
Answering Your COVID-19 Questions

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Emergency FMLA

04/15/20

Question: How do employers pay an exempt employee for intermittent leave under FFCRA?

Answer: The regulations confirm that intermittent leave is not required under either provision of the FFCRA absent an agreement between the employer and employee. The regulations encourage employers to provide as much flexibility as possible to employees to care for children or other family members during the current crisis, so long as the employer's business needs can be met, particularly when an employee is teleworking. But, ultimately, an employee is only entitled to intermittent usage if the employer approves it.

The regulations encourage employers to allow flexible scheduling in telework arrangements and to permit unpaid breaks in the workday (for example, so an employee may tend to children who are out of school) and allow an employer not to pay an employee for such time, thereby temporarily straying from the continuous workday doctrine, which generally requires an employer to pay employees for all time from their first to last principal work activity. An employer must still pay an employee for all time worked and reported during the workday.

The regulations note that providing maximum flexibility to employers and employees during this public health emergency should not impact the underlying relationships between an employer and an employee. Specifically, the use of intermittent leave should not be construed as undermining the employee's salary basis for purposes of exempt status under the Fair Labor Standards Act (FLSA). The regulations also place additional limitations on the

use of intermittent leave in circumstances where use of such leave would be incompatible with efforts to slow the spread of COVID-19 (e.g. allowing intermittent leave for reasons 1-3 under EPSLA for non-teleworking employees).

As a general rule, the FLSA requires that if exempt employees perform any work during the workweek, they must be paid the full salary amount.

04/15/20

Question: Does the employer have to accrue PTO, sick, etc. for an employee on FFCRA leave?

Answer: An employer's policy governs whether an employee on Family and Medical Leave Act (FMLA) leave continues to accrue paid leave. Often, an employer's policy states that when an employee is on paid leave, accrual continues, but when an employee is on unpaid status, accrual ceases. In compliance with §825.209(h) of the FMLA regulations, an employer must treat the employee using paid leave while on FMLA leave the same way it treats employees on other types of paid leave (such as regular sick or vacation leave). Specifically, the regulations state: "An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (e.g., holiday pay) is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate)."

04/03/20

Question: How should an employer document the employee need to take EFMLA for child care?

Answer: The IRS also details the "records and documentation related to and supporting each employee's leave" as required to substantiate the claim for credits (and validate the need for leave), as follows:

- The name and age of the child (or children) to be cared for
- The name of the school that has closed or place of care that is unavailable
- A representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave

- If care is needed during daylight hours for a child older than fourteen, a statement that special circumstances exist requiring the employee to provide care

Notably, the DOL states that employers “are not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.”

The IRS also specifies that employers must retain records of employees’ work, telework, and qualified E-PSL and E-FMLA leave, for purposes of showing how the amount of qualified wages were paid. In addition, employers must also retain documentation showing how it determined the amount of qualified health plan expenses that it allocated to wages.

Employers should implement policies and forms that capture the information listed above, in order to ensure both that the need for FFCRA leave is valid and that they will be able to support their tax credit claims.

If one of your employees takes expanded family and medical leave to care for his or her child whose school or place of care is closed or whose child care provider is unavailable due to COVID-19, under the Emergency Family and Medical Leave Expansion Act, employers must require appropriate documentation in support of such leave, just as they would for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or daycare website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider.

This requirement also applies when the first two weeks of unpaid leave run concurrently with paid sick leave taken for the same reason. Again, if you intend to claim a tax credit for expanded FMLA, employers should retain this documentation in their records.

03/31/20

Question: Can EFMLA be used intermittently?

Answer: Please review questions 20-22 on the [DOL FAQs](#).

03/26/20

Question: Who is entitled to the Paid Sick Leave and Expanded Family and Medical Leave under [The Families First Coronavirus Response Act](#)?

Answer: The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers and private employers with fewer than 500 employees. Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave if they are caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

NOTE: Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Sick Leave

06/26/20

Question: Are employees who travel internationally eligible for Emergency Paid Sick Leave?

Answer: Yes. Per CDC, all international travelers should stay home for 14 days after their arrival into the United States. At home, employees are expected to monitor their health and practice social distancing. To protect the health of others, employees should not go to work for 14 days.

NOTE: Employers will need proper documentation that the employees was eligible for Paid Sick Leave. Such documents may include: a written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19.

04/03/20

Question: An employee sent an email saying that they will not be coming into the office for the next two weeks and will be getting a doctor's note. The employee is over 65 and unable to work from home. Are we required to pay the employee two weeks in FFCRA sick time because of the California recommendation that all over 65 years of age stay home?"

Answer: No, unless the doctor's note states the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a healthcare provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis.

04/01/20

Question: Can an employee use Paid Sick Leave to care for a spouse who has been advised by a Healthcare Provider to self-quarantine/isolate?

Answer: Yes. The employee will be paid 2/3 of their regular rate of pay.

03/31/20

Question: Do you know during this time if an employer reduces their employees' hours, can they force them to use sick and PTO to cover the other hours?

Answer: The employer cannot require that the worker use paid sick leave; that is the worker's choice. If the worker decides to use paid sick leave, the employer can require they take a minimum of two hours of paid sick leave. The determination of how much paid sick leave will be used is up to the employee. The law prevents an employer from requiring an employee to immediately use personal, vacation, or sick time if they do not go into work due to COVID-19 concerns. Those concerns include feeling ill due to possible exposure to the virus or caring for someone who may have been exposed. Employers cannot require employees to use vacation days, paid time off, personal days, or CA paid sick leave until the 80 hours of sick leave pay have been used. In general, employers can require employees to use vacation time.

03/30/20

Question: Can employees use CA Sick Leave due to COVID -19?

Answer: California sick leave can be used for the following situations " If you or a family member are sick or for preventative care when civil authorities recommend quarantine." Quarantine means that you have been exposed to the virus. Furloughed employees do not fall under this category. They are not working due to the "Shelter at Home" and are not in an essential job as defined by the Governor's Executive Order. Therefore, they would not qualify for sick leave.

03/26/20

Question: Can employers take employees' temperatures at work?

Answer: Employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

03/24/20

Question: Does Shelter in Place/Stay-at-Home Order = Sick Leave under CV19 Act?

Answer: No. Sick Leave under CV19 can only be used for the following:

- 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 healthcare 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 healthcare 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.

03/20/20

Question: Is the Emergency Sick Leave in addition to the sick leave our employee already has?

Answer: Yes, the paid sick leave through the Families First Coronavirus Response Act is in ADDITION to any sick leave the employee already has.

03/19/20

Question: Can I require a doctor's note if someone calls in sick?

Answer: Employers should suspend requiring employees to provide doctors' permission to stay home notes.

Non-Essential Businesses

03/31/20

Question: Is it legal to require employees to go into the office in CA at this time for a non-essential industry?

Answer: It depends on the nature of your business. Non-essential businesses may continue operating only (1) if employees can work from home; (2) if it is a single-owner business with no in-person, on-site public interaction, (3) if the business consists exclusively of employees or contractors performing

business activities at their homes or residences, and who do not engage in in-person contact with clients; or (4) to perform “basic minimum operations.” The Proclamation defines “basic minimum operations” as “the minimum activities necessary to maintain the value of the business’ inventory, preserve the condition of the business’ physical plant and equipment, ensure security, process payroll, and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions.”

CARES ACT

04/03/20

Question: Would payroll costs include workers’ compensation insurance?

Answer: Based on the CARES Act, the following items are not included in payroll costs or the report:

- Federal income tax
- Social Security/Medicare - employee portion
- Social Security/Medicare - employer portion
- Federal Unemployment Tax
- Workers compensation premiums
- Stock compensation
- Compensation of employees whose principal place of residence is outside of the U.S
- Payments to independent contractors
- For those employees that made more than \$100,000 on an annualized basis, once the employee exceeds \$100,000 in a given month any additional costs are excluded.
- Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act.

03/27/20

Question: What is the Paycheck Protection Program (“PPP”)

Answer: Forgivable loans to small businesses to pay their employees during the COVID-19 crisis. All loan terms will be the same for everyone. The loan amounts will be forgiven as long as:

- The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the 8 week period after the loan is made; and
- Employee and compensation levels are maintained.

- The loan provides small businesses with funds to pay up to 8 weeks of payroll costs including benefits. Funds can also be used to pay interest on mortgages, rent, and utilities.
- All loan terms will be the same for everyone.

04/02/20

Question: How much of my loan will be forgiven under the Paycheck Protection Program?

Answer: Generally, as long as you maintain the same employee headcount and compensation levels and use the funds towards payroll, rent, and utilities (max 25% non-payroll costs), you should be able to get all or most of the loan forgiven.

03/27/20

Question: What is the CARES Act?

Answer: The Coronavirus Aid, Relief, and Economic Security Act includes a number of different programs and interventions that provide or intend to provide financial relief to eligible employers and employees. It includes: Small business loans, Paycheck Protection Program, Loan Forgiveness, Pandemic Unemployment Assistance, Emergency Increase in Unemployment Compensation Benefits, Delay of Payment of Employer Payroll taxes, Emergency Relief and Taxpayer Protections and more. It is a \$2.3 trillion economic relief bill.

Other FAQs

06/29/20

Question: Are office employees required to wear face masks?

Answer: Yes. The [Health Order](#) specifically states (part 11) that all businesses that are reopening have to abide by the [Safe Opening Plan](#). Under the "B" Measures within the reopening requirements, it states: "**All employees must wear facial coverings in the workplace, if within six feet of others.**"

06/16/20

Question: As a business, are we required to do temperature checks daily before employees begin their shift?

Answer: Yes, per SD County Health Order and reopening plan, all businesses, "shall conduct temperature screening of all employees and prohibit entry to the workplace of employees with a temperature of 100 degrees or more,

employees exhibiting [COVID-19 symptoms as described by the Centers for Disease Control and Prevention](#), or employees who have recently been exposed to a person who has tested positive for COVID-19.

06/09/20

Question: For Commercial property landlords, how are they to treat clients that have shared space (for example, shared bathrooms) and what is their responsibility as it relates to safe opening procedures?

Answer: Commercial Property owners have the same mandate to adhere to the SD County Guidance for reopening. The occupants of the building can get together and ensure they are meeting the guidelines, but the owner of the business would need to make sure that the reopening guidance and [Health Orders](#) are being met. The building needs to comply whether he/she as the owner makes that happen or his/her tenants.

06/08/20

Question: Is there a max capacity limitation for office workers?

Answer: There are no maximum numbers, but there are a lot of parameters that a business should consider which are included in the [Office Guidelines](#). The business should also allow all employees who can telecommute to continue to do so.

05/27/20

Question: What can I do if an employee is refusing to come to work out of fear of contracting the coronavirus?

Answer: A good first step is to actively listen to the employee and have a conversation with the employee regarding their concerns. Employees can refuse to work if they reasonably believe they are in imminent danger, according to the Occupational Safety and Health (OSH) Act. The employee must have a reasonable belief that there is a threat of death or serious physical harm likely to occur immediately or within a short period for this protection to apply. Employers should accommodate employees who request altered worksite arrangements, remote work or time off from work due to underlying medical conditions that may put them at greater risk from COVID-19. The [EEOC's guidance on COVID-19 and the Americans with Disabilities Act](#) (ADA) notes that accommodations may include changes to the work environment to reduce contact with others, such as using Plexiglas separators or other barriers between workstations.

NOTE: Per unemployment, refusal of work is grounds for unemployment benefits ending (exceptions are determined by EDD).

05/01/20

Question: What should I do if an employee is suspected or confirmed to have COVID -19?

Answer: Wait 24 hours before cleaning and disinfecting to minimize the potential for other employees being exposed to respiratory droplets. If waiting 24 hours is not feasible, wait as long as possible. Sick employees should follow [CDC-recommended steps](#). Employees should not return to work until they have met the criteria to [discontinue home isolation](#) and have consulted with a healthcare provider and state or local health department. For persons recovered from COVID-19 illness, CDC recommends that isolation be maintained for at least 10 days after illness onset and at least 3 days (72 hours) after recovery. Illness onset is defined as the date symptoms begin. Recovery is defined as resolution of fever without the use of fever-reducing medications with progressive improvement or resolution of other symptoms. Ideally, isolation should be maintained for this full period to the extent that it is practicable under rapidly changing circumstances.

NOTE: Employers may not disclose the identity of the employee diagnosed with or presumed to have COVID-19. Employers are also required to maintain the privacy of any health information they gather related to an employee's medical condition or their symptoms, and any such documentation should be kept in a private health folder, separate from the employee's personnel file.

06/05/20

Question: *Is an employee who is living overseas and performing work for US clients, eligible for FFCRA (PSL or EFMLA)?*

Answer: *No, they are not eligible regardless of the fact that they only work with US clients.*

04/29/20

Question: If I have to furlough my employees, do I have to pay out their PTO and vacation?

Answer: Yes. If you do not bring back your employees to work within that same pay period, then you will have to pay them out for any PTO/Vacation they have accrued.

04/23/20

Question: If my employer chooses to re-open but I don't feel comfortable going back into work, will I lose my job?

Answer: If they are not considered essential workers, then they really can't force employees to return to work. Employees who are not essential workers ("non-essential workers") and who believe they were terminated or otherwise retaliated against for refusing to go into work may file a retaliation claim with the Labor Commissioner's Office. Employers and employees are encouraged to carefully review the stay-at-home order, any applicable local shelter in place orders, and the latest health information to ensure compliance with all state and local orders. Employers are encouraged to allow non-essential workers to telework to the full extent possible and to use all available paid and unpaid leave. Businesses that are requiring non-essential workers to go into work are in violation of the Stay-at-Home Order or a local public health order. Any non-essential components of the business must either shut down or switch to remote/teleworking (if possible).

Question: What if I or a member of my household is considered "high risk"?

Answer: Employers are not under any obligation to allow employees of essential businesses to stay home if they cannot work remotely. Employers do have an obligation to take whatever steps necessary to protect essential employees, including allowing remote working wherever possible and enforcing social distancing to the extent possible. Employees of essential businesses who do not feel comfortable working should discuss the matter with their supervisor or HR department to see if they can use PTO or take an unpaid leave of absence. If an employee of an essential business, or an essential business function, loses their job because they do not want to come to work, they should apply for unemployment benefits.

04/20/20

Question: Can an employee who is collecting only partial Unemployment Insurance (UI) in California qualify for the entire \$600/week extra of unemployment from the federal government?

Answer: Yes! In CALIFORNIA, if someone receives \$1 in UI they will receive the full \$600 extra per week.

04/04/20

Question: During this time, if an employer places employees on partial furlough is a DE2063 required?

Answer: Due to the COVID-19 pandemic, the EDD is not requiring workers who are working reduced hours or are completely laid off to seek work. There is no need to participate in the Partials program at this time. The primary benefit of previously participating in this program was to retain your skilled and trained workforce because they were not required to look for work. The EDD recommends you take the following steps:

- Do not issue the Notice of Reduced Earnings (DE 2063) (PDF).
- Inform your working or laid-off employees to apply for UI benefits online for the fastest way to file.
- Inform your employees that after they apply for UI benefits online and their claim is processed, to certify for continued benefits for every two-week period by logging into their UI Online account for the fastest way to certify and receive their benefit payments.

NOTE: If you have been participating in the Partials program by issuing the Notice of Reduced Earnings (DE 2063) (PDF) to your employees, we will separately work with you to have your employees switch to regular UI continued claim forms. This will ease the burden on you of having to complete the employer portion of the paper DE 2063 form and allow your employees to certify for continued benefit online.

03/30/20

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

Answer: 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.

03/30/20

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

Answer: 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 sick 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.

03/29/20

Question: When does the small business exemption apply to exclude small businesses from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?

Answer: An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern.

A small business may claim this exemption if an authorized officer of the business has determined that:

- The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

03/27/20

Question: Are employees who receive a reduction in salary (not hours) eligible for unemployment?

Answer: If an employee is working full time and receiving over minimum wage (even if wages are reduced), they will not be eligible for unemployment.

03/26/20

Question: Where do I post the [Families First Coronavirus Response Act notice](#) since most of my workforce is teleworking?

Answer: Each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees or posting this notice on an employee information internal or external website.

03/24/20

Question: Is there any flexibility in requirements related to Form I-9 compliance?

Answer: Employers with employees taking physical proximity precautions due to COVID-19 will not be required to review the employee's identity and employment authorization documents in the employee's physical presence. However, employers must inspect the Section 2 documents remotely (e.g., over a video link, fax or email, etc.) and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2. Employers also should enter "COVID-19" as the reason for the physical inspection delay in Section 2 Additional Information field once physical inspection takes place after normal operations resume.

03/19/20

Question: What is the workshare program through EDD?

Answer: Employers can apply for the Unemployment Insurance (UI) Work Sharing Program if reduced production, services, or other conditions cause them to seek an alternative to layoffs. For more information, please visit the [EDD website](#).

03/19/20

Question: Who is considered an essential business?

Answer: [Attached](#) is the most recent update to businesses and organizations that provide critical infrastructure.

03/17/20

Question: If we have an employee that is unable to work from home, do we need to pay them? Can we make them use their vacation or sick time first?

Answer: If they are not doing any work, you do not need to pay them. If they are non-exempt (hourly) you only need to pay them for the hours that they do work. For exempt (salaried), if they perform no work for an entire workweek, you do not need to pay them for that week. If they end up performing some work in the week (e.g. check emails or make phone calls for 30 minutes one day) you would need to pay them their weekly salary for that week. You can require them to use their vacation and should communicate that in advance. You can not require them to use their sick leave to receive pay but can give them the option to do so. However, if they are exempt and they are sick, attending doctors' appointments and/or caring for a sick family member, you can draw from their sick leave bank to make up the difference between what they worked and their weekly pay.

NOTE: If your employees are covered by a Collective Bargaining Agreement, it may specify how these situations need to be covered which could be different than the above.