

Families First Coronavirus Response Act – Frequently Asked Questions

PRELIMINARY ISSUES

Eligibility and Coverage – In General

Q. Can a department deny an eligible employee’s leave request under the Families First Coronavirus Response Act for operational need?

A. No. Departments cannot deny an eligible employee’s leave request based on operational need.

Q. What does it mean to be unable to work, including telework, for the Families First Coronavirus Response Act?

A. It means the employee cannot work, including telework, due to one of the six qualifying reasons listed in the policy, even though the employer has work available to be perform..

Q. If an employee is unable to telework is the employee entitled to EPSLA or E-FMLA?

A. EPSLA. Yes. If the employer has offered work, including telework, and the employee is unable to perform the work required due to one of the qualifying reasons for EPSLA, the employee is entitled to use EPSLA.

E-FMLA. If the employer has offered work, including telework, and the employee is unable to perform the work required because the employee needs to care for their child whose school or place of care is closed, or a child care provider is unavailable for COVID-19 reasons, yes, the employee is entitled to take E-FMLA.

Q. If more than one guardian works for the state, and their child’s school is closed, are both employees eligible to receive the leave?

A. Yes, both would be eligible for EPSLA and E-FMLA but generally the leave must be used separately. While both employees can take leave, the leave cannot generally be taken on the same day.

Q. Are intermittent time base employees who are working eligible for EPSLA and E-FMLA?

A. Intermittent time base employees, including temporary (seasonal) or permanent who are working and scheduled to work are eligible to take leave. Intermittent employees who are not scheduled to work or who are not teleworking are not eligible for this leave.

EMERGENCY PAID SICK LEAVE ACT

Q. The state allows full payment for paid sick leave, while the federal law has a lesser benefit. Which benefit applies?

A. Departments must follow the state policy, as outlined in CalHR’s policy, for eligible employees. Per state policy the employee will receive full sick leave pay for all qualifying EPSLA reasons for the first two-weeks.

Families First Coronavirus Response Act – Frequently Asked Questions

Q. Can an employee have more than two-weeks of EPSLA? For example, the employee used their 80 hours to quarantine and now their child has been told to quarantine?

A. No. Employees are only entitled to two-weeks of EPSLA. Employees may be able to take additional leave under the California Family Rights Act (CFRA), FMLA, or E-FMLA, if eligible. Additionally, an employee may be able to collect a wage replacement under Paid Family Leave or Nonindustrial Disability Insurance Family Care Leave, if eligible. Finally, an employee may be able to use available leave credits to cover the quarantine period of the child.

Q. Does the “order” to quarantine or self-isolate need to come from a local public health agency to qualify for EPSLA?

A. The order must come from a federal or state order, or a health care provider to quarantine due to qualifying reasons 1, 2, 3, 4 and 6 that specifically prevents the employee from being able to work, including telework.

Q. Are employees who have COVID-19 symptoms and are seeking medical attention eligible to take EPSLA while they are awaiting test results?

A. Yes. Under qualifying reason number 3, the employee is entitled to EPSLA. If the diagnosis is negative, the eligibility for EPSLA stops.

Q. Are employees who are 65 years and older or who have underlying health conditions that make them more vulnerable to COVID-19 able to use EPSLA for these reasons?

A. No, it must be used for one of the six reasons specified in the policy.

Q. What is considered “any other” “substantially similar condition” specified by U.S. Department of Health and Human Services?

A. Specific conditions identified by U.S. Department of Health and Human Services. Per the U.S. Department of Labor, as of April 5, 20<https://www.saccounty.net/COVID-19/Pages/default.aspx>²⁰, the U.S. Department of Health and Human Services has not identified any substantially similar conditions.

Q. What documentation is required for EPSLA?

A. Departments may require a doctor’s note as long as it complies with the Memorandum of Understanding (MOU). However, CalHR also recommends looking at what the county requires. For example, Los Angeles County Public Health has very clear instructions for anyone who has been exposed or has the virus to self-isolate and/or quarantine. Departments should check the local jurisdiction public health website and consider the impact on the health system if employees are required to provide a doctor’s note when the county has already issued very specific guidance about documentation.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Q. If more than one guardian works for the state, do they both qualify to take paid leave under the Emergency Family and Medical Leave Expansion Act (E-FMLA)?

Families First Coronavirus Response Act – Frequently Asked Questions

A. Leave taken under E-FMLA is not a shared amount. The parents may switch back and forth intermittently taking leave to care for their children due to school or child care closures.

Q. Who is considered a child care provider?

A. A child care provider can be anyone who cares for the child, including paid and non-paid individuals, including grandparents, aunts, uncles, or neighbors.

Q. Can an employee take E-FMLA to care for a child other than their own?

A. No. This leave is available to care for the employee's own son or daughter. The definition of son or daughter includes a biological, adopted, foster child, stepchild, a legal ward, or a child who the employee is standing in loco parentis ("in place of the parent") who has the day-to-day responsibility to care for or financially support the child. The child must be under the age of 18, or if over the age of 18, be unable to provide self-care because of a mental or physical disability.

OTHER ISSUES

Q. What record retention is required?

A. The same as for any other pay and Family Medical Leave Act and California Family Rights Act documentation retention.

Poster Requirements

Q. Is CalHR planning to come out with its own poster to clarify the difference between the federal law and state policy?

A. No. The federal poster should be posted as required. Departments should communicate CalHR policy through their normal channels.