



# DOL Issues Regulations and Guidance for FFCRA Paid Leave

The U.S. Department of Labor (DOL) has issued a [temporary rule](#) and updated their [Q&A](#) to implement the paid leave mandates of the Families First Coronavirus Response Act (FFCRA). The regulations provide direction for administration of the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA).

This action is intended to provide guidance to the regulated community as they implement the statutory requirements.

The most salient updates include:

- - New guidance that allows employers to require employees to use certain types of existing paid leave to run concurrently, for the same hours, with expanded family and medical leave after the first two workweeks (usually 10 workdays)
- - An expansion of the definition of *Child Care Provider* that now **also includes individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors**
- - A definition of what it means to be *Subject to a Quarantine or Isolation Order*
- - An expansion of the documentation requirements related to EFMLEA leave

## Expanded FMLA - Concurrent Leave Allowance

The DOL included new guidance in the temporary rule and the Q&A that will allow an employer to require an employee to use certain types of existing available leave concurrently with the EFMLEA leave. To be clear, the guidance doesn't mandate that an employer require the employee use this leave concurrently, it simply allows the employer to do so.

The prior guidance that an employer may not require employees to use provided or accrued paid vacation, personal, medical, or sick leave before the paid sick leave (EPSLA) still applies. The prior guidance that an employer may not require employees to use such existing leave concurrently with the paid sick leave under the EPSLA also still apply. We have included the full details from the two questions in the Q & A below:

### **If I am an 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 (including Federal Employees') other leave entitlements. You may not require your employee to use provided or accrued paid vacation, personal, medical, or sick leave before the paid sick leave. You also may not require your employee to use such existing leave concurrently with the paid sick leave under the EPSLA. But if you and your employee agree, 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. Note, however, that you are not entitled to a tax credit for any paid sick leave that is not required to be paid or exceeds the limits set forth under the EPSLA. You are free to amend your own policies to the extent consistent with applicable law.

### **If I am an employer, may I require my employee to take paid leave he or she may have under my 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, under your policies, 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 your employee the full amount to which he or she is entitled under your 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. You are free to amend your own policies to the extent consistent with applicable law.

### **Expanded Definition of Child Care Provider**

The DOL expanded the definition of *Child Care Provider* to also include individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors. We have included the updated definition from the temporary rule and the updated Q&A below:

*Child Care Provider.* The term “Child Care Provider” means a provider who receives compensation for providing child care services on a regular basis. The term includes a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that is licensed, regulated, or registered under State law as described in section 9858c(c)(2)(E) of Title 42; and satisfies the State and local requirements, including those referred to in section 9858c(c)(2)(F) of Title 42. Under the Families First Coronavirus Response Act (FFCRA), the eligible child care provider need not be compensated or licensed if he or she is a family member or friend, such as a neighbor, who regularly cares for the Employee’s child.

### **Who is my “child care provider”?**

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

### **Definition of Subject to a Quarantine or Isolation Order**

The DOL provided a definition of what it means to be *Subject to a Quarantine or Isolation Order*. We have included the new definition from the temporary rule as well as the updated Q&A below:

*Subject to a Quarantine or Isolation Order.* For the purposes of the EPSLA, a quarantine or isolation order includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the Employee to be unable to work even though his or her Employer has work that the Employee could perform but for the order. This also includes when a Federal, State, or local government authority has advised categories of citizens (*e.g.*, of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of Employees to be unable to work even though their Employers have work for them.

### **How do I know if I can receive paid sick 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 sick 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. In the instance where your employer does not have work for you as a result of a shelter-in-place or a stay-at-home order, please see [Questions 23-27](#).

### **Expanded FMLA - Documentation Requirements**

The DOL expanded the documentation requirements related to EFMLEA leave to include a requirement that no other suitable person will be caring for the son or daughter. We have copied the language from the temporary rule below.

To take Paid Sick Leave for a qualifying COVID-19 related reason under § 826.20(a)(1)(v) or Expanded Family and Medical Leave, an Employee must additionally provide:

- (1) the name of the Son or Daughter being cared for;
- (2) the name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and
- (3) a representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave.

The Employer may also request an Employee to provide such additional material as needed for the Employer to support a request for tax credits pursuant to the FFCRA. The Employer is not required to provide leave if materials sufficient to support the applicable tax credit have not been provided. For more information, please consult

<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>.

Please refer to the full text of the DOL's temporary rule and updated Q & A for greater detail and future updates.