

Families First Coronavirus Response Act: Emergency Paid Sick Leave

Frequently Asked Questions

Revised 4/15/20

Q: What is it?

A: The Families First Coronavirus Response Act (FFCRA) passed by Congress on March 18, 2020, includes the Emergency Paid Sick Leave Act (EPSL) which requires employers to provide paid sick time if an employee is unable to work or telework due to six qualifying reasons.

Q: When is this law effective?

A: It is effective from April 1, 2020 until December 31, 2020.

Q: Which employees are eligible?

A: Employees are eligible for EPSL immediately, regardless of length of employment. Employees designated as health care providers or emergency responders who are necessary to the Commonwealth's response to COVID-19 will be exempted from the EPSL provisions of the FFCRA.

Up to ten free additional sick days will be available for any employee who is exempt from the EPSL provisions of the FFCRA and who needs to use sick time due to COVID-19 for themselves or to care for a quarantined family member and will be paid at their full salary rate.

Q: Do employees who have accrued sick leave qualify for EPSL?

A: Yes, EPSL is in addition to any sick leave eligible employees may have already earned.

Q: When can an eligible employee use EPSL?

A: Employees may use EPSL (when they are unable to work or telework) for six qualifying reasons:

1. The employee is subject to a Federal, State or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who is subject to a quarantine or isolation order or health care provider advisory, as described above;
5. The employee who is unable to work or telework is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions;
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Q: How much EPSL are employees eligible to receive?

A: Employees are eligible for 10 days of emergency sick leave pay.

- For purposes of the EPSL, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week and a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week.

Q: If an employee takes paid sick leave under the EPSL, does that count against other types of paid sick leave to which the employee is entitled under State Law or policy?

A: No. Paid sick leave under the EPSL is in addition to other leave provided under Federal, State, or local law; a collective bargaining agreement; or policy.

Q: Can an employee take EPSL and PHEL together for any COVID-19 related reasons?

A: No. The PHEL applies only when an employee is on leave to care for the employee's child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons.

Q: When is ESPL no longer available to an employee?

A: When the ESPL has been exhausted or beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick time.

Q: What is telework?

A: The term "Telework" means work the Employer permits or allows an Employee to perform while the Employee is at home or at a location other than the Employee's normal workplace.

Q: If an employee is able to telework while quarantined, is the employee entitled to EPSL?

A: No, if the employee is able to telework, normal wages must be paid and it is not compensated EPSL. An Employee is able to Telework if: there is work for the employee; the employer permits telework, and there are no extenuating circumstances (like serious COVID-19 symptoms) preventing the employee from performing that work.

Q: An employee has tested positive for COVID-19, but is indicating that they feel well and want to telework, can they?

A: Yes, if the employee is not experiencing symptoms that would impair their ability to telework, and indicates that they are able and willing to telework, that employee may be permitted to do so.

Q: How does EPSL apply to an employee who has not yet received a diagnosis (Reason #3)?

A: Paid sick leave taken for this reason is limited to time the employee uses to seek a medical diagnosis (making, waiting for or attending an appointment) and is unable to work. An employee cannot use EPSL to self-quarantine if they have not taken steps to receive a medical diagnosis. Employees who are able to telework while seeking a medical diagnosis should continue to do so.

Q: Can an employee take EPSL only to care for a family member?

A: No. An employee may qualify for EPSL to provide care for an individual who is subject to a quarantine or isolation order or health care provider advisory as long as the employee has a personal relationship with, and a genuine need to care for them.

Q: Can I require an employee to find a replacement for their shift before they can take EPSL?

A: No. This is prohibited by the law.

Q: Can an employee use their accrued leave before using EPSL?

A: An employee may choose to use their accrued leave before using EPSL, but cannot be forced to do so.

Q: Are there any caps on how much employees are paid?

A: Yes. For employees unable to work for reasons related to 1-3 above, the payment for leave must be the greater of the employee's regular rate of pay or the highest applicable minimum wage (local, state or federal). EPSL is capped at \$511 per day per employee and \$5,110 in the aggregate, per employee for these reasons.

For employees unable to work for reasons 4-6 above, the leave must be the greater of 2/3 of the employee's regular rate of pay, or 2/3 of the highest applicable minimum wage (local, state or federal). For these purposes, paid sick time is capped at \$200 per day per employee and \$2,000 in the aggregate per employee.

Q: The FFCRA also included Public Health Emergency Leave, (PHEL) do employees qualify for both?

A: Yes, if an employee uses EPSL for qualifying reason #5, they may also be eligible for up to 12-weeks of PHEL. Up to the first two weeks of PHEL may be taken as paid leave using EPSL. If applicable, the remaining 10-weeks would be paid pursuant to the PHEL.

Q: Does unused EPSL carry over after December 31, 2020?

A: No. This leave does not carry over from one year to the next.

Q: When are employees eligible for paid sick leave based on a "substantially similar condition" specified by the U.S. Department of Health and Human Services (Reason #6)?

A: 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 sick leave. If HHS does identify any such condition, the Department of Labor will issue guidance explaining when employees may take paid sick leave on the basis of a "substantially similar condition."

Q: What is a Health Care Provider?

A: The U.S. Department of Labor has for the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the EPSL and PHEL, stated 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 the above institutions, employers, or entities institutions to provide services or to maintain 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.

The U.S. DOL has also stated that the Governor may designate any individual who is a necessary to the Commonwealth of Massachusetts' response to COVID-19 a health care provider.

Q: What is an Emergency Responder?

A: The U.S. Department of Labor has for the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, stated an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of 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, 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.

The U.S. DOL has also stated that the Governor may designate any individual who is a necessary to the Commonwealth of Massachusetts' response to COVID-19 an emergency responder.

Q: Can employees take 10 days for self-quarantine and then another amount for another reason under the EPSL?

A: No. The total number of days is capped at 10 days under the EPSL.

Q: What documentation can be requested to support the need for EPSL?

A: An employee must provide a signed statement containing their name, the dates for which leave is requested, the qualifying reason for EPSL leave and a statement that they are unable to work or telework because of that qualifying reason. Additionally, employees must provide additional documentation depending upon the qualifying reason, including:

- The source of the quarantine or isolation order
- Name of the health care provider who has advised the self-quarantine for the employee or individual for whom the employee has a genuine need to provide care
- For qualifying reason #5: (1) the name of the child being care for; (2) the name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons; and (3) a statement representing that no other suitable person is available to care for the child during the period of requested leave.

Q: How much notice do employees have to provide?

A: Employees should provide as much notice as practicable, but notice may not be required in advance, and may only be required after the first workday (or portion thereof) for which an employee takes EPSL.

Q: If an employee receives 2/3 of their pay with EPSL and PHEL, can an employee use leave accruals at the same time to allow for full pay?

A: Employees will not be able to supplement EPSL or PHEL with leave accruals.

Q: Can EPSL be used on an intermittent basis?

A: No, EPSL cannot be used intermittently.

Q: What benefits are available to an employee who has been excluded from this law (Core employees) but has tested positive or ordered to be quarantined due to COVID-19 diagnosis or exposure?

A: Employees who have been excluded from this law but have tested positive or ordered to be quarantined due to COVID-19 diagnosis or exposure or are needed to care for an immediate family member subject to quarantine are encouraged to contact their HR Director to discuss available options including:

- Up to ten free additional sick days will be available for any such core employee and will be paid at their full salary rate.

Q: Is this law retroactive?

A: No, EPSL became available on April 1, 2020.

Q: Are employees entitled to EPSL if they have a qualifying reason but exhausted all of their available FMLA prior to the passage of the law.

A: Employees who have exhausted their FMLA would be entitled to 10 days of EPSL for a qualifying reason. The employee would not be eligible for PHEL.

Q: What is a childcare provider?

A: Childcare providers include center-based childcare provider, a group home childcare provider, a family childcare provider, or other provider of childcare services for compensation that is licensed, regulated, or registered under State law.

The definition of childcare provider can also include affinity childcare which is a caregiver 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, if such provider complies with any applicable requirements that govern child care provided by the relative. For affinity childcare: an eligible child must be less than 13 years of age and

- The child's family income does not exceed 85 percent of the State median income for a family of the same size, and the child's family assets do not exceed \$1,000,000 (as certified by a member of that family;) and
- who—
 - resides with a parent or parents who are working or attending a job training

- or educational program; or
- is receiving, or needs to receive, protective services and resides with a parent or parents.

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.

Q: How will employees learn about the law?

A: All employers must post a notice prepared by the Department of Labor in the work locations where such notices are customarily posted.

Q: How do I track an employee's use of EPSL?

A: Agencies may use their typical tools and processes to keep track of employee use of EPSL. HRD will provide a job aid and other supports to agency HR to ensure compliance with the law.

Q: How do employees receive pay for using EPSL?

A: Agency HR staff should enter the appropriate time reporting code (TRC) on behalf of employees approved to take EPSL. These TRCs will provide the appropriate pay for employees through their regular means of receiving pay (direct deposit or check). See the Communication to Agency HR for more information on the new TRCs.

Q: Are there any penalties for not paying EPSL?

A: Yes, nonpayment of EPSL will be treated as failing to pay minimum wages under the Fair Labor Standards Act. Employers are also prohibited from disciplining or discriminating against an employee for using EPSL.