

## COVID-19 FAQs

*current as of March 27, 2020*

**Q. Can I send home an employee who is showing COVID-19 symptoms?**

A. Yes. One caution: this practice should be exercised uniformly and consistently among all employees. Requiring some employees to go home and allowing some employees to stay could lead to a charge of discrimination.

**Q. Can I send home an employee who is not showing COVID-19 symptoms, but may have been exposed to the virus?**

A. Yes, if they have had close contact, sat in an aircraft with, or live in the same household as someone with symptomatic, confirmed COVID-19.

**Q. Can I send home an employee who has traveled to a high risk area (China, Iran, South Korea, Italy)?**

A. Yes, but be extremely careful to be consistent and base your decision on recent travel only. Do not discriminate against an employee based on the employee's national origin.

**Q. Can I require employees to telecommute?**

A. Yes, if they are able based on their particular jobs.

**Q. Can I require a symptomatic employee to be fever and symptom free for 24 hours before returning to work?**

A. Yes. If an employee does not feel well enough to work after being fever and symptom free after 24 hours the employee should be allowed to remain out of work. If the illness lasts three or more consecutive days, or requires hospitalization or a visit to a health care provider with continuing care, the employer should begin the FMLA process. If the illness limits one or more major life activities, the employer should consider the Americans with Disabilities Act.

**Q. Can I deny an employee from returning to work even if the employee/employee's doctor says they are fit to return?**

A. Yes, if you believe the employee still poses a health risk to your other employees.

**Q. Can I require an employee to use PTO if he or she is absent related to COVID-19?**

A. Yes, provided you follow your own PTO policy and enforce it consistently.

**Q. Can I provide employees with additional sick days or allow employees to go “into the red” on PTO for absences related to COVID-19?**

- A. Yes, however, advancing PTO can be an administrative hassle and leave you holding the bag if the employee terminates with negative PTO, depending on state law. Many employers are drafting policies that grant employees an additional number of sick days for 2020 that can be used for COVID-19 related absences. The additional sick days do not carry over into the following year and are not payable on termination if the policy is drafted correctly.

Employers may also enact a temporary policy to excuse all COVID-19 related absences, but the policy should be drafted to be legally compliant and should be applied uniformly.

**Q. Can I pay employees for COVID-19 related absences even if they are not entitled to paid sick or vacation leave, or PTO?**

- A. Yes, but you should clearly establish the policy and apply it consistently.

**Q. How do state and local paid sick leave laws relate to COVID-19 related absences?**

- A. Some paid sick leave laws only permit the use of paid sick leave for the employee’s illness or the illness of a family member. This may not apply to asymptomatic employees who self- quarantine after travel, for example. Some paid sick leave laws permit the use of paid sick leave related to school and child care closure, communicable disease exposure, and public health emergency. Employees whose children’s schools have closed may be entitled to use paid sick leave depending on jurisdiction. In addition, several states have declared a public health emergency, and many are expected to follow.

**Q. Can I require a nonexempt employee to use PTO in partial day increments?**

- A. Yes (subject to state and local law)

**Q. Can I require an exempt employee to use PTO in partial day increments?**

- A. Yes (subject to state and local law), as long as the exempt employee receives his or her full salary and his or her pay is not docked.

**Q. Do I have to pay a nonexempt employee if the business is closed, shut down, or no work is available due to COVID-19?**

- A. Nonexempt employees only need to be paid for time actually worked.

**Q. Do I have to pay an exempt employee if the business is closed, shut down, or no work is available due to COVID-19?**

- A. If the employee is ready, willing, and able to work, and the employer sends the employee home, the employer must pay the employee for a full week if the employee performs any work in that workweek. If the employee chooses to be absent (due to illness or self-quarantine, for example), the employer may deduct only for full seven day absences that coincide with the workweek.

**Q. Can I assign attendance points or unexcused absences for absences related to COVID-19?**

- A. Yes, unless the absences fall under FMLA or ADA territory. Also, disciplining or terminating an employee for COVID-19 related absences is extremely damaging to employee morale, and may encourage employees who have been exposed or are experiencing symptoms to come to work to avoid discipline or termination, thereby risking the health of everyone at work.

**Q. Is COVID-19 covered by traditional FMLA?**

- A. Only if the employee (or qualifying family member) experiences three calendar days of incapacity plus two treatments by a healthcare provider, or more than three calendar days of incapacity plus one treatment by a healthcare provide plus continuing treatment.

**Q. Do I have to provide reasonable accommodations to an employee with COVID-19 under the ADA?**

- A. Generally no, as the illness is too transient in nature to be considered a disability. However, COVID-19 may trigger other health conditions in an employee such as asthma, pneumonia, or cardiovascular disease, all of which are considered disabilities and must be accommodated. If an employee is undergoing chemotherapy or has a disease of the immune system, for example, that is most likely to be a disability that must be accommodated. Employees with those conditions may be homebound to avoid exposure, and should be accommodated with telecommuting arrangements, leave, or other reasonable accommodations.

**Q. Can we tell other employees, customers, vendors, contractors, or others on the premises if one of our employees has tested positive or been exposed to COVID-19?**

- A. You should disclose that there has been an individual who tested positive for or was exposed to COVID-19 in the workplace. You should keep the identity of the individual strictly confidential.

**Q. Can an employee refuse to come to work to avoid exposure to or infection with COVID-19?**

- A. There are federal laws that may protect an employee's right to refuse to come to work under certain circumstances. These individual circumstances should be evaluated by counsel on a case by case basis.

**Q. Can an employer refuse to allow an employee to wear a mask?**

Yes, an employer can prohibit face masks.

**Q. Do I have to provide equipment for employees working from home?**

- A. Depending on state law, you may be required to reimburse your employees for all business expenses. You cannot require a nonexempt employee to purchase any equipment the cost of which would put the employee's wages below minimum wage for hours worked.

**Q. Does workers' comp cover an employee if they are injured in their home while telecommuting?**

- A. Yes. If the employee is acting in the course of their employment when the injury occurs, the injury is covered by workers' comp.

**Q. Are our employees eligible for unemployment if we have to close for a few weeks?**

- A. Probably. Eligibility for unemployment benefits is dependent on a number of factors and determined by each state's unemployment division but generally, employees who are not working through no fault of their own are eligible for unemployment. An employee who was ill with COVID-19 symptoms or was in quarantine would most likely be ineligible for unemployment, because they are not ready, willing, and able to work.

**Q. We are a non-profit and do not have unemployment. How do we handle this?**

- A. Non-profits are exempt from Federal Unemployment Tax Act (FUTA), but not from the State Unemployment Tax Act (SUTA). Most non-profits must pay out unemployment benefits in one of two ways: through unemployment insurance taxes or as a reimbursing (self-insured) employer. A 501(c)(3) organization has the option of opting out of its state unemployment insurance program. Instead of paying a set amount of unemployment tax to the state every year regardless of how many of its employees file claims, it reimburses the state only for unemployment claims the state actually pays out to its former employees. This can save big money because nonprofits typically pay more in unemployment taxes than the state pays out for the nonprofit's former employees' claims. In the past, many nonprofits have saved 30% to 40% over five to ten years.

But there are obvious risks to this approach. If your nonprofit is forced to lay off substantial staff, the unemployment costs it will have to reimburse the state could far exceed the unemployment tax it would otherwise have had to pay. This risk is doubtless greater now than in the past because so many nonprofits are experiencing declining funding. To mitigate these risks, thousands of nonprofits have joined grantor trusts that pool money from many organizations to pay off future claims. It is also possible to purchase private insurance to cover claims.

**Q. In regard to Families First Coronavirus Response Act, to receive the tax credits, what requirements do we have as a business?**

- A. Please review our blog posted March 22nd on our COVID-19 website:  
<https://www.myhrcounsel.com/covid19>

**Q. If we are considered an essential service, do we need to have employees who are working sign off saying they agree to perform their services and are aware of the risks of exposure to COVID-19?**

- A. No.

**Q. At what point should we notify employees about co-worker - when exposed? tested? or positive?**

- A. If an employee is confirmed to have COVID-19 infection or believes they have been exposed, employers should inform fellow employees, clients, vendors or anyone else the employee may have come into contact with of their possible exposure to COVID-19 in the workplace. However, employers must maintain confidentiality as required by the Americans with Disabilities Act (ADA). The fellow employees should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).

**Q. Does short term or long term disability apply to the current situation?**

- A. Yes, employees may be able to receive income replacement through a short-term or long-term disability policy. You should refer your employees to their providers for information on eligibility and benefits.

**Q. What if the leave is before the April 2nd effective date?**

- A. The new effective date is April 1st. The law is not retroactive, so any leave taken prior to the effective date does not qualify for the Family First Coronavirus Response Act Leave. Further any paid leave employers allowed employees to take prior to the April 1st effective date are not eligible for tax credits.

**Q. If an employee uses up all their new 80 hours of paid sick leave, but need more time, is the rest unpaid?**

- A. Yes, unless they have some other type of paid leave available to them.

**Q. Is it possible for employees, who have had work hours cut, but are still working to receive unemployment compensation?**

A. Depending on the state where your employees work and the amount of hours that have been cut, they may be eligible for unemployment benefits. You should direct employees whose hours have been cut to apply for unemployment insurance benefits.

**Q. I have heard there are exemptions for the FMLA emergency act - we are a social service agency. Are we exempt?**

A. It is unlikely you are exempt. Under the Act, special rules apply for Health Care Providers and Emergency Responders.

**Q. Businesses with fewer than 50 employees may be exempt... Is that for sure, or just proposed?**

A. 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. To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations. *You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.* Again, this exemption only applies to the leave requirements due to school or daycare closings.

**Q. Our employees are on furlough. They are not working because work is not available at this time. They applied for UC. Do we still have to pay them under the emergency FMLA and paid sick leave act for 2 weeks?**

A. Please see the below guidance from the Department of Labor on this topic:

**If my employer closed my worksite before April 1, 2020 (the effective date of the FFCRA), can I still get paid sick leave or expanded family and medical leave?**

No. If, prior to the FFCRA's effective date, your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility.

It should be noted, however, that if your employer is paying you pursuant to a paid leave policy or State or local requirements, you are not eligible for unemployment insurance.

**If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but before I go out on leave, can I still get paid sick leave and/or expanded family and medical leave?**

No. If your employer closes after the FFCRA's effective date (even if you requested leave prior to the closure), you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility.

## **If my employer closes my worksite while I am on paid sick leave or expanded family and medical leave, what happens?**

If your employer closes while you are on paid sick leave or expanded family and medical leave, your employer must pay for any paid sick leave or expanded family and medical leave you used before the employer closed. As of the date your employer closes your worksite, you are no longer entitled to paid sick leave or expanded family and medical leave, but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because the employer was required to close pursuant to a Federal, State or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

### **Q. How do you determine if the employees get emergency FMLA or paid sick leave?**

- A.** They may be eligible for both depending on the reason for the leave. If the need for leave is due to a minor child's school or daycare closing, they would be eligible for both types of leave.

If the need for leave only falls under the qualifying reasons for the emergency Paid Sick Leave, then they would only be entitled to the Paid Sick Leave. See this guidance from the Department of Labor:

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 sick leave and expanded family and medical 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. The Emergency Paid Sick Leave Act 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 Emergency and Family Medical Leave Expansion Act unless the 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 Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act 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.

### **Q. Do state and local 'stay-home' orders count as quarantine?**

- A.** No. Employees who are subject to a Federal, State or local quarantine order under the first qualifying reason for EPSL is not the same as a state or local shelter-in-place, stay home or other isolation order. Quarantine orders are a term of art and refer to an individual who has been confirmed to or suspected to have COVID-19 and is individually required to quarantine. If you close your worksite, even for a short period of time, employees are not entitled to take paid sick leave or expanded family and medical leave. However, employees may be eligible for unemployment insurance benefits. This is true whether your company closes for lack of business or because it was required to close pursuant to a Federal, State, or local directive.

**Q. If an employee has been permanently laid due to lack of work because of COVID-19, who is responsible for filing for unemployment - the business or employee?**

A. In most cases, employees should be the ones filing for unemployment. Some states may have differences on those requirements. Please visit our website at <https://www.myhrcounsel.com/covid19> to find links to each state's unemployment website for guidance.

**Q. We have part-time employees and interns but our offices are closed (we're still open but not working in the office) so they have nothing to do. Do I still have to pay them?**

A. If they are non-exempt and not performing any work, then no you do not have to pay them when they are not working.

**Q. Does an Employee have to use any remaining PTO before filing for unemployment?**

A. If you layoff or terminate an employee, you may be required to pay out accrued, but unused PTO to an employee depending on state law and employer policies. Consult your states' unemployment laws as each state is different as to whether accrued, but unused PTO balances are deducted from unemployment insurance payments.

**Q. If people are home for shelter in place do small businesses have to pay employees for the emergency Paid Sick Leave? And also is it different for employees who could work remotely but they are taking care of kids with no child care.**

A. The emergency Paid Sick leave law states that employees who are subject to a federal, state or local quarantine are eligible for paid sick leave under that act. However, that does not apply to shelter-in-place, stay at home or other state and local isolation orders. If an employee is unable to work or telework due to a child's school or daycare being closed, they are also eligible for the emergency FMLA and Paid Sick Leave.

**Q. For furloughs, are you required to provide a set timeframe of unpaid time off? Or can you indicate return to work date undetermined?**

A. We recommend setting an initial timeframe to set employee expectations, but advise carving out an exception that the furlough may be extended as the situation warrants.

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

A. If one of your employees takes paid sick leave under the Emergency Paid Sick Leave Act, you must require your employee to provide you with appropriate documentation in support of the reason for the leave, including: the employee's name, qualifying reason for requesting leave, statement that the employee is unable to work, including telework, for that reason, and the date(s) for which leave is requested. Documentation of the reason for the leave will also be necessary, such as the source of any quarantine or isolation order, or the name of the health care provider who has advised you to self-quarantine. For example, this documentation may include a copy of the Federal, State or local quarantine or isolation order related to COVID-19 applicable to the employee or written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave wages, you should retain this documentation in your records. You should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit.

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 child care provider is unavailable, due to COVID-19, under the Emergency Family and Medical Leave Expansion Act, you must require your employee to provide you with appropriate documentation in support of such leave, just as you would for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care 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. If you intend to claim a tax credit under the FFCRA for the expanded family and medical leave, you should retain this documentation in your records.

You should consult IRS applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit.

**Q. If an employee has already used 12 weeks of FMLA leave within the last year, must we give them additional leave?**

- A. The way that the law is written, it does not seem that it expands an eligible employee's FMLA leave entitlement to greater than 12 workweeks during any 12-month period. Accordingly, an employee that has otherwise exhausted FMLA leave during the 12-month period is not entitled to additional 12 weeks of leave under EFMLA. That said, as we understand it, this employee would still be eligible for ten days of Emergency Paid Sick Leave under the Act, as well as any other available leave under state and local laws or company policies.

**Q. Can we make exempt employees use PTO hours if they do not work their usual hours during this time?**

- A. Employers may require exempt staff to take vacation or paid time off (PTO) in the case of an office closure due to COVID-19, whether for a full- or partial-day absence, so long as the exempt employee receives his or her full guaranteed weekly salary. If the exempt employee does not have sufficient vacation time or PTO available, the employee must still receive the full guaranteed salary for any week in which he or she performs any work in order to maintain the employee's exempt status. The exempt employee does not have to be paid for any week in which no work is performed. Here again, employers should determine any additional pay obligations imposed by applicable state law.

**Q. What about salaried employees with furlough? Just pay hourly equivalent rate of 30 hours a week (as example), as opposed to the standard 40?**

- A. With exempt employees, if they perform any work in a workweek, they must be paid their full salary.

**Q. Are we required to apply for loans to keep employees paid or can we just direct them to apply for unemployment**

- A. See our blog regarding IRS guidance on our COVID-19 webpage: [myHRcounsel.com/covid19](https://myHRcounsel.com/covid19)

**Q. Do the EFMLA and EPSL acts cover employees who choose to take leave because they can't afford daycare due to reduction in hours because of COVID-19?**

- A. Unless other guidance is provided, this is not how the statute reads. EFMLA and EPSL only cover employees if the daycare is closed or otherwise unavailable due to a public health emergency.

**Q. If an employee is laid off - can they ask to be paid their vacation they have earned and are eligible for per their employee handbook?**

A. If you separate an employee through a layoff or termination, you will need to pay out accrued but unused vacation or PTO if either your state or local law require it, a collective bargaining agreement requires it, or it is guaranteed to an employee through the company's written policies like an employee handbook.

**Q. If you don't reveal the employee's name who tested positive, how do you go about informing ones sitting next to the person that they should be tested?**

A. To reveal the employee's name would be a violation of various laws including the ADA and HIPAA. You should inform all employees that someone within the workplace tested positive and that they should monitor their symptoms. This way you have notified all employees, including those sitting next to the employee who tested positive.

**Q. Instead of furlough or layoff, can we suggest someone take EFMLA instead? Better for employee and also the business would get reimbursed.**

A. Emergency FMLA only covers employees who are unable to work or telework due to a minor child's school or place of care being closed, so it is likely not a good substitute for layoffs or furloughs.

**Q. We are a very small employer with no sick leave. Would we still have to provide the new emergency FMLA sick leave?**

A. Yes, the new laws apply to all companies that have fewer than 500 employees. There are exemptions to the law for those companies smaller than 50 that would have a financially difficult time providing some of these benefits. However, the exemption only applies to companies who are not financially able to provide child-care related paid sick leave and expanded FMLA. This small employer exemption does not apply to any of the other qualifying reasons an employee may take the EPSL or expanded FMLA.

**Q. Can non-exempt employees use the emergency PSL if they just don't want to go to work because they are fearful?**

A. As much as we might be able to commiserate with a scared employee, being fearful to go to work is not an eligible reason for leave under the new law.

**Q. For temporary staffing firms, how is the "employee count" calculated? Are temporary employees included? Or only corporate, full-time and part time employees?**

A. You have fewer than 500 employees if, at the time your employee's leave is to be taken, you employ fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. In making this determination, you should include employees on leave; temporary employees who are jointly employed by you and another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer's payroll); and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than employees, are not considered employees for purposes of the 500-employee threshold.

**Q. We are a 12-person organization. We would be alright if a couple of employees took advantage of the emergency FMLA, but not all. Would we be able to say a certain number of employees can take advantage of the acts but above a certain number would jeopardize the business?**

A. No – you will need to provide these leaves for any employee that otherwise qualifies.

**Q. If there are two parents for a child out of school/daycare, can both be eligible for pay under the FFCRA?**

A. Until we receive further guidance, the law does not specifically state that it can only be one parent or the other, so it appears that both employees would be eligible for pay leave to care for a minor child whose school or daycare facility is closed or unavailable under the FFCRA.

**Q. What about a “Fitness for Duty” for someone who is out for COVID-19 cases but not on FMLA?**

A. You can require fitness for duty certification if an employee misses work due to COVID-19 and wants to return.

**Q. On a long term scale, will unemployment rates go up if employees go on unemployment due to COVID-19?**

A. Many states are passing relief measures which are designed to protect companies from being negatively impacted by unemployment claims related to COVID-19.

**Q. What if we have an employee is coughing and sneezing for a few days now. Can we ask that employee to get cleared by doctor in order for him to return to work?**

A. Employees who have symptoms (i.e., fever, cough, or shortness of breath) should notify their supervisor and stay home. Sick employees should follow CDC-recommended steps. Employees should not return to work until the criteria to discontinue home isolation are met, in consultation with healthcare providers and state and local health departments. Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and follow CDC recommended precautions.

**Q. What about their health insurance? Do employees need to go be given COBRA notices or can we continue to pay for the health insurance?**

A. Employers should review their group health plan document (or certificate of coverage if your plan is fully insured) to determine how long employees who are not actively working may remain covered by your group health plan. Once this period expires, active employee coverage must be terminated (unless the insurance carrier or self-funded plan sponsor otherwise agrees to temporarily waive applicable eligibility provisions), and a COBRA notice must be sent. If your plan is self-funded and you would like to waive applicable plan eligibility provisions, you should first make sure that any stop-loss coverage insurance carriers agree to cover claims relating to participants who would otherwise be ineligible for coverage.

**Q. Are termination letters mandatory to be provided to terminated employees?**

A. It is highly advisable that you provide a termination letter to any employee you are letting go to be very clear about the employee’s work status, benefits they are eligible for like COBRA and how to apply for unemployment.

**Q. As an employer, what documents or information do I need to provide for my employees to apply for unemployment?**

A. Every state is different, but most states have an unemployment notice form that you can provide. Check out your states' unemployment website for guidance.

**Q. Do part-time employees qualify for benefits under the FFCRA?**

A. Yes.

**Q. In regards to states that have shelter in place order, does that apply if a business is already fully mobile and having people working at home? Doesn't make sense to shut businesses down if people are already at home and still work.**

A. If your employees are able to work remotely and operations continue but the employee becomes ill and cannot work for a period of time or is otherwise covered by one of the qualifying reasons under either the EFMLA or EPSL laws, you provide them with the job-protected paid leave.

**Q. Do these Acts cover public sector employers?**

A. 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. Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

**Q. Please define WARN**

A. WARN is the Worker Adjustment and Retraining Notification Act.

**Q. Does the paid leave taken under the FFCRA need to be taken all at once or can it be used intermittently?**

A. According to the Department of Labor:

**May I take my paid sick 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 Emergency Paid Sick Leave Act. In that situation, you and your employer may agree that you may take paid sick 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.

The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

**May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?**

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

If you no longer have a qualifying reason for taking paid sick leave before you exhaust your paid sick leave, you may take any remaining paid sick 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 paid sick leave intermittently if you are taking paid sick leave to care for your child whose school or place of care is closed, or whose child care 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 paid sick leave on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite on Tuesdays and Thursdays.

The Department encourages employers and employees to collaborate to achieve maximum flexibility. Therefore, if employers and employees agree to intermittent leave on less than a full work day for employees taking paid sick leave to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19-related reasons, the Department is supportive of such voluntary arrangements.

**May I take my expanded family and medical leave intermittently while my child's school or place of care is closed, or child care 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.

The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements.