

# Frequently Asked Questions for State Employees COVID-19

April 28, 2020

Updated: December 30, 2020

The Families First Coronavirus Response Act (FFCRA) is a federal law that was enacted to provide relief to American workers affected by the COVID-19 (Coronavirus) pandemic. The applicable sections related to employees are the **Emergency Paid Sick Leave Act (EPSL)** and the **Family and Medical Leave Expansion Act (FMLA+)**. The questions and answers below are based upon guidance provided by the U.S. Department of Labor (DOL) (available at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>).

The provisions of the FFCRA were originally set to expire on December 31, 2020. Effective December 29, 2020, leave authorized by the FFCRA has been extended through March 31, 2021.

## **1. What is the effective date of the FFCRA, which includes the Emergency Paid Sick Leave Act (EPSL) and the Emergency Family and Medical Leave Expansion Act (FMLA+)?**

The FFCRA's paid leave provisions became effective on April 1, 2020, and apply to applicable leave taken between April 1, 2020, and March 31, 2021. However, state employees who have been teleworking or who have been on the Governor authorized paid emergency leave will not need to utilize the leave authorized by the FFCRA through April 30, 2020. Effective May 1, 2020, these guidelines will apply to all state employees except Health Care Providers or Emergency Responders as defined in FAQs #30 and #31.

## **2. Is my agency a covered employer under the FFCRA?**

Yes. All governmental entities are covered by the FFCRA regardless of the number of employees.

## **3. Who is a covered employee under the FFCRA?**

The EPSL applies to all state employees regardless of length of service. The FMLA+ applies to all state employees who have been employed for at least 30 calendar days.

**4. Am I eligible for this leave if I am working from home?**

Employees who are working from home or at an alternative workplace (teleworking) are not eligible for leave under the FFCRA, nor are they charged leave, as they are in work status.

**5. If I am deemed an essential employee, but unable to telework, can I use the leave provided under the FFCRA?**

Yes, if you meet the eligibility criteria and are not a Health Care Provider or Emergency Responder, you will be able to utilize the paid leave provisions of the FFCRA as of April 1, 2020. Alternatively, an appointing authority may allow an essential employee to use the Governor authorized paid emergency leave through April 30, 2020.

NOTE: The FFCRA allows employers to exclude Health Care Providers and Emergency Responders from the leave allowances (see FAQs #30 and #31 below). An appointing authority may also exclude an entire qualifying agency from the FFCRA under this provision.

**6. When am I eligible to use the leave provided by the FFCRA?**

For employees who are unable to telework and who are currently on the Governor authorized paid emergency leave, FFCRA leave will become available on May 1, 2020. Essential employees were eligible for the FFCRA provisions effective April 1, 2020. Agency heads may allow essential employees who are unable to telework, but meet the FFCRA eligibility criteria, to utilize the Governor authorized paid emergency leave through April 30, 2020, and then utilize the leave allowances of the FFCRA.

**7. Does the time I have been on the Governor authorized paid emergency leave count against my FFCRA entitlement?**

No. An employee's time on the Governor authorized paid emergency leave does NOT count against any FFCRA entitlement.

## **8. What are the qualifying reasons to take EPSL leave?**

The EPSL identifies six (6) qualifying reasons for taking this leave:

- 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 because of COVID-19.
- 3) The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- 4) The employee is caring for an individual subject to or advised to quarantine or isolation.
- 5) The employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19.
- 6) The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services. For information as to what may be considered substantially similar conditions, please go to: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/grouse-at-higher-risk.html>.

## **9. Who is an "individual" as defined by the EPSL?**

You may take EPSL leave to care for an immediate family member or someone who regularly resides in your home. You may also take EPSL to care for someone where your relationship creates an expectation that you would care for the person in quarantine and that individual depends on you for care during this time. FMLA+ leave is only available for childcare.

## **10. How much paid leave is available under the EPSL?**

It depends on an employee's work schedule. Full-time employees are entitled to 80 hours of EPSL leave, while part-time employees are entitled to an

average number of hours worked in a two-week period (part-time employees who do not work a standard schedule should consult their agency personnel/payroll staff to determine the number of EPSL hours for which they qualify).

Governor Ivey has authorized this leave (80 hours) to be paid at the employee's regular rate of pay, rather than the two-thirds pay and other statutory cap limitations of the FFCRA. Please note that this is different than the paid emergency leave authorized by Governor Ivey which ended April 30, 2020.

**11. May I choose to use my accrued sick, annual, etc., leave before using EPSL leave?**

Yes. This law requires that the employer allow the employee to choose whether to first use the EPSL leave provided by this law or to use any accrued sick, personal, compensatory, or annual leave in accordance with the State Personnel Board Rules. In any case, the employer cannot require the employee to use accrued leave prior to utilizing EPSL leave, which is capped at 80 hours. However, as discussed in FAQ #10, Governor Ivey has authorized the EPSL leave to be paid at the employee's full regular rate of pay.

**12. If an employee has tested positive for COVID-19 and needs to be quarantined, would the employee use EPSL leave or be required to use accrued leave if he or she is not able to telework?**

The employee would use the initial 80 hours of EPSL leave under the provisions of the FFCRA. If the employee exhausts the 80 hours of EPSL leave, but is still instructed to isolate, he or she may use accrued sick, annual, etc., leave.

**13. What qualifies for FMLA+ leave?**

This expanded FMLA leave is for parents who are caring for a son or daughter, under 18 years of age, whose school or place of care is closed, or a childcare provider is unavailable, due to COVID-19 precautions.\* Caring for a child over the age of 18 may qualify under certain conditions. If you have

a child over the age of 18 in need of care, please consult your agency personnel manager or officer.

\*Please note that EPSL leave and FMLA+ leave is not available for this qualifying reason if the school or childcare provider is closed for summer vacation, or any other reason that is not related to COVID-19. However, the employee may be able to take leave if his or her child's care provider during the summer—a camp or other programs in which the employee's child is enrolled—is closed or unavailable for a COVID-19 related reason.

**14. Can grandparents qualify for FMLA+ if they are keeping the children while the parents, who are essential employees, are going in to work?**

No. This leave only applies to parents who are caring for a son or daughter unless the grandparents are standing *in loco parentis* to the child – that is - someone with day-to-day responsibilities to care for or financially support the child.

**15. How much paid leave is available under the FMLA+?**

As under the EPSL, it depends on an employee's work schedule. Full-time employees are eligible for up to 12 weeks (40 hours per week), while part-time employees are eligible for the number of hours that the employee is normally scheduled to work over that 12-week period.

This law provides that the first two weeks of FMLA+ leave may be unpaid, or employees may choose to use their accumulated annual or compensatory leave. Employees may also choose to use the 80 hours of EPSL leave which Governor Ivey has authorized to be paid at the employee's regular rate of pay. For the remaining 10 weeks, employees will be required to use their accumulated annual or compensatory leave concurrently with the FMLA+ leave. Under the FFCRA, an employee that exhausts his or her leave during this period will be paid at two-thirds of his or her regular rate of pay up to a maximum of \$200 per day, or a total of \$10,000, over the entire FMLA+ period.

**16. Can my agency require me to use my accrued leave concurrently with the FMLA+ leave?**

Yes, but only after the initial 80 hours. After this time, employees will be required to use their accumulated leave concurrently with the FMLA+ leave.

If the employee exhausts his or her leave, the remainder of the FMLA+ time will be paid at two-thirds of his or her regular rate of pay, as described in FAQ #12.

**17. If I have already taken FMLA leave in the last 12 months, does the FMLA+ entitle me to an additional 12-week FMLA leave entitlement?**

No. The FMLA+ does NOT create an additional 12 weeks of FMLA leave. When determining available FMLA leave, the state will continue to use the “rolling year” method. Employees who have already taken FMLA leave during the preceding 12-month period will have the remaining portion of FMLA leave available. For example, if an employee has used 4 weeks of FMLA leave, he or she will have the remaining 8 weeks of leave to use for childcare. For questions on available FMLA leave, employees should continue to consult their agency personnel manager or officer.

**18. Is all leave under the FMLA now paid leave?**

No. The leave allowed under FMLA is not paid leave. The paid leave provisions as described in this document are only for FMLA+ leave and will expire on March 31, 2021.

**19. May both parents take FMLA+ leave at the same time?**

No. The employee alone must be providing care for the child during the period for which the employee is receiving this type of leave. For example, if there is a co-parent, co-guardian, or another individual present to care for the child, this leave is not available. If both parents work for the state, they will each be eligible for FMLA+ but cannot take this leave for the same time period.

**20. Does an employee who is allowed to telework after April 30th, because they have children under the age of 18 whose schools or daycares are closed due to COVID-19, qualify for FFCRA leave?**

No. Employers are encouraged to allow employees to engage in productive telework. If an employee can telework, the FFCRA does not apply. Telework with children at home can only occur during a declared emergency. Once the declared emergency is over or childcare becomes available, an individual may not telework without certifying that childcare is available.

Please remember that teleworking is at the sole discretion of the appointing authority. An appointing authority may terminate or modify the telework arrangement at any time. Termination of an employee's ability to telework may be immediate and does not require advance notice.

**21. An employee has been teleworking productively since mid-March, with children in the home, without any issues. May the employee now take paid sick leave and expanded family and medical leave to care for the children, whose school is closed because of COVID-19, even though the employee has been teleworking with the children at home for four weeks. May the employer ask the employee why he or she is now unable to work?**

Yes. An employer may require that the employee provide the qualifying reason he or she is taking the leave and ask what circumstances have changed that no longer make the employee able to telework. All other documentation should also be provided as allowed by the FFCRA. (see FAQ #27 below).

**22. Is an employee eligible for FMLA+ if he or she chooses not to send his or her child to childcare that is open and available?**

No. The FMLA+ is available only when the school or place of care is closed, or the childcare provider is unavailable due to COVID-19. If the childcare provider is open and available, the FMLA+ does not apply.

**23. Do I have to take EPSL leave and FMLA+ leave all at once or can I use it as I need to on an intermittent basis?**

EPSL leave, for reasons other than childcare, must be taken in one continual block of time until the need for taking leave no longer exists. If the employee no longer has a qualifying reason for taking EPSL leave, any remaining EPSL leave may be taken at a later time, if an additional EPSL qualifying reason occurs (through March 31, 2021). An employee cannot, however, receive more than 80 hours of EPSL leave regardless of the number of qualifying reasons.

Leave taken for childcare reasons under the EPSL (the first 80 hours) should, if possible, be taken in one continual block of time. An appointing authority, however, may allow employees critical to agency operations to take this leave on an intermittent basis - in full day increments only.

The FMLA+ leave may be taken intermittently with the approval of the employee's appointing authority but only in full day increments. For example, an employee may need to take this leave two days a week for several weeks. This is an allowable intermittent usage, but the leave must be used to cover the number of hours in the employee's full day shift (8, 10, 12, or 24 hours).

**24. If an employee takes EPSL leave for a reason other than childcare, does it count against the employee's FMLA+ allotment?**

No. FMLA+ leave is only available for employees who need to care for a child due to school or daycare closure. If an employee takes EPSL leave for reasons 1, 2, 3, 4, or 6 in FAQ #8 above, it does not count against the FMLA+ leave allotment. However, if an employee takes EPSL leave due to school or daycare closure, then the 80 hours of EPSL leave would also count against the initial 80 hours of FMLA+ leave.

Example: An employee takes the entire 80 hours of EPSL leave due to his or her own COVID-19 health-related condition. After recovering from the illness, the employee needs to take leave in order to care for a child whose school or daycare has closed due to COVID-19. The employee will still have 12 weeks of FMLA+ leave available (assuming the employee has not taken FMLA leave for any other reason in the immediately preceding 12 months). However, for the first two weeks, the employee will have to choose whether to use his or her accumulated leave or go on leave without pay. The remaining time period, the employee must use accumulated annual leave (or compensatory time) concurrently with the FMLA+ usage.



**25. An employee with a documented FMLA qualifying health condition, such as an immunodeficiency disorder (a compromised immune system), is instructed by his or her health care provider to quarantine due to COVID-19. Is the employee required to use “regular” FMLA leave concurrently with EPSL leave?**

No. An employee who has an FMLA qualifying health condition and has been instructed by his or her health care provider to quarantine as a precautionary measure due to COVID-19 is entitled to 80 hours of EPSL leave. However, this time would NOT count against the employee’s FMLA leave balance. If the employee exhausts the 80 hours of EPSL leave but is still advised to quarantine by a health care provider, the employee may then use accrued annual or compensatory leave. This time also would NOT count against the employee’s FMLA leave balance. In other words, if the employee is isolating solely to prevent potential exposure to COVID-19, but is not sick or experiencing symptoms associated with the FMLA qualifying health condition, he or she would first use EPSL leave, and, once that expires, would use accrued annual or compensatory leave. If the employee is experiencing symptoms or other actual issues related to the FMLA qualifying health condition, other than just precautionary measures, then the normal FMLA rules would apply.

**26. How much notice do I need to give my agency?**

The timing of the notice differs depending on the reason. Those who need leave for school closures and where leave is foreseeable should provide notice as soon as practicable. If the leave is for any other reason under the EPSL, an employer can only require an employee to provide notice after the first workday that an employee takes EPSL.

**27. If I am taking leave under the FFCRA, am I required to provide anything to my agency?**

Yes. The following documentation is required when an employee is requesting leave under the FFCRA. Forms for this leave usage have been provided to agency personnel staff.

- a. Employee's name
- b. Date(s) of leave
- c. The FFCRA qualifying reason for the leave request
  - i. Quarantine: Name of governmental entity or health care professional ordering or advising quarantine or self-quarantine. If providing care for an individual, provide the person's name and relationship to employee.
  - ii. Childcare: Name and age of child (or children) and the name of the school or place of care that has closed. The employee must provide a statement that no other suitable person is available to care for the child during the period of the requested leave. If the child is over 18 and is in need of care, the agency personnel manager should be consulted.
- d. A statement that the employee is unable to work, including telework, for one of the six qualifying reasons of the FFCRA.
- e. An employee must also provide his or her supervisor with a set schedule of the time off needed for childcare as soon as reasonably practicable.

**28. Will I be able to return to my job after taking my FMLA+ leave?**

As with the original FMLA law, the FMLA+ leave is job-protected, meaning the employer must restore an employee to the same or equivalent position upon his or her return to work.

**29. How will the two-thirds pay affect my leave accruals?**

Employees receiving two-thirds of their regular rate of pay will still receive full leave accruals.

### **30. Are the EPSL and FMLA+ retroactive?**

No. Leave time taken prior to April 1, 2020 will not count against the leave provided by the FFCRA.

### **31. Who is a Health Care Provider that may be excluded from the FFCRA?**

According to the U.S. Department of Labor, a health care provider includes two groups of employees.

The first group is anyone who is a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for [purposes of the FMLA](#).

The second group is any other person who is employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care. This group includes employees who provide direct diagnostic, preventive, treatment, or other patient care services, such as nurses, nurse assistants, and medical technicians. It also includes employees who directly assist or are supervised by a direct provider of diagnostic, preventive, treatment, or other patient care services. Finally, employees who do not provide direct health care services to a patient but are otherwise integrated into and necessary to the provision those services—for example, a laboratory technician who processes medical test results to aid in the diagnosis and treatment of a health condition—are health care providers.

A person is not a health care provider merely because his or her employer provides health care services or because he or she provides a service that affects the provision of health care services. For example, IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers are not health care providers, even if they work at a hospital or a similar health care facility.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA. For example, an employer may decide to exempt these employees from leave for caring for a family member but choose to provide them paid sick leave in the case of their own COVID-19 illness.

### **32. Who is an Emergency Responder that may be excluded from the FFCRA?**

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, child welfare workers and service providers, 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. This also includes any individual that the Governor determines is an emergency responder necessary for Alabama's response to COVID-19.

### **33. May my agency close an area in order to decontaminate due to COVID-19?**

Yes. An agency may close an area for a necessary amount of time in order to ensure it is safe for employees. When an area is closed for this reason, employees will either telework or be sent home with no charge to the employees' leave balances.

### **34. May my agency ask whether an employee has COVID-19 symptoms?**

Yes. An agency may ask whether an employee has COVID-19 symptoms and may also take an employee's temperature. The CDC has provided a list of symptoms associated with COVID-19 here:

<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

An employee who is experiencing COVID-19 symptoms may use EPSL leave to quarantine and to seek a medical diagnosis. In this case, an agency may ask the employee to identify his or her symptoms and a date for a test or a doctor's appointment.

**35. May an agency require an employee to be tested for COVID-19 and provide the results of the test before returning to work?**

Yes. An agency may take steps during a public health emergency, such as the current pandemic, to protect the safety and wellness of the workplace. Therefore, an agency may require an employee who is exhibiting symptoms of COVID-19 to be tested and, in order to prevent or lessen a serious and imminent threat to the health and safety of a person or the public, request the results of the test.

**36. May my agency require an employee to wear or use personal protective equipment (PPE)?**

Yes. The agency may require an employee to wear a face covering, gloves, or other PPE. It may also require the employee to clean/disinfect a common workspace. However, if the agency requires the use of PPE, then it must provide the appropriate PPE for the employee.

**37. Are there any accommodations for employees who are concerned about returning to work and being around other people?**

No. An employee who is concerned about coming to work due to fear of contracting COVID-19 may request to use accumulated annual, holiday, or compensatory leave.

**38. If an employee decides to self-quarantine because of possible exposure to COVID-19, may they use sick leave or annual leave?**

An appointing authority has discretion whether to allow an employee to take leave under these circumstances. If allowed by the appointing authority, an employee may use accrued annual or compensatory leave but not sick leave.

**39. I am an hourly employee, such as a Laborer or Retired State Employee. Do the FFCRA Guidelines apply to me?**

Yes. The FFCRA applies to hourly employees.

**40. My child's school has moved to virtual learning or to another model in which students are expected or required to complete assignments at home. Is the school considered "closed" under the FFCRA?**

Yes. If the physical location where your child received instruction is now closed, the school is "closed" for purposes of EPSL and FMLA+ leave. This is true even if some or all instruction is being provided virtually or whether, through another format such as "distance learning," your child is still expected or required to complete assignments.

**41. My child's school is planning to reopen in the fall but allow students the option to participate virtually. Will I qualify for EPSL or FMLA+ leave if I choose for my child to participate virtually?**

No. The FFCRA provides EPSL or FMLA+ leave for employees who are unable to work due to a bona fide need for leave to care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19. If the child's school is open for in-person instruction, then that child's caregiver would not qualify for FMLA+ leave.

**42. My child's school plans to operate on a "hybrid" schedule, meaning some days of in-person instruction and some days of virtual learning. Will I qualify for EPSL or FMLA+ leave?**

EPSL and FMLA+ leave may only be taken intermittently for childcare issues with the approval of the employee's appointing authority. (See FAQ #23 above). Therefore, if the school is not open for students on the virtual learning days, those days may qualify for FMLA+ leave, with approval of the appointing authority. In any case, a child's caregiver will not qualify for FMLA+ leave on the days that the school is open for in-person instruction. If intermittent leave is allowed, it must be taken in full day increments.

**43. My child is physically attending school, however, the after-school care that he or she would normally attend is not available. Do I qualify for EPSL or FMLA+ leave if I only need to take leave to care for my child after school?**

No. As explained in FAQ #23, EPSL and FMLA+ leave may ONLY be taken in full day increments. Any leave taken by an employee for childcare reasons for less than a full day should be counted against the employee's annual leave balance, but NOT EPSL or FMLA+. In this case, normal rules for the usage of annual leave should be followed.

**44. My child's school has resumed with virtual learning or another model in which students are expected to complete assignments electronically at home, however, the virtual instruction is completed well before the end of my scheduled shift. If I report to work for my remaining scheduled shift, may I use EPSL or FMLA+ for the time at home for my child's virtual learning?**

No. As explained in FAQ #23, EPSL and FMLA+ leave may ONLY be taken in full day increments. Any leave taken by an employee for childcare reasons for less than a full day should be counted against the employee's annual leave balance, but NOT EPSL or FMLA+. In this case, normal rules for the usage of annual leave should be followed.

**45. If I take EPSL for childcare reasons, will that also be charged against my FMLA+ balance?**

Yes. If you use EPSL for childcare reasons such as school or daycare closures, it will also be counted against your FMLA+ balance. If you have already taken any FMLA leave during the preceding 12-month period, you will have the remaining portion to use for FMLA+. For example, if you have used 6 weeks of FMLA, you will have the remaining 6 weeks to use for childcare reasons for FMLA+. For questions on available FMLA or FMLA+, employees should continue to consult with your agency personnel manager or officer.

**Questions:**

If you have any further questions concerning the FFCRA as it relates to state employees, please do not hesitate to contact your agency attorney, personnel manager, or the following individuals by email:

[AliceAnn.Byrne@personnel.alabama.gov](mailto:AliceAnn.Byrne@personnel.alabama.gov)

[Tara.Hetzel@personnel.alabama.gov](mailto:Tara.Hetzel@personnel.alabama.gov)

[Laury.Morgan@personnel.alabama.gov](mailto:Laury.Morgan@personnel.alabama.gov)