA leave and expanded family and medical leave to care for your child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons. The EPSLA 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 EFMLEA unless you elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, you will receive 2/3 of your [regular rate of pay](#) for the hours you would have been scheduled to work in the subsequent ten weeks under the EFMLEA.

Please note that you can only receive the additional ten 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 child care provider is unavailable, due to COVID-19 related reasons.

- 8. Can my employer deny me paid sick leave if my employer gave me paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?**

No. EPSLA imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

- 9. Is all leave under the 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 ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

- 10. Are the paid EPSLA leave and expanded family and medical leave requirements retroactive?**

No.

- 11. How do I know whether I have “been employed for at least 30 calendar days by the employer” for purposes of expanded family and medical leave?**

You are considered to have been employed by your employer for at least 30 calendar days if your employer 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 1, 2020, you would need to have been on your employer's payroll as of March 2, 2020.

If you have been working for a company as a temporary employee, and the company 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.

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

Regardless of whether you grant or deny a request for paid EPSLA 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 childcare provider is unavailable, you must 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.

13. What documents do I need to give my employer to get EPSLA leave or expanded family and medical leave?

When requesting EPSLA leave or expanded family and medical leave, you must provide your employer 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 childcare provider is unavailable, you must also provide:

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

In addition to the above information, you must also provide to your employer written documentation in support of your EPSLA leave as specified in applicable IRS forms, instructions, and information.

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 two weeks of EPSLA 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 employer.

14. When am I able to telework under the FFCRA?

You may telework when your employer 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.

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

You are unable to work if your employer 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 employer 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.

16. If I am or become unable to telework, am I entitled to paid EPSLA leave or expanded family and medical leave?

If your employer 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 EPSLA leave, then you are entitled to take EPSLA 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 child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave. Of course, to the extent you are able to telework while caring for your child, paid EPSLA leave and expanded family and medical leave is not available.

17. May I take my EPSLA leave or expanded family and medical leave intermittently while teleworking?

Yes, if your employer 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 employer may agree that you may take EPSLA 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 child care provider is unavailable, because of COVID-19 related reasons, you and your employer 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 employer 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.

Departments are encouraged to collaborate with their employees to achieve flexibility and meet mutual needs. Voluntary arrangements that combine telework and intermittent leave are an example of flexibility.

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

It depends on why you are taking paid EPSLA leave and whether your employer agrees. Unless you are teleworking, paid EPSLA 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 EPSLA leave for one or more of these qualifying reasons, you must continue to take paid EPSLA leave each day until you either (1) use the full amount of paid EPSLA leave or (2) no longer have a qualifying reason for taking paid EPSLA leave. This limit is imposed because if you are sick or possibly EPSLA 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 EPSLA leave as necessary to keep you from spreading the virus to others.

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

In contrast, if you and your employer agree, you may take EPSLA leave intermittently if you are taking paid EPSLA leave to care for your child whose school or place of care is closed, or whose childcare 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 child care provider is unavailable, because of COVID-19 related reasons, you may take EPSLA leave

on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite on Tuesdays and Thursdays.

Departments are encouraged to collaborate with their employees to achieve maximum flexibility. Therefore, if employers and employees agree to intermittent leave on less than a full workday for employees taking EPSLA leave to care for their child whose school or place of care is closed, or childcare provider is unavailable, because of COVID-19-related reasons, the Department should consider such voluntary arrangements.

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

Yes, but only with your employer's permission. Intermittent expanded family and medical leave should be permitted only when you and your employer agree upon such a schedule. For example, if your employer 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 child care provider is unavailable, due to COVID-19 related reasons, for the duration of your leave.

Departments are encouraged to collaborate with their employees to achieve maximum flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department should consider such voluntary arrangements.

20. If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid EPSLA leave or expanded family and medical leave?

No. If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid EPSLA leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility.

21. If my employer reduces my scheduled work hours, can I use paid EPSLA leave or expanded family and medical leave for the hours that I am no longer scheduled to work?

No. If your employer reduces your work hours because it does not have work for you to perform, you may not use paid EPSLA 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 EPSLA 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.

22. May I collect unemployment insurance benefits for time in which I receive pay for paid EPSLA leave and/or expanded family and medical leave?

No. If your employer provides you paid EPSLA leave or expanded family and medical leave, you are not eligible for unemployment insurance. However, each State has its own unique set of rules; and the United States Department of Labor [recently clarified additional flexibility to the States](#) (UIPL 20-10) to extend partial unemployment benefits to workers whose hours or pay have been reduced. Therefore, individuals should contact their State workforce agency or State unemployment insurance office for specific questions about eligibility.

23. If I elect to take paid EPSLA leave or expanded family and medical leave, must my employer continue my health coverage? If I remain on leave beyond the maximum period of expanded family and medical leave, do I have a right to keep my health coverage?

If your employer provides group health coverage that you've elected, you are entitled to continued group health coverage during your expanded family and medical leave on the same terms as if you continued to work. If you are enrolled in family coverage, your employer must maintain coverage during your expanded family and medical leave. You generally must continue to make any normal contributions to the cost of your health coverage.

If you do not return to work at the end of your expanded family and medical leave, check with your employer to determine whether you are eligible to keep your health coverage on the same terms (including contribution rates). If you are no longer eligible, you may be able to continue your coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA, which generally applies to employers with 20 or more employees, allows you and your family to continue the same group health coverage at group rates. Your share of that cost may be higher than what you were paying before but may be lower than what you would pay for private individual health insurance coverage. (If your employer has fewer than 20

employees, you may be eligible to continue your health insurance under State laws that are similar to COBRA. These laws are sometimes referred to as “mini COBRA” and vary from State to State.)

If you elect to take paid EPSLA leave, your employer must continue your health coverage. Under the Health Insurance Portability and Accountability Act (HIPAA), an employer cannot establish a rule for eligibility or set any individual’s premium or contribution rate based on whether an individual is actively at work (including whether an individual is continuously employed), unless absence from work due to any health factor (such as being absent from work on sick leave) is treated, for purposes of the plan or health insurance coverage, as being actively at work.

24. As an employee, may I use my preexisting leave entitlements and my FFCRA paid EPSLA leave and expanded family and medical leave concurrently for the same hours?

During the first two weeks of unpaid expanded family and medical leave, you may not simultaneously take paid sick leave under the EPSLA and preexisting paid leave, but you may supplement the amount you receive from paid sick leave with your preexisting paid leave, up to your normal earnings. After the first two workweeks (usually 10 workdays) of expanded family and medical leave under the EFMLEA, however, you may elect—or be required by your employer—to take your remaining expanded family and medical leave at the same time as any existing paid leave that, under your employer’s policies, would be available to you in that circumstance. This would likely include personal leave or paid time off, but not medical or sick leave if you are not ill.

If you are required to take your existing leave concurrently with your remaining expanded family and medical leave, your employer must pay you the full amount to which you are entitled under your existing paid leave policy for the period of leave taken. If you exhaust your preexisting paid leave and still are entitled to additional expanded family and medical leave, your employer must pay you at least 2/3 of your pay for subsequent periods of expanded family and medical leave taken, up to \$200 per workday and \$10,000 in the aggregate, for expanded family and medical leave.

25. As a state employer, may I use the paid sick leave mandated under the EPSLA to satisfy paid leave entitlements that an employee may have under my 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 EPSLA leave. You also may not require your employee to use such existing leave concurrently with the paid sick leave under the EPSLA. But 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.

26. May I require my employee to take paid leave he or she may have under the existing paid leave policy concurrently with expanded family and medical leave under the EFMLEA?

Yes. After the first two workweeks (usually 10 workdays) of expanded family and medical leave under the EFMLEA, you may require that your employee take concurrently for the same hours expanded family and medical leave and existing leave that would be available to the employee in that circumstance. This would likely include personal leave or paid time off, but not medical or sick leave if your employee (or a covered family member) is not ill.

If you do so, you must pay the employee the full amount to which he or she is entitled under the existing paid leave policy for the period of leave taken. You must pay your employee at least 2/3 of his or her pay for subsequent periods of expanded family and medical leave taken, up to \$200 per workday and \$10,000 in the aggregate, for expanded family and medical leave. If your employee exhausts all preexisting paid vacation, personal, medical, or sick leave, you would need to pay your employee at least 2/3 of his or her pay for subsequent periods of expanded family and medical leave taken, up to \$200 per day and \$10,000 in the aggregate.

27. Which of my employees are eligible for paid EPSLA leave and expanded family and medical leave?

Both of these new provisions use the [employee definition](#) as provided by the Fair Labor Standards Act, thus all of your employees who meet this definition are eligible including full-time and part-time employees, and "joint employees" working on your site temporarily and/or through a temp agency. However, if you employ a health care provider or an emergency responder you are not required to pay such employee paid EPSLA leave or expanded family and medical leave on a case-by-case basis.

There is one difference regarding an employee's eligibility for paid EPSLA leave versus expanded family and medical leave. While your employee is eligible for paid EPSLA leave regardless of length of employment, your employee must have been employed for 30 calendar days in order to qualify for expanded family and medical

leave. For example, if your employee requests expanded family and medical leave on April 10, 2020, he or she must have been your employee since March 11, 2020.

28. 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, United States Department of Labor, Wage and Hour Division clarifies 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.

29. Do I have a right to return to work if I am taking paid EPSLA leave or expanded family and medical leave under the Emergency Paid EPSLA Leave Act or the Emergency Family and Medical Leave Expansion Act?

Generally, yes. In light of Congressional direction to interpret requirements among the Acts consistently, United States Department of Labor, Wage and Hour Division clarifies that the Acts require employers to provide the same (or a nearly equivalent) job to an employee who returns to work following leave.

In most instances, you are entitled to be restored to the same or an equivalent position upon return from paid EPSLA leave or expanded family and medical leave. Thus, your employer is prohibited from firing, disciplining, or otherwise discriminating against you because you take paid EPSLA leave or expanded family and medical leave. Nor can your employer fire, discipline, or otherwise discriminate against you because you filed any type of complaint or proceeding relating to these Acts or have or intend to testify in any such proceeding.

However, you are not protected from employment actions, such as layoffs, that would have affected you regardless of whether you took leave. This means your employer can lay you off for legitimate business reasons, such as the [closure of your worksite](#). Your employer must be able to demonstrate that you would have been laid off even if you had not taken leave.

Your employer may also refuse to return you to work in your same position if you are a highly compensated [“key” employee](#) as defined under the FMLA, or if your employer has fewer than 25 employees, and you took leave to care for your own

son or daughter whose school or place of care was closed, or whose child care provider was unavailable, and all four of the following hardship conditions exist:

- your position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of your leave;
- your employer made reasonable efforts to restore you to the same or an equivalent position;
- your employer makes reasonable efforts to contact you if an equivalent position becomes available; and
- your employer continues to make reasonable efforts to contact you for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after your leave began, whichever is earlier.

30. May I take leave under the Family and Medical Leave Act over the next 12 months if I used some or all of my expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act?

It depends. You may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the Emergency Family and Medical Leave Expansion Act. 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 four 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 eight weeks of FMLA leave.

However, you are entitled to paid EPSLA leave under the Emergency Paid EPSLA Leave Act regardless of how much leave you have taken under the FMLA. Paid EPSLA 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 EPSLA leave concurrently with the first two weeks of expanded family and medical leave, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period.

31. If I take paid EPSLA leave under the Emergency Paid EPSLA Leave Act, does that count against other types of paid EPSLA leave to which I am entitled under State law, or my employer's policy?

No. Paid EPSLA leave under the Emergency Paid EPSLA Leave Act is in addition to other leave provided under Federal, State, or local law; an applicable collective bargaining agreement; or the Appointing Authority's existing leave policy.

32. May I use paid EPSLA leave and expanded family and medical leave together for any 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 paid EPSLA leave under the EPSLA for numerous other reasons.

33. What is a full-time employee under the Emergency Paid EPSLA Leave Act?

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 Emergency Paid EPSLA Leave Act?

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 EFLMEA 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. How does the "for each working day during each of the 20 or more calendar workweeks in the current or preceding calendar" language in the FMLA definition of "employer" work under the Emergency Family and Medical Leave Expansion Act?

The language about counting employees over calendar workweeks is only in the FMLA's definition for employer. This language does not apply to the Emergency

Family and Medical Leave Expansion Act for purposes of expanded family and medical leave. Employers should use the number of employees on the day the employee's leave would start to determine whether the employer has fewer than 500 employees for purposes of providing expanded family and medical leave and paid EPSLA leave.

36. I've elected to take paid EPSLA leave and I am currently in a waiting period for my employer's health coverage. If I am absent from work on paid EPSLA leave during the waiting period, will my health coverage still take effect after I complete the waiting period on the same day that the coverage would otherwise take effect?

Yes. If you are on employer-provided group health coverage, you are entitled to group health coverage during your paid EPSLA leave on the same terms as if you continued to work. Therefore, the requirements for eligibility, including any requirement to complete a waiting period, would apply in the same way as if you continued to work, including that the days you are on paid EPSLA leave count towards completion of the waiting period. If, under the terms of the plan, an individual can elect coverage that becomes effective after completing the waiting period, the health coverage must take effect once the waiting period is complete.

37. As a public-sector employee, may I take paid sick leave under the Emergency Paid Sick Leave Act?

Generally, yes, however, health care providers and emergency responders may be excluded by their employer from being able to take paid EPSLA leave under the Act. These coverage limits also apply to public-sector health care providers and emergency responders.

38. I am a public-sector employee. May I take paid family and medical leave under the Emergency Family and Medical Leave Expansion Act?

It depends. In general, you are entitled to expanded family and medical leave if you are an employee of a non-federal public agency. Therefore, you are probably entitled to paid EPSLA leave if, for example, you work for the government of a State, the District of Columbia, a Territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar entity.

Further, health care providers and emergency responders may be excluded by their employer from being able to take expanded family and medical leave under the Act. These coverage limits also apply to public-sector health care providers and emergency responders.

39. 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 EPSLA 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 EPSLA leave, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

40. Who is a “health care provider” who may be excluded by their employer from paid EPSLA leave and/or expanded family and medical leave?

For the purposes of employees who may be exempted from EPSLA Leave or Expanded Family and Medical Leave by their employer 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, Employer, 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. This also includes any individual that the highest official of a State or territory, including the District of Columbia, determines is a health care provider necessary for that State’s or territory’s or the District of Columbia’s response to COVID-19.

To minimize the spread of the virus associated with COVID-19, Appointing Authorities are encouraged to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA. For example, an Appointing Authority may decide to exempt these employees from leave for caring for a family member but choose to provide them EPSLA leave in the case of their own COVID-19 illness.

41. Who is an emergency responder?

For the purposes of Employees who may be excluded from EPSLA 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. This also includes any individual whom the highest official of a State or territory, including the District of Columbia, determines is an emergency responder necessary for that State's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, Appointing Authorities are encouraged to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA. For example, an Appointing Authority may decide to exempt these employees from leave for caring for a family member but choose to provide them EPSLA leave in the case of their own COVID-19 illness.

42. How do I know if I can receive EPSLA 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 EPSLA 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.

43. When am I eligible for paid EPSLA leave to self-quarantine?

You are eligible for paid EPSLA 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).

44. I am an employee. I become ill with COVID-19 symptoms, decide to quarantine myself for two 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 two weeks under the FFCRA?

Generally, no. If you become ill with COVID-19 symptoms, you may take paid EPSLA 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 EPSLA leave. You may not take paid EPSLA 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 EPSLA leave under the FFCRA if you become ill with an illness not related to COVID-19. Depending on your employer's expectations and your condition, however, you may be able to telework during your period of quarantine.

45. When am I eligible for paid EPSLA leave to care for someone who is subject to a quarantine or isolation order?

You may take paid EPSLA 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 EPSLA 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 EPSLA 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 EPSLA leave to care for someone with whom you have no relationship. Nor can you take paid EPSLA leave to care for someone who does not expect or depend on your care during his or her quarantine or self-quarantine.

46. Can I take paid EPSLA 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 EPSLA leave under the FFCRA to care for an immediate family member or someone who regularly resides in your home. You may also take paid EPSLA 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 EPSLA leave under the FFCRA to care for someone with whom you have no relationship. Nor can you take paid EPSLA 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.

47. When am I eligible for paid EPSLA leave to care for someone who is self-quarantining?

You may take paid EPSLA 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).

48. May I take paid EPSLA 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 EPSLA 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 EPSLA 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, EPSLA 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 EPSLA leave if you are unable to work or telework as a result of providing care. But in no event, may your total paid EPSLA leave exceed two weeks.

49. 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.

50. Who is my “childcare provider”?

A “childcare provider” is someone who cares for your child. This includes individuals paid to provide childcare, like nannies, au pairs, and babysitters. It also includes individuals who provide childcare at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.

51. Can more than one guardian take EPSLA leave or expanded family and medical leave simultaneously to care for my child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons?

You may take paid EPSLA 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.

52. 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 EPSLA 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.

53. May I take paid EPSLA leave to care for a child other than my child?

It depends. The EPSLA 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.”

However, paid EPSLA 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 EPSLA leave if you are unable to work or telework as a result of providing care. But in no event, may your total paid EPSLA leave exceed two weeks.

54. 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.”

55. When am I eligible for paid EPSLA 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 EPSLA leave. If HHS does identify any such condition, the U.S. Department of Labor will issue guidance explaining when you may take paid EPSLA leave on the basis of a “substantially similar condition.”

56. How much must an employer pay a seasonal employee with an irregular schedule for each day of EPSLA leave or expanded family and medical leave that he or she takes?

You may calculate the daily amount you must pay a seasonal employee with an irregular schedule by taking the following steps.

First, you should calculate how many hours of leave your seasonal employee is entitled to take each day. Because your employee works an irregular schedule, this is equal to the average number of hours each day that he or she was scheduled to work over the period of employment, up to the last six months. Please note that you should exclude from this calculation off-season periods during which the employee did not work.

Second, you should calculate the seasonal employee’s regular hourly rate of pay. This is calculated by adding up all wages paid over the period of employment, up to the last six months, and then dividing that sum by the number of hours actually worked over the same period. Again, you should exclude off-season periods during which the employee did not work.

Third, you multiply the daily hours of leave (first calculation) by your employee's regular hourly rate of pay (second calculation) to compute the base daily paid leave amount.

Fourth, you should determine the actual daily paid leave amount, which depends on the type of paid leave taken and the reason for such paid leave.

You must pay your seasonal employee the full base daily paid leave amount, up to \$511 per day and \$5,110 in total, if the employee is taking paid EPSLA leave for any of the following reasons:

- Your employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- Your employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- Your employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

You must pay your seasonal employee 2/3 of the base daily paid leave amount, up to \$200 per day and \$2,000 in total, if your employee is taking paid EPSLA leave for any of the following reasons:

- Your employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- Your employee is caring for his or her child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons; or
- Your employee is experiencing any other substantially similar condition, as determined by the Secretary of Health and Human Services.

You must pay your seasonal employee 2/3 of the base daily paid leave amount, up to \$200 per day and \$10,000 in total, if the employee is taking expanded family and medical leave to care for the employee's child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. Please note that if your seasonal employees are not scheduled to work, for example, because it is the off-season, then you do not have to provide paid EPSLA leave or expanded family and medical leave.

58. May I take EPSLA leave or expanded family and medical leave if I am receiving workers' compensation or temporary disability benefits through an employer or state-provided plan?

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 EPSLA 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 EPSLA leave or expanded family and medical leave, as the situation warrants.

59. **May I take EPSLA 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 EPSLA 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 EPSLA 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).

In the instance of a mandatory leave of absence, you may be eligible for unemployment insurance benefits. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility.

60. **What six-month period is used to calculate the regular rate under the FFCRA when, for example, my employee takes paid EPSLA leave, gets better, and then one week (or one month or three 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 six-month period every time my employee takes leave?**

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

61. **Under what circumstances may an employee be required to use his or her existing leave under the employer's policy and when does the choice belong**

to the employee under the U.S. Department of Labor's regulations, specifically [29 CFR 826.23\(c\)](#), [826.24\(d\)](#), [826.60\(b\)](#) and [826.160\(c\)](#)?

EPSLA leave under the Emergency Paid Sick Leave Act is in addition to any form of paid or unpaid leave provided by an employer, law, or an applicable collective bargaining agreement. Appointing Authorities may not require employer-provided paid leave to run concurrently with—that is, cover the same hours as— EPSLA leave under the Emergency Paid Sick Leave Act.

In contrast, an Appointing Authority may require that any paid leave available to an employee under the State'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 Emergency Family and Medical Leave Expansion Act. In this situation, the employer must pay the employee's full pay during the leave until the employee has exhausted available paid leave under the employer's plan—including vacation and/or personal leave (typically not sick or medical leave). If the employee exhausts available paid leave under the employer's plan but has more paid expanded and medical family leave available, the employee will receive any remaining paid expanded and medical family in the amounts and subject to the daily and aggregate limits in the Emergency Family and Medical Leave Expansion Act. Additionally, provided both the Appointing Authority and employee agree, and subject to federal or state law, paid leave provided by an employer may supplement 2/3 pay under the Emergency Family and Medical Leave Expansion Act 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 Appointing Authority—to take EPSLA leave under the Emergency Paid Sick Leave Act or paid leave under the employer's plan for the first two weeks of unpaid expanded family and medical leave, but not both. If, however, an employee has used some or all paid EPSLA leave under the Emergency Paid Sick Leave Act, any remaining portion of that employee's first two weeks of expanded family and medical leave may be unpaid. During this period of unpaid leave under the Emergency Family and Medical Leave Expansion Act, the employee may choose—but the employer may not require the employee—to use paid leave under the employer'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.

62. **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, 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 employer has for you. You may not take paid leave due to such an order if your employer 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 employer 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 fourteen days because you were on a cruise ship where other passengers tested positive for COVID-19, and your employer has work for you to do, you are also entitled to paid EPSLA leave if you cannot work (or telework) because of the order. If, however, your employer closed one or more locations because of a quarantine or isolation order and, as a result of that closure, there was no work for you to perform, you are not entitled to leave under the FFCRA and should seek unemployment compensation through your State Unemployment Insurance Office.

63. **My employees have been teleworking productively since mid-March without any issues. Now, several employees claim they need to take paid EPSLA 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 four weeks. Can I ask my employees why they are now unable to work or if they have pursued alternative childcare 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 documentation outlined in section 826.100 of the U.S. Department of Labor's rule applying the FFCRA. 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 EPSLA 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 EPSLA 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 EPSLA 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.

64. **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 EPSLA 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 FMLA, 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.

65. **I took EPSLA 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 EPSLA leave or expanded family and medical leave to care for my children because their school is closed for summer vacation?**

No. EPSLA leave and emergency family and medical leave are not available for this qualifying reason if the school or childcare 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.

66. I took time under the temporary COVID-19 paid leave for state employees after April 1, 2020. Does that time count against my EPSLA and EFMLEA?

No. Those employees who received full pay under the temporary COVID-19 paid leave should leave their previous timesheets intact. They are still entitled to use EPSLA and EFMLEA, if they meet the eligibility requirements.

67. I was not eligible for temporary COVID-19 paid leave for state employees and I used my accrued leave for a purpose that is covered under the EPSLA or EFMLEA. Am I entitled to use my federal leave?

Employees who were entitled to use either EPSLA or EFMLEA, or both, and used accrued leave instead, should contact their H.R. representatives. They will have the option of having their accrued leave restored and the time counted under the applicable federal program, or the ability to use the federal leave in the future.

68. Please explain #6 (relating to eligibility due to experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services (“other condition”) under Earned Sick Partial Pay Leave. As an example, an employee was initially diagnosed with COVID-19 and later was diagnosed with pneumonia as a result of having COVID-19. Would this be an example of “other condition”?)

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 EPSLA leave. If HHS does identify any such condition, the Department of Labor will issue guidance explaining when you may take paid EPSLA leave on the basis of a “substantially similar condition.”

69. Are departments permitted to continue to follow their current sick leave policy that requires the employee to provide specific written documentation from their health care provider for their own illness and / or for caring for others?

See answer to 63 above. In order for an employee to take leave under the EPSLA for symptoms consistent with COVID-19 and while seeking a diagnosis, the

employee may be required to identify his or her symptoms and a date for a test or doctor's appointment. The employer may not 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 EPSLA leave for that purpose. Thus, the employee may take paid EPSLA leave for the time spent making, waiting for, or attending an appointment for a test for COVID-19. But the employee may not take paid EPSLA leave to self-quarantine without seeking a medical diagnosis.

An employee seeking to use EPSLA to care for an individual who is subject to a quarantine or isolation order or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 must provide either the government entity that issued the quarantine or isolation order to which the individual is subject or the name of the health care provider who advised the individual to self-quarantine.

If an employee is taking unpaid leave under the FMLA, the FMLA's documentation requirements are different and apply. And if the employee is concurrently taking another type of paid leave, the agency's documentation requirements relevant to that leave still apply.

70. Does the definition in Title 4A regarding immediate family apply to “care for quarantined individual”?

For purposes of eligibility under the EPSLA due to the employee caring for an individual who is subject to a quarantine or isolation order or who has been advised to self-quarantine, the employee must have a personal relationship with the individual. Thus, the individual being cared for must be an immediate family member as defined in Title 4A, roommate, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined.

71. For leave due to childcare, what qualifies or is acceptable as “representation” that no other suitable person will be caring for the child during the period for which the employee takes EPSLA or EFMLEA leave?

The employee must present a written statement attesting that no other suitable person will be caring for the child during the period for which the employee takes EPSLA or EFMLEA leave.

72. **How are TES hourly employees going to be addressed assuming that they are not covered as part-time or intermittent employees? Are TES employees entitled to these benefits?**

TES employees are employees for purposes of the FFCRA. As a result, they are eligible for benefits if they meet the eligibility requirements set forth in the law. Please refer to the Guidelines for pertinent information concerning these requirements.

73. **Why do the draft guidelines state that an employer may require employees to follow reasonable notice procedures AFTER the first workday “or portion thereof” for which an employee takes EPSLA? How do we approve this type of leave if we are not provided with advanced notice?**

Under the federal regulations, an employee taking EPSLA or EFMLEA leave for childcare purposes must provide notice to the employer of the need for the leave as soon as practicable where the leave was foreseeable. An Appointing Authority may require an employee to follow reasonable notice procedures after the first workday (or portion thereof) for which an employee takes EPSLA for any reason other than childcare.

74. **Under EFMLEA should we use the existing FMLA forms (WH-380-E, WH-380-F)?**

Existing FMLA forms should be used for leave under the EFMLEA.

75. **How are employees proving that a childcare provider is unavailable due to COVID-19? What kind of documentation is acceptable?**

See answer to #12 above. For leave due to the closure or unavailability of a child care provider, the following documentation is required:

- The name of the child being cared for;
- The name of the 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.

76. **Will EPSLA and EFMLEA benefit time be documented in eCATS, PMIS and on payroll as a leave with pay or without pay? For example, employees receiving temporary workers compensation benefits via the Division of Risk Management are placed on a leave without pay to receive that paid**

benefit. Who is paying this benefit? If a leave without pay, will employees be required to pay their portion of the premium to maintain health benefit coverage?

These payments are processed directly through Centralized Payroll, and they will be recorded in eCATs and PMIS for payroll purposes.

77. If a day care center has reopened, and the employee chooses not to put their child back in the center, can they use this leave time?

No. Leave for child care purposes under the EPSLA and EFMLEA is available only if the school or place of care is closed, or the childcare provider is unavailable, due to COVID-19 related reasons. If the employee's day care center has reopened and the employee makes a choice not to put their child back in the center, then such leave is not available

78. How do we address families with two state employees and the fact that at least one could be available to watch the child?

As indicated in the Guidelines, employees should provide a "representation" that no other suitable person will be caring for the child during the period for which the employee takes paid EPSLA leave.

79. How should departments handle employees who went on leave, for example in May, given that the law became effective April 1, 2020? Leaves were calculated based on the information at the time and now these leaves could be applicable but retroactive.

See answers 65 and 66 above. Those employees who received full pay under the temporary COVID-19 paid leave should leave their previous timesheets intact. They are still entitled to use EPSLA and EFMLEA, if they meet the eligibility requirements. Those employees who were entitled paid leave under the federal law but who were required to use accumulated leave time should contact their HR departments to discuss their options.

80. If an employee uses EPSLA for their own need to self-quarantine for a period of less than 80 hours, are they eligible to apply EPSLA for a second period of absence not to exceed a combined total of 80 hours?

Yes.

81. **Is the type of benefit time an employee may opt to apply to supplement the two-thirds salary under EFMLEA for school closure reasons restricted to AL, Vacation and Compensatory? Sick leave would not be appropriate, would it?**

The type of accrued leave that can be taken concurrently or to supplement 2/3 pay under EFMLEA for school/childcare closure is restricted to administrative leave, vacation leave or compensatory leave.