

COVID-19: A Practical Guide for Managers and Supervisors

Updated April 2, 2020

Disclaimer: RGS provides up-to-date, accurate information as much as possible. Please note that as of April 1, 2020 the Department of Labor issued regulations concerning the interpretation of the FFCRA which should be considered in administering leaves granted by the FFCRA. Please ensure your agency's legal counsel has reviewed your MOU's and personnel policies in relation to the FFCRA emergency legislation and has approved your current emergency leave practices.

How to Use This Guide

As we face the impact of COVID-19, many counties have ordered their residents to “shelter in place.” Businesses that do not provide “essential” services must send employees home. However, some public agencies may still have staff on job locations to provide essential public services.

This Guide provides basic information for managers and supervisors on several key issues: how to send employees home who exhibit symptoms, use of leaves—including the NEW federal leave entitlements, and work-from-home policies during this time. Information provided can be modified to reflect your agency's policies and distributed to your supervisory staff.

Please note that:

- Guidance about COVID-19 is constantly changing as health officials disseminate new information.
- Emergency legislation (the Families First Coronavirus Response Act) amended the federal Family and Medical Leave Act and provided NEW Emergency Paid Sick Leave entitlements. Past practice will not apply at this time.
 - Employers must post a notice for employees in a conspicuous place. The notice can also be emailed to ALL employees. The DOL model notice poster is included in this packet.
 - New leave provisions will go into effect on April 1, 2020 and will remain in effect until December 31, 2020.

NOTE: The legal team at Liebert Cassidy Whitmore has graciously provided a FREE set of policies and templates which we will reference in our Guide. We encourage you to obtain their materials by following this link:

<https://www.lcwlegal.com/complimentary-templates-for-coronavirus-covid-19-related-policies>

FAQ's FOR SUPERVISION DURING COVID19

When Employees Are Present In The Workplace

Under what circumstances should an employee be sent home?

- Any employee who has symptoms should stay at home. This is particularly true for employees with symptoms of respiratory infections including, fever, cough, sore throat, etc.
 - If an employee reports to work with these symptoms, direct them to go home. (BEST PRACTICE: Document this directive. LCW's policy templates include an excellent model: "Sample Notice of Directive to Employee not to Return to Work and Use Sick Leave or other Leave".)
 - Advise the employee to contact their medical provider to determine if they need to self-quarantine and/or be tested for the COVID-19 virus.
 - Ask the employee to notify you if they test positive for the virus. The medical provider's instructions determine how long the employee should stay home.
- Any employee who is taking care of someone in his or her household who is suspected of having the COVID-19 virus.
- Any employee who has been in close contact with a person either diagnosed with or suspected to have the COVID-19 virus.
- Any employee who has recently traveled either internationally or domestically in areas subject to travel restrictions described by the Centers for Disease Control and Prevention (CDC).
- Any employee who lives in the same household with a person under 14-day quarantine at home because of recent travel to a level 2 or level 3 country.
- Employees not exhibiting symptoms but having possible exposure should seek medical advice as to what steps to take with regard to voluntary self-quarantine, testing, etc.

What do I do if an employee reports to me that they may have been exposed to COVID-19?

- Thank the employee for disclosing this information. Direct them to go home right away and to contact their medical provider for instructions immediately. (BEST PRACTICE: Document this directive. LCW's policy templates include an excellent model: "Sample Notice of Directive to Employee not to Return to Work and Use Sick Leave or other Leave".)

What steps should I take regarding the co-workers of an employee who were exposed to an employee who may have been exposed to the COVID-19 virus?

- Employees who have had close contact (being within six feet of one another) with employees who may have been exposed to the virus should go home and contact their medical provider for instructions immediately. (BEST PRACTICE: Document this directive. LCW's policy templates include an excellent model: "Sample Notice of Directive to Employee not to Return to Work and Use Sick Leave or other Leave".)

In addition to sending employees home, what steps should I take?

- Ask the employee to seek medical certification from their health care provider, if possible. Pending receipt of that document (which may be difficult to get, so be patient!), document the directive (including the reason) and email it to employee at home.

Employees may need to self-certify rather than get a doctor's note. You can email a self-certification form to the employee. LCW's policy templates include several models: "Employee Certification of Need for Paid Emergency Sick Leave" and "Employee Certification of Need for Emergency Family and Medical Leave".

- Contact the person in your agency responsible for HR Management to report that you have directed an employee to go home. Provide them with the directive, and be prepared for follow-up communications regarding receipt of the medical provider's instructions or other guidance on documenting absence or permitting return to work.
- Follow policies and procedures of your agency regarding medical confidentiality.
- Request sanitization of the employee's workspace by contacting your facilities manager. Ensure that the work place is properly sanitized by professional maintenance staff wearing protective gear. Do not attempt to clean the area yourself!

I have an employee who has confirmed they have self-quarantined, either because they have acquired the virus that causes COVID-19 ("confirmed case"), or at the direction of a medical professional. Should I report this, and how?

Yes. Call the person in your agency responsible for HR Management and be prepared to provide the following information:

- Name of the employee.
- Instructions of the medical provider, if available.

In addition, work with your HR management to determine if other staff members should be sent home as discussed above, and for assistance in how this directive should be communicated.

Use of Paid Time Off

Can employees use their paid leave for absences during this emergency?

- Policies and procedures will vary by agency, as will employee leave balances and reasons for absences. Consult your Personnel Policies/Rules, relevant MOU's, and HR management team.
- Additional requirements of the Families First Coronavirus Response Act went into effect on April 1, 2020.
- RGS has provided an overview of these new temporary emergency leaves in this guide, as well as a flowchart, a cover memo to employees explaining the new benefits, and a sample notice to document the type of leave you are providing to employees under this new law.
- Please note that ALL of your regular leave policies and practices, as well as the usual terms and conditions of Family Medical Leave Act/California Family Rights Act (FMLA/CFRA) leaves remain in effect. Employees should be considered for leave and pay benefits under all policies, and benefits integration practices should ensure entitled leaves and pays are clearly provided and documented.

Working Remotely

Can employees work remotely during the COVID-19 outbreak?

Yes. One of the most effective methods of preventing the spread of communicable disease, in addition to personal hygiene, is social distancing. Although some employees have job duties that

require them to be physically onsite; employees can and should be assigned and equipped to work remotely.

- Arrangements for equipment, access, and scheduling require supervisor approval on a case-by-case basis. (BEST PRACTICE: Document the assignments you make for remote work.)
- Employees who already have appropriate job duties, and proper equipment and access to work remotely should be granted approval to work from home as soon as possible. These adjustments must be made in a manner to avoid critical business disruption.
- Employees whose job functions could be performed remotely, but who currently lack equipment or access, should request equipment and/or access from their immediate supervisor, if available. This may take a few days to resolve, and you may not be able to accommodate everyone.

In-Person Meetings

We have been directed to avoid holding in-person meetings. What alternatives are there to face-to-face meetings?

- Employees should consider utilizing conference calls and video conferencing for meetings. Please contact your IT support person for direction on setting up remote online meetings.
- Non-essential meetings that are not well-suited to calls or conferencing should be postponed.
- If you have a necessary in-person meeting, hold the meeting in a large area and stay six feet apart.

School Closures

What if employees are impacted by a school closure?

- Consider permitting employees who need to remain at home with their children to accomplish their work remotely. Otherwise, employees must be permitted to use leave.

Return to Work

What if an employee has been self-quarantined, or on a medically supervised quarantine or isolation and wants to return to work in person?

- It may be difficult to get a medical certification. In that case, ask the employee to self-certify that they have fulfilled appropriate conditions before they return to the workplace. (LCW's templates include a model "Employee Certification to Return to Work After Exhibiting Symptoms of COVID-19 or Suspicion of Having or Being Exposed to COVID-19".)
- Consider remote work options for employees unable to self-certify but willing to work.

Overview of Families First Coronavirus Response Act

The Families First Coronavirus Response Act (FFCRA) went into effect on April 1, 2020. Two new paid leaves are provided by this legislation: Public Health Emergency Leave as described in the Emergency Family and Medical Leave Expansion Act (EFMLEA); and Emergency Paid Sick Leave (EPSL).

Note: An employer of a health care provider or an emergency responder may elect to exclude such employees from these new leave provisions. The Department of Labor has defined such employees in their FAQ's. RGS recommends that you consult legal counsel before making such an exclusion.

Qualifying Reasons for EFMLEA

Only one qualifying reason for EFMLEA: *An employee is unable to work or "telework" due to need for childcare, because of school or childcare closures, or unavailability of child care provider, due to a public health emergency* with respect to COVID-19.*

- Provides up to 12 weeks of job-protected leave
- Initial 10 days of leave may be unpaid.
- Employee may elect to use any accrued vacation, personal, medical, or sick leave during the initial 10 days of unpaid leave. OR Employee may use Emergency Paid Sick Leave during the initial 10 days. (See below)

Pay During EFMLEA

From the eleventh day, employers must provide paid leave in an amount not less than 2/3 of the employee's *regular rate of pay***, not to exceed \$200 per day and \$10,000 total.

Varying Schedule Calculations

If an employee works variable hours, the employer must pay based on an average number of hours over the six-month period ending on the date the employee begins the leave. The calculation must include leaves taken during that period. If the employee did not work over that period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

Use of Accrued Leave

Employees may supplement the EFMLEA with accrued leave. EFMLEA is a part of an employee's total FMLA 12-month entitlement of 480 hours.

Reinstatement

Employees have the same FMLA leave rights to reinstatement.

Emergency Paid Sick Leave (EPSL)

Eligibility

All employees are eligible for EPSL—but entitlements vary as described below.

1. Employee's Own COVID-19 Related Circumstances

All employees of the Agency are entitled to EPSL *at their regular rate of pay*** if they are unable to work or telework due to the following circumstances:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.†
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

Caps on EPSL for Employee-Related COVID-19 Absence

\$511/Day and \$5,110 in the Aggregate

Use of Accrued Leave

Employees may supplement the EPSL with accrued leave. For FMLA/CFRA-eligible employees, apply these policies in addition.

2. Leave for Caring for an Individual or Son or Daughter

All employees of the Agency are entitled to EPSL *at two-thirds of their regular rate of pay*** if they are unable to work or telework under the following circumstances:

- The employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or been advised by a health care provider to self-quarantine due to concerns related to COVID-19 order.
- The employee is caring for their son or daughter if the school or child care is unavailable due to COVID-19 precautions.
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Caps on EPSL Related to Leave To Care for an Individual or Son or Daughter

\$200/Day and \$2,000 in the Aggregate

Use of Accrued Leave

Employees may supplement the EPSL with accrued leave. For EFMLEA and/or FMLA/CFRA-eligible employees, apply these policies in addition to EPSL.

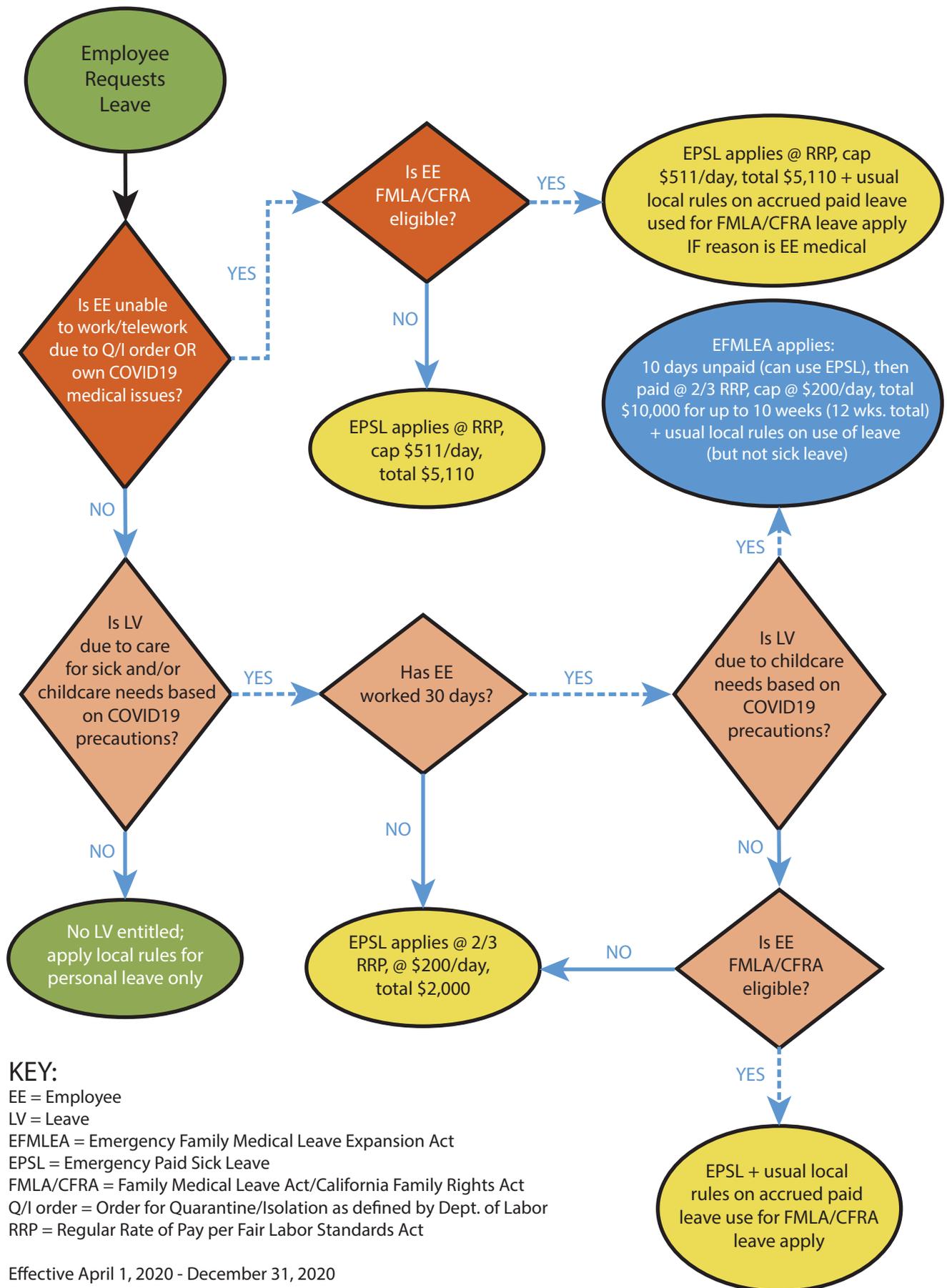
Duration of Paid Sick Leave

- For Full-time Employees: 80 hours
- For Part-time Employees: A number of hours employee works, on an average, over a period of two weeks
- Emergency paid sick leave ceases with the employee's next scheduled work shift immediately following the need for paid sick time under this Act.

* Consult legal counsel as to interpretation/application.

**Regular rate of pay as described in the Fair Labor Standards Act (FLSA).

† Refer to quarantine/isolation orders as defined in Department of Labor FFCRA regulations.



KEY:
 EE = Employee
 LV = Leave
 EFMLEA = Emergency Family Medical Leave Expansion Act
 EPSL = Emergency Paid Sick Leave
 FMLA/CFRA = Family Medical Leave Act/California Family Rights Act
 Q/I order = Order for Quarantine/Isolation as defined by Dept. of Labor
 RRP = Regular Rate of Pay per Fair Labor Standards Act

Sample Message to Employees Benefits during the COVID-19 Outbreak

Dear Employees:

During this pandemic, expanded benefits have been made available by federal legislation and executive orders. This is an overview to give you guidance for accessing key benefits that may match your specific situation.

These are terms that are used frequently now.

- **Shelter in Place:** In California, this public health order means to stay at home unless reporting to essential work, getting food, gas, or other necessary supplies, or for medical reasons.
- **Quarantine:** A medical order that separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick.
- **Isolation:** A medical order that separates sick people with a contagious disease from people who are not sick.
- **Families First Coronavirus Response Act (FFCRA):** This Federal Emergency Legislation goes into effect on April 1, 2020. This legislation provides employees with expanded family and medical leave and paid sick pay for specified reasons related to COVID-19. In addition to Family Medical Leave, the emergency legislation added a benefit for caregivers during this crisis. The FFCRA will be in effect through December 31, 2020. The attached overview provides key provisions of these new and temporary benefits.

Note: Shelter in place, quarantine, and isolation may all qualify for family medical leave and emergency paid sick leave. (See attached.)

As always, if you need to be absent from work, please let your supervisor know. Your supervisor will work with you and your agency's HR team to determine if Emergency Paid Sick Leave or PHEL/EFMLEA apply to your situation.

Unemployment and Disability Insurance

If you or someone in your family is ill or has a reduction in work hours, you may be eligible for benefits from a disability insurance plan or through the Employment Development Department. Check with your agency's HR team and review the EDD's programs at:

https://edd.ca.gov/about_edd/coronavirus-2019/faqs.htm

Employee Assistance Program

Our Employee Assistance Program is a resource that can help you and your family at this time.

EAP

Phone Number

[NOT FOR INCLUSION - NOTE TO AGENCY SUPERVISORS – This following section is OPTIONAL, and should only be used IF you have classifications that meet the DOL definition AND your Agency has properly adopted a policy excluding these employees.]

Emergency Responders

The [Agency] has designated the following classifications as Emergency Responders under the FFCRA: {Enter Agency appropriate classifications here as defined by the DOL guidance}.

Emergency Responders are hereby excluded from eligibility for both Expanded Family and Medical Leave (Sections 3101, et seq.) and Emergency Paid Sick Leave (Sections 5101 et seq.) benefits under the FFCRA.

Sample Notice of Eligibility and Rights & Responsibilities
Emergency Paid Sick Leave and/or Public Health Emergency Leave/EFMLEA ONLY

TO: _____
(Employee's name)

FROM: _____
(Name of employer representative)

DATE: _____

PART A – NOTICE OF ELIGIBILITY

On _____, you informed us that you needed leave beginning on _____
(date) (date)

because:

- You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- A health care provider has advised you to self-quarantine related to COVID-19.
- You are experiencing COVID-19 symptoms and are seeking a medical diagnosis
- You are caring for an individual subject to an order described in (1) or self-quarantine described in (2).
- You are caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

This Notice is to inform you about:

Emergency Paid Sick Leave

- Pursuant to the Family First Coronavirus Response Act, effective April 1, 2020 – December 31, 2020, you are eligible for EPSL. (See Part B below for Rights and Responsibilities)
 - At your regular rate of pay, up to \$511 per day, maximum \$5,110.00.
 - At 2/3 of your regular rate of pay, up to \$200 per day, maximum \$2,000.00.

You may supplement EPSL with your accrued leave to achieve 100% of your regular income. Select which leave you choose to use:

Sick leave Vacation leave Other leave-Specify: _____

Public Health Emergency Leave/Emergency Family and Medical Leave Expansion Act (PHEL/EFMLEA):

- Pursuant to the Family First Coronavirus Response Act, effective April 1, 2020 – December 31, 2020: You have worked for the Agency more than 30 calendar days, and are eligible for up to 12 weeks of Public Health Emergency Leave/FMLA, with the exceptions indicated immediately below. (See Part B below for Rights and Responsibilities)
 - Because you have already used _____ weeks of FMLA benefits in the FMLA 12-month period, you are entitled to _____ weeks of Public Health Emergency /FMLA Leave. (You are still eligible for the Emergency Paid Sick Leave benefit.)

PART B – RIGHTS AND RESPONSIBILITIES FOR LEAVE

1. As explained in Part A, you meet the eligibility requirements for EPSL and/or PHEL/EFMLEA. To confirm your eligibility for leave benefits, you are required to provide the following **within ___ days/** **upon Agency request in the future:**

- Sufficient certification to support your request FMLA leave. A certification form that sets forth the information necessary to support your request **is/** **is not** enclosed.
- Sufficient documentation to establish the required relationship between you and your family member.
- Sufficient documentation to establish the required relationship between you and the individual for whom you are caregiving.
- Other information needed:

- No additional information requested

If sufficient information is not provided in a timely manner, your leave may be denied.

If you have any questions about appropriate documentation or your ability to provide it timely, contact _____.

2. Employees on PHEL/EFMLEA have the same right to reinstatement as they would under the FMLA.

3. If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.
4. While on leave you may be required to furnish us with periodic reports of your status.
5. Employees who misuse or abuse FMLA leave may be disciplined up to and including termination.
6. Please note that if you have worked at least 1,250 hours in the past 12 months, and you or a qualifying family member is sick, you may ALSO qualify for FMLA/CFRA leave. Please contact _____ at _____ if you believe you need to be considered for extended medical leave under the conditions of these laws and local policy.

[NOT FOR INCLUSION IN THE NOTICE--SUPERVISOR/HR TEAM: If an employee is FMLA/CFRA eligible, please follow your usual procedures for eligibility determination and noticing, as well as for leave management and return to work practices.]

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 10 weeks more of paid sick leave and expanded family and medical leave paid at $\frac{2}{3}$ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days* prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

- | | |
|---|---|
| <ol style="list-style-type: none">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 related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd

