



Executive Series | What You Need To Know
COVID-19 | Employee Benefits Compliance Webinar
Frequently Asked Questions (FAQs)

FFCRA Leave Provision Considerations



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FFCRA Leave Provision Considerations

April 20, 2020

On March 31, 2020, USI's national Employee Benefits Compliance team hosted a COVID-19 Employee Benefits Compliance Update Webinar. During the call, many questions were submitted by participants. These questions have been collected and answered here, split into three topics: group health plan coverage considerations, FFCRA leave provision considerations, and FFCRA payroll tax credit considerations.

The following questions and answers address leave provision considerations under the Families First Coronavirus Response Act ("FFCRA").

This material is up to date as of April 20, 2020. Due to the rapidly changing nature of this information, there may be new or updated guidance that is not included in this summary. The DOL regularly updates their website with FAQs related to the FFCRA paid leave. For more information, visit <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.¹

Employer Size

Q1: We are a global employer with more than 5,000 employees worldwide. Do we count all employees or just those within the United States to determine whether we are subject to the leave requirements under FFCRA?

The determination of whether an employer has fewer than 500 employees is based on all employees within the United States (this includes any state, the District of Columbia or any territory or possession of the United States).

See [DOL FAQ 2](#).

Q2: We are a University. For purposes of determining whether we employ fewer than 500 employees, do we count adjunct faculty?

A public university is subject to the FFCRA leave requirements regardless of size. However, it would not be eligible for tax credits with respect to its paid leave expenses. From [IRS FAQs](#):

Eligible Employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide paid sick leave under the EPSLA and to provide paid family leave under the Expanded FMLA (note that although the FFCRA requires most government employers to provide paid leave, it does not entitle those governmental employers to tax credits for this leave).

¹ The IRS also maintains a website of FAQs related to the tax credits available under FFCRA. For more information, visit <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>.



A private university would be subject to the FFCRA leaves if it employed fewer than 500 employees on the date the leave is taken. Assuming the adjunct faculty are employees of the University (and not independent contractors), it would appear they are counted for this purpose.

See also [DOL FAQ 2](#).

Q3: As an employer I have over 500 employees on April 1 and do not believe I am subject to FFCRA leave. However, in May, I lay off 100 employees. In June, an employee starts a leave protected under FFCRA and my employee count is 400. Do I have to follow the FFCRA laws?

Employers should use the number of employees on the day the employee's leave would start to determine whether the employer has fewer than 500 employees for purposes of providing FFCRA leave benefits. "Layoff" infers the employees are no longer considered to be employees. Thus, in this situation, as of June when the employee starts a leave, the employer has fewer than 500 employees and therefore must comply with FFCRA leave with respect to that employee.

See also [DOL FAQs 2](#).

Employee Eligibility

Q4: What is an employee's eligibility for FFCRA if they are hired after April 1, 2020?

Any employee is eligible for EPSLA, including an employee hired on or after April 1, 2020. And an employee is eligible for EFMLEA after 30 calendar days on the employer's payroll.

See [DOL FAQ 14](#).

Q5: When determining the number of employees, how are employees counted? Do hours matter in the calculation?

An employer has fewer than 500 employees if, at the time the employee's leave is to be taken, it employs fewer than 500 full-time and part-time employees within the United States.²

The 500-employee threshold is determined under regular FMLA rules which include:

- Not using controlled group rules. Where one corporation has an ownership interest in another corporation, it is a separate employer unless it meets the:
 - "joint employment" test (where two or more businesses exercise some control over the work or working conditions of the employee); or

² Includes any state of the United States, the District of Columbia, or any territory or possession of the United States.



- “integrated employer” test (factors include: (i) common management; (ii) interrelation between operations; (iii) centralized control of labor relations; and (iv) degree of common ownership/financial control).
- Including employees on leave and employees placed with the employer by a temporary agency.

See [DOL FAQ 2](#).

Emergency Paid Sick Leave Act (“EPSLA”)

Q6: Briefly, what is EPSLA under FFCRA?

The EPSLA requires employers to provide up to two weeks (80 hours) of paid sick leave at full pay (up to \$511/day/employee) when an employee is unable to work (or telework) because the employee:

1. is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
3. is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

EPSLA provides up to two weeks of paid sick leave at 2/3 of an employee’s pay (up to \$200/day/employee), when the employee is unable to work (or telework) because the employee:

4. is caring for an individual who is subject to an order as described in (1), or who has been advised as described in (2);
5. is caring for his or her son or daughter whose school or place of care has been closed or whose childcare provider is unavailable due to COVID-19 related reasons; or
6. 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.

Q7: Is paid sick leave under EPSLA paid at the employee’s full salary for the two-week period?

Simply put:

- For situations 1, 2 and 3, the employee is eligible for their average regular rate up to \$511/day (\$5,110 in the aggregate).
- For situations 4, 5, and 6 the employee may be eligible for 2/3 of their average regular rate up to \$200/day (\$2,000 in the aggregate)

However, determining the amount the employee must be paid during any of the required sick leave events is more complicated.



The employer must identify:

- whether the employee is full-time or part-time;
- the employee's average regular rate; and
- the type of sick leave being requested.

Full-time Employees

A full-time employee is entitled to 80 hours of paid sick leave over the two-week period.

For this purpose, a full-time employee is an employee who:

- is normally scheduled to work at least 40 hours each work week; or
- does not have a normal weekly schedule, but is scheduled to work on average at least 40 hours each work week over a period of time that is the lesser of
 - the 6-month period prior to the date on which leave is requested; or
 - the entire period of the employee's employment.

Part-time Employees

A part-time employee is entitled to paid sick leave equal to the number of hours he or she is normally scheduled to work over a two-week period. A part-time employee whose weekly work schedule varies is entitled to paid sick leave equal to fourteen times the average number of hours that the employee was scheduled to work per calendar day over the 6-month period ending on the date on which the employee takes paid sick leave, including any hours for which the employee took any type of leave.³

A part-time employee is an employee who:

- is normally scheduled to work fewer than 40 hours each workweek; or
- does not have a normal weekly schedule and is scheduled to work on average fewer than 40 hours each workweek.

Amount of Pay for Paid Sick Leave

For each hour of paid sick leave taken by an employee under 1, 2 or 3, the employer shall pay the employee the greater of:

- The employee's average regular rate,

³ If the part-time employee with a varying weekly schedule has been employed fewer than 6-months, the employee is entitled to fourteen times the expected number of hours the employee and employer agreed at the time the employee was hired that the employee would work, on average, in each calendar day. The guidance goes further to address what happens when there is no agreement. Employers should carefully review these rules.



- The federal minimum wage to which the employee is entitled, or
- The state or local minimum wage to which the employee is entitled.

In no case, shall the employer be required to pay more than \$511 per day and \$5,110 in the aggregate per employee who takes paid sick leave for qualifying reasons 1, 2 or 3.

For qualifying reasons 4, 5 and 6, the employer must pay the employee at two-thirds of the amounts described above. In no case shall the employer be required to pay more than \$200 per day and \$2,000 in the aggregate per employee who takes paid sick leave for qualifying reasons 4, 5 and 6.

Calculating the Regular Rate

The regular rate of pay used to calculate an employee's paid leave is the average of the employee's regular rate⁴ for each full workweek over a period of up to six months prior to the date on which the employee takes leave.⁵

Total compensation in the workweek (except for statutory exclusions) ÷ Total hours worked in the workweek = Regular Rate for the workweek

Commissions, tips, or piece rates are incorporated into the above calculation to the same extent they are included in the calculation of the regular rate under the FLSA.

Example from the preamble to the DOL temporary regulations

Consider an employee who receives \$400 of non-excludable compensation in one week for working 40 hours and \$200 of non-excludable compensation in the next week for working ten hours. The regular rate in the first week is \$10 per hour ($\$400 \div 40$ hours), and the regular rate for the second week is \$20 per hour ($\$200 \div 10$ hours). The weighted average, however, is not computed by averaging \$10 per hour and \$20 per hour (which would be \$15 per hour). Rather, it is computed by adding up all compensation over the relevant period (here, two workweeks), which is \$600, and then dividing that sum by all hours worked over the same period, which is 50 hours. Thus, the weighted average regular rate over this two-week period is \$12 per hour ($\$600 \div 50$ hours).

See also [DOL FAQ 82 and 83](#).

⁴ See DOL Fact Sheet #56A, Overview of the Regular Rate of Pay Under the Fair Labor Standards Act (FLSA), <https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate>

⁵ If an employee has worked less than 6 months, the average is determined over the employee's entire period of employment.



Q8: Does a state or local “shelter-in-place” or “stay-at-home” order qualify as a quarantine or isolation order for purposes of EPSLA (reasons 1 and 4)?

Yes. A quarantine or isolation order includes 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.

However, if the employer does not have work for an employee to do (e.g., due to COVID-19), paid sick leave under EPSLA is not available.

See [DOL FAQ 60 and 87](#).

Q9: If an employee has not been working for 3 weeks due to slowed business, will the employee qualify for EPSLA?

No. Paid sick leave under EPSLA is not available when the employer does not have work for an employee. Unemployment insurance may be available through the state.

Q10: An employer has had to shut down, due to the state’s issuance of a “stay at home order.” There is no work or telework available to the employee. Can the employee use paid sick leave under #1?

If the employer must shut down business operations due to the isolation order and there is no work for an employee to perform, paid sick leave is not available.

Q11: What does “seeking a medical diagnosis” under #3 of EPSLA consist of?

In order to qualify for EPSLA under #3, the employee must be (1) experiencing symptoms of COVID-19 and (2) seeking a medical diagnosis. For this purpose:

- Experiencing symptoms includes fever, dry cough, shortness of breath or other COVID-19 symptoms as identified by the CDC.
- Seeking a medical diagnosis means the employee is taking affirmative steps to obtain a medical diagnosis.

For example, an employee experiencing COVID-19 symptoms may take paid sick leave for time spent making, waiting for, or attending an appointment for a test for COVID-19.

An employee may not take paid sick leave to self-quarantine under EPSLA reason #3 without seeking a medical diagnosis.



Q12: What is meant by “experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services (HHS)”?

To date, 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 you may take paid sick leave on the basis of a “substantially similar condition.”

See [DOL FAQ 73](#).

Q13: Does EPSLA apply to sick leave taken for COVID-19 reasons prior to April 1, 2020?

No. EPSLA does not apply retroactively. Therefore, employees do not have a right or entitlement to EPSLA for any sick leave taken before April 1, 2020. Likewise, employers are not entitled to tax credits for any paid sick leave taken by employees before April 1, 2020.

Q14: In March we already allowed 10 days paid sick leave under our employer policy as a result of COVID-19. Must the employer provide EPSLA sick leave after April 1st?

Yes. The FFCRA requires employers to provide the entirety of the paid sick leave regardless of whether an employee took the leave under an employer policy related to COVID-19 prior to April 1, 2020.

Q15: Can the employer require the employee to use accrued sick pay under an employer policy instead of paid sick leave under the EPSLA?

No. Paid sick leave under the EPSLA is in addition to other leave provided under federal, state, or local law; an applicable collective bargaining agreement; or your employer’s existing company policy. However, if the employer and employee agree, the 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, though any payroll tax credit would be limited to EPSLA limits.

See [DOL FAQs 32 and 46](#).

Q16: Are employees eligible for paid sick leave if they are sick but the health care provider does not suspect the employee has COVID-19, but the provider instructs the employee to stay out two or three days “just in case or to be safe”.

Yes, when:

- a health care provider directs or advises an employee to stay home or otherwise self-quarantine because the health care provider believes that you may have COVID-19 or are particularly vulnerable to COVID-19, and
- quarantining yourself based upon that advice prevents you from working (or teleworking).

However, employees may not take paid sick leave if they unilaterally decide to self-quarantine for an illness without medical advice, even if they have COVID-19 symptoms. Further, paid sick leave under the FFCRA is not available when an employee has an illness not related to COVID-19.



Q17: If employees are furloughed post 4/1 and subsequently request paid sick leave or expanded FMLA, do we have to retroactively grant?

Possibly. If there was work for the employee to do between April 1 and the time of furlough, the employee missed work for a valid reason under EPSLA or EFMLEA, and the employee made a [timely request](#), he or she could be entitled to paid sick leave.

See [DOL Temp. Reg. § 826.90](#) regarding employee notice of need for leave.

Q18: What if you laid employees off 3/25/2020? Do we have to provide the sick leave benefits?

No. FFCRA paid leave only applies if there is work for the employee to do and the employee is prevented from performing that work due to a qualifying reason.

Emergency Family and Medical Leave Expansion Act (“EFMLEA”)

Q19: Briefly, what is EFMLEA under FFCRA?

Employers must provide up to 12 weeks of expanded family and medical leave to eligible employees (employees employed at least 30 days) who are unable to work (or telework) because the employee is caring for his or her son or daughter whose school or place of care has been closed or whose child care provider is unavailable due to COVID-19 related reasons.⁶ After the first two weeks, up to 10 weeks must be paid at 2/3 pay (up to \$200/day/employee).

During the first two weeks of unpaid leave, the employee may use paid sick leave under EPSLA, as described above.

Q20: Who is defined as a childcare provider for purposes of EFLMEA and #5 under EPSLA? Can it be a family member?

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

See [DOL FAQ 68](#).

Q21: Would a summer camp qualify as a “place of care” for purposes of EFLMEA and EPSLA reason #5?

Yes, a summer camp may qualify as a “place of care”.

A place of care is a physical location in which care is provided for your child. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and

⁶ Under the statute the closure would be “due to a public health emergency” which is narrowly defined as an emergency with respect to COVID-19, declared by a federal, state or local authority.



after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

See [DOL FAQ 67](#).

Q22: Does the Expanded FMLA also expand the definition of "immediate family" to include individuals other than spouse, child and parent?

Expanded FMLA leave is available for the employee's "son or daughter" which is his or her own child, which includes the employee's biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis.

See [DOL Q&A 40](#).

Q23: Employees are currently working a reduced work week. Do we pay employees under the paid sick leave and Expanded FMLA at 2/3 of the reduced hours or do we pay 2/3 at 40 hours?

The former; if the employer reduces work hours because it does not have work for the employee to perform, the employee may not use FFCRA leave for the hours that he or she is no longer scheduled to work. For example, the employee normally works 40 hours per week, but due to business slow-down, is reduced down to 30 hours per week. Then, if the employee is unable to work the 30 hours per week, due to one of FFCRA reasons providing for only 2/3 pay, the 2/3 would be based on 30 hours that are missed due to such reason.

See [DOL FAQ 28](#).

Other Employer Paid Leave Policies

Q24: May an employer require an employee to take his/her PTO before paid time with new legislation?

EPSLA

No, unless the employee agrees.

EPSLA is in addition to an employee's other leave entitlements. An employer may not require an employee to use other available leave (e.g., PTO, sick leave, vacation leave) with respect to EPSLA. Paid sick leave under the Emergency Paid Sick Leave Act is in addition to any form of paid or unpaid leave provided by an employer, law, or an applicable collective bargaining agreement. An employer may not require employer-provided paid leave to run concurrently with—that is, cover the same hours as—paid sick leave under the Emergency Paid Sick Leave Act. But an employee may use preexisting leave entitlements to supplement the amount he or she receives from EPSLA, up to the employee's normal earnings.



For example, if the employee is receiving 2/3 of normal earnings under the EPSLA, the employee may use preexisting employer-provided paid leave to receive the additional 1/3 of normal earnings.

See [DOL FAQ 32 and 86](#).

EFMLEA

Yes. With respect to EFMLEA leave after the first two workweeks, an employee can elect, or an employer can require, for the employee to take remaining EFMLEA leave at the same time as any existing paid leave available under the employer's PTO policy. Depending on the employer policy, 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 existing paid leave is exhausted before the employee receives the fully remaining EFMLEA leave, the balance of such EFMLEA must be paid by the employer.

See [DOL FAQ 33 and 86](#).

Payment

Q25: How do employees get paid for the FFCRA? Is this done through Unemployment Insurance or is the employer required to pay them and be reimbursed? How is this handled?

Employers pay the employee, and continue paying for qualified health plan expenses, and then are entitled to take a dollar-for-dollar tax credit in the paid amounts.

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

Q26: Are the payments under the paid sick leave or expanded FMLA considered taxable for W-2 purposes?

Yes. The FFCRA does not distinguish qualified leave wages from other wages an employee may receive from the employee's standpoint as a taxpayer.

See [IRS payroll tax credit FAQs](#).

Intermittent Leave

Q27: Can FFCRA leaves be taken intermittently?

In general, intermittent leave is only an option while teleworking or for childcare related reasons.

- Intermittent leave while teleworking is allowed if the employer agrees and the employee is unable to telework his or her normal scheduled hours due to one of the qualifying reasons.
- For intermittent leave while not teleworking, paid sick leave is generally not allowed. Qualifying reasons related to COVID-19 must be taken in full-day increments until either (1) the full amount of



paid sick leave is used or (2) the employee no longer has a qualifying reason for taking paid sick leave.⁷ This limit is imposed because the intent of FFCRA is to provide such paid sick leave as necessary to keep employees from spreading the virus to others.

- However, if the employer and employee agree, the employee may take paid leave intermittently for childcare-related reasons. For example, if the employee’s child is at home because his or her school or place of care is closed, or childcare provider is unavailable, because of COVID-19 related reasons, the employee may take paid sick leave on Mondays, Wednesdays, and Fridays to care for the child.

Absent agreement, no leave under the FFCRA may be taken intermittently.

The DOL encourages employers and employees to collaborate to achieve flexibility and meet mutual needs.

See [DOL FAQs 20 and 22](#).

Q28: Can the FFCRA leave to care for a child be taken intermittently? i.e. an employee is able to telework for 4 hours a day as the spouse covers the other 4 hours.

Yes, if the employer and employee agree to the arrangement.

See [DOL FAQs 20-22](#).

EFMLEA and Traditional FMLA

Q29: If the employee has already exhausted FMLA for the year, can they take FMLA for childcare under EFMLEA?

No. Generally, the total number of weeks of EFMLEA leave and of traditional FMLA leave, combined, cannot exceed 12 weeks in the 12-month FMLA leave year selected by the employer. For example, assume the employer selects the calendar year as its FMLA leave year, employee is eligible for traditional FMLA leave (e.g., for the employee’s own serious health condition) and took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. The employee therefore has 10 weeks of FMLA leave remaining. Because expanded FMLA leave is a type of FMLA leave, the employee would be entitled to take up to 10 weeks of expanded FMLA leave, rather than 12 weeks. If the employer only becomes covered under the FMLA on April 1, 2020 (due to the FMLA expansion), this analysis does not apply.

See [DOL FAQs 44 and 45](#).

⁷ If the employee no longer has a qualifying reason for taking paid sick leave before exhausting paid sick leave, he or she may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.



Q30: If an employee tests positive for COVID-19, would this qualify them for FMLA for the period of time they are recovering and request the employee to have an FMLA certification packet completed by themselves and the provider? Or does FMLA only apply if the illness results in a critical illness that requires ongoing treatment?

To trigger FMLA protections due to the employee’s own illness, traditional FMLA rules apply and would require the employee have a “serious health condition”. Not all “positive” cases of COVID-19 will be considered “serious health conditions” under this definition. EFMLEA does not provide additional protections for an employee (or family members) diagnosed with COVID-19.

See <https://www.dol.gov/agencies/whd/fmla/faq#9>.

Q31: Should employers require a doctor's release note from an employee who was out on FMLA leave prior to the pandemic prior to a return to full status? If yes, but the doctor is unable, and employee exhausted her FMLA time, what's next?

The employer may have a uniformly applied policy or practice that requires all similarly situated employees to obtain and present certification from the employee’s health care provider that the employee is able to resume work. Employers are required to notify employees in advance if the employer will require a [fitness-for-duty certification](#) to return to work. Employers should be aware that fitness-for-duty certifications may be difficult to obtain during a pandemic.

See <https://www.dol.gov/agencies/whd/fmla/pandemic>.

Paying Premiums

Q32: How is the insurance premium coverage paid for employees who are on extended FMLA or Paid Sick Leave?

Employees should continue to be charged only the “active” rate for insurance premiums while on EPSLA or EFMLEA leave. For employees on EPSLA leave at 100% of pay, insurance premiums should be taken from employee pay as under normal circumstances. Employees on EPSLA or EFMLEA leave at 2/3 normal pay should have pay sufficient to pay insurance premiums from employee pay as under normal circumstances. Having a reduction in pay is generally not a reason under cafeteria plan rules to allow an employee to change or revoke their salary reduction election to pay for elected insurance coverage. Where pay is insufficient to cover the employee’s premiums, an employer should apply the rules under traditional FMLA, which provide mechanisms for the employer to obtain payment (prepay, pay-as-you-go or catch-up).

See [DOL FAQ 30](#).



Q33: Are we required to continue paying their medical, dental, vision, STD, and Life insurance premiums while they are gone?

If the employer provides group health coverage that the employee has elected, the employee is entitled to continued group health coverage during the FFCRA leave on the same terms as if the employee continued to work. These rules only apply to medical, dental and vision coverages, and not to non-group health coverages such as STD and life insurance. Employers should review policy terms and other employer practices.

See [DOL FAQ 30](#).

Q34: When an employee is receiving 2/3 pay under Expanded FMLA, can the employer withhold healthcare and other deductions from the employee pay?

Yes.

See [DOL FAQ 30](#).

Posted Notice

Q35: Are ALL employers required to post the notice by April 1st, or just those employers subject to FFCRA leave requirements?

Only employers subject to the FFCRA leave requirements must post the notice.

Q36: If our office is closed, how do we comply with "required posted notice"? Does posting the notice through our intranet comply with the requirement?

The notice must be posted in a conspicuous place where employees can see it. For teleworking employees, this includes emailing, direct mailing, or posting to a website.

See <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>.

Documentation

Q37: Will a specific DOL form (similar to regular FMLA forms available) be created related to any EFMLEA or Paid Sick Leaves? Or what documents should we be asking for to show proof?

Possibly the DOL will produce forms. Documentation must include a signed statement containing the following information: (1) the employee's name; (2) the date(s) for which leave is requested; (3) the COVID-19 qualifying reason for leave; and (4) a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason.



For substantiation:

- Employees must provide the employer with documentation in support of the reasons for paid sick leave which may include a copy of the federal, state, or local quarantine or isolation order related to COVID-19 or written documentation by a health care provider⁸ advising the employee to self-quarantine due to concerns related to COVID-19.
- The employee must provide documentation in support of the expanded FMLA leave taken which may include a notice of closure or unavailability from the child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to the employer from an employee or official of the school, place of care, or child care provider.

See [DOL Q&As 15 and 16](#) and [IRS FAQ 44](#).

Q38: Can an employer require a doctor's note for their spouse if an employee is not sick but using sick leave to care for spouse?

Yes. Employees must provide the employer with documentation in support of the reasons for paid sick leave which may include a copy of the federal, state, or local quarantine or isolation order related to COVID-19 or written documentation by a health care provider⁹ advising the individual to self-quarantine due to concerns related to COVID-19.

See [DOL Q&As 15 and 16](#).

Health Care Provider Exemption

Q39: Are health providers exempt from the new EFMLEA or Paid Sick Leave requirements?

Health care providers¹⁰ and emergency responders¹¹ may be excluded by their employer from being able to take paid leave under the FFCRA. However, this is not a blanket exemption of employers of health care providers or emergency responders from compliance with FFCRA.

To minimize the spread of the virus associated with COVID-19, the DOL encourages employers to be judicious when using these definitions to exempt health care providers and emergency responders from the provisions of the FFCRA.

See [DOL FAQs 55-57](#).

⁸ The term "health care provider," for this purpose, means a licensed Doctor of Medicine, Nurse Practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

⁹ The term "health care provider," for this purpose, means a licensed Doctor of Medicine, Nurse Practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

¹⁰ See Q&A 56 at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

¹¹ See Q&A 57 at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.



Unions

Q40: Do unions follow the same guidance?

Yes. Paid sick leave under the FFCRA is in addition to other leave provided under any collective bargaining agreement.

For information addressing how to comply via a multiemployer plan, see [DOL FAQs 35-37](#).

Helpful Resources

To help clients navigate these challenging times USI has implemented a **STEER (Steer Through Epidemic & Economic Recovery) Task Force**. This cross-functional team is working to provide timely COVID-19 information, understand cross-industry and geography impact and evolving responses, and to develop and deliver tailored solutions to help clients **steer** through this epidemic challenge and economic recovery.

For additional resources, tools, information, and links, please visit our COVID-19 resource page: www.usi.com/public-health-emergencies

