

# FAQs

## Reopening Amid COVID-19: Personnel Edition

### Preventing the Spread

#### **Q** Can we require employees to wear a mask at work?

**A** Yes. Wearing a mask can be required as a condition of employment. If an employee refuses to wear a mask, it is important that his supervisor have a conversation with him to determine why he does not want to wear a mask. If there is a valid medical reason, an exception may be granted or an accommodation provided, e.g. mask is not required in a private office or when no students are present, etc. If the reason is that he simply prefers not to wear a mask, the directive should stand. Any employee who refuses to wear a mask without a valid reason can be disciplined for insubordination.

#### **Q** Can we take the temperature of employees before they enter the building or throughout the workday?

**A** Yes. While medical examinations are usually limited under the Americans with Disabilities Act, during a pandemic, employers may take employee temperatures in the workplace. However, remember that some people who are positive for COVID-19 have no fever.

#### **Q** What temperature must they have to enter?

**A** According to the CDC, a temperature of 100.4 degrees or higher is a potential symptom of COVID-19. Employees with temperatures under 100.0 degrees may be admitted unless they have other COVID-19 symptoms. As of this writing, the CDC has identified the following symptoms as potential symptoms of COVID-19 which can develop 2-14 days after exposure:

- Fever or chills
- Cough
- Shortness of breath
- Fatigue
- Muscle or body aches
- Headache
- New loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

*Check [CDC.gov](https://www.cdc.gov) for more updates on potential symptoms*

#### **Q** Do we have to have a medical professional take the temperature?

**A** Having a medical professional, like a school nurse or LPN, take the temperatures is preferred, but if you do not have a nurse available each day, another employee may be designated and trained to do so. Ensure that information collected is treated confidentially and sensitively. For example, the person taking the temperature should not announce a high temperature to a line of employees or otherwise share this information with anyone other than a designated administrator.

**Q Can we send employees home if they are exhibiting COVID-19 symptoms?**

**A** Yes. The EEOC has stated that exclusion is permissible because a symptomatic employee's presence would be a "direct threat" to the health and safety of the workplace.

**Q An employee appears to be symptomatic (e.g. coughing, congestion, runny nose, etc.), but has not reported COVID19 symptoms. Can we send the employee home?**

**A** Yes. The employer can send an employee home based on his observations of apparent symptoms even if the employee does not self-report such symptoms. It is a good idea to have a conversation with the employee to determine if your observations are accurate or may have some other non-COVID-19 cause, like allergies. Any such conversation should be handled sensitively and discretely. Also, encourage (but don't require) the employee to seek medical attention to determine if a test is appropriate.

**Q An employee is frequently sneezing, but insists her symptoms are the result of allergies. Should we send her home as being symptomatic?**

**A** It depends. Employers can't distinguish between symptoms caused by allergies or other conditions and COVID-19. If the employee can provide a satisfactory explanation for her symptoms or the employee's condition is generally known, e.g. she always suffers from allergies in the spring, there is no need to send the employee home. If the supervisor has reason to question the employee's explanation, the employee should be sent home until she can obtain medical certification that she is not contagious.

**Q What if the employee is diagnosed with flu or pneumonia instead of COVID-19? Should the employee stay home?**

**A** Yes. Any time an employee (or student) is diagnosed with a contagious illness, they should stay away from the workplace, but they would not be eligible for leave under the FFCRA (see the FFCRA section). They would, however, be eligible to take their accrued sick leave.

## Questions About Health

**Q Can we require our employees to tell us if they have symptoms of COVID-19 or have tested positive for COVID-19?**

**A** Yes. Because COVID-19 poses a direct threat to the health and safety of the workplace, we can require employees to disclose possible symptoms of COVID-19 or a positive test result. Once our schools and workplaces have reopened, all employees should be instructed to disclose possible symptoms of COVID-19 or a positive test result to their supervisor or a designated administrator. Any such report must be treated as confidential.

**Q An employee has called in sick. Can we ask what his symptoms are?**

**A** Yes, but only if that question relates to COVID-19 symptoms and if the employee would otherwise be present in the workplace. During the pandemic, you can ask any or all of the following questions:

- Do you have symptoms of COVID-19 (e.g. fever, chills, sore throat, shortness of breath, etc.)?
- Have you been tested for COVID-19?
- Have you tested positive for COVID-19?

If the employee has been teleworking and has not been and is not expected to be in the workplace, you cannot ask about their medical condition or symptoms unless those symptoms are so severe that they cannot even work remotely.

**Q Can we require employees to take a COVID-19 test? What if we suspect they have been exposed or show symptoms?**

**A** Schools likely cannot require all employees to take a COVID-19 test, but an employer may require an employee to take a test if there is reason to believe the employee has been exposed or is showing symptoms. However, be aware that employees are not in control of whether they receive a test or not. Even if an employee is symptomatic, widespread testing may not be available in their area.

**Q Can we require employees be vaccinated?**

**A** We are not addressing this question as vaccines are not yet imminent. Should a vaccine become available, we will update this guidance.

**Q Can we ask employees if they have health factors that would put them at a high risk of serious illness if they contract COVID-19?**

**A** No. This would violate the Americans with Disabilities Act because it would potentially reveal a disability. The employer can, however, ask whether an employee may be more adversely impacted than the average person by asking about medical and non-medical reasons without seeking details. Here is an example of a way to collect information legally:

**PANDEMIC IMPACT EMPLOYEE SURVEY**

**Directions:** Answer the whole question without specifying the factor that may apply to you. Simply check "yes" or "no" at the bottom of the page. Would you be unable to come to work because of any of the following reasons:

- You would need to care for a child if schools or daycare centers were closed or your regular childcare was unavailable due to COVID-19;
- You would need to care for other individuals who would rely on you for care due to COVID-19; and/or;
- You fall into one of the categories identified by the CDC as being at high risk for serious complications from COVID-19 and may be advised by public health authorities or your healthcare provider not to come to work (e.g. pregnant women; persons with compromised immune systems due to cancer, HIV, history of organ transplant or other medical conditions; persons less than 65 years of age with underlying chronic conditions; or persons over 65).

YES\_\_\_\_\_ NO\_\_\_\_\_

**NOTE:** In the event an accommodation becomes necessary, limited medical information may be requested.

**Q Can we ask our employees if they have a family member that has tested positive?**

**A** No, but you can ask employees if they have had close contact with anyone who has tested positive for COVID-19. Close contact is defined as having been within 6 feet of the positive person for more than 15 minutes.

## **Sending Employees Home**

**Q If an employee has a temperature or other COVID-19 symptoms and we do not let them enter or report to work, do they have to take leave?**

**A** Generally yes, but there may be other options:

- If the employee is well enough to work and has the option to work remotely, no leave is required.
- If no remote work is available, he may be eligible for emergency paid sick leave (see FFCRA below) or accrued sick leave.
- If the employee is seeking a test for COVID-19, he may be eligible for emergency paid sick leave (see FFCRA below).
- If the employee is not eligible for emergency paid sick leave and has no accrued sick leave, the leave may be unpaid.

Emergency paid sick leave (FFCRA) can be used for up to 10 work days. If an employee exhausts that leave, they may no longer claim it, even if their illness lasts more than 10 days or they become symptomatic more than once. Also, the FFCRA is set to expire on December 31, 2020 unless extended by Congress. If the pandemic continues through next year and the FFCRA expires, emergency paid sick leave will not be available. Additionally, FMLA is probably not an option as mere symptoms of COVID-19 are likely not a “serious health condition” that would trigger FMLA leave. If the employee is positive for COVID-19, FMLA leave may be available if the employee’s symptoms are severe enough to constitute a “serious health condition”.

**Q We may have employees that are forced to stay home if they are exposed or if we have to shut down all or part of a building for cleaning. They may not have enough paid leave available. We don’t think this is fair to our employees. Can we place them on paid administrative leave?**

**A** Yes. While a system is under no obligation to place an employee on paid administrative leave, there may be circumstances for which paid administrative leave is the best option. For example, if a school is forced to close for several days because of COVID-19 and every employee is impacted, the system may decide to place employees on paid administrative leave rather than using accrued or unpaid leave. If paid administrative leave is not an option, systems can also promote the use of sick leave banks or permit employees to make hardship requests for paid leave. Finally, remember that if the Governor declares a state of emergency that causes schools to close—whether locally or statewide—systems can seek relief from the State Superintendent, if not provided by the Governor’s Order. If granted, employees would not lose any pay due to the school closure. Ala. Code §16-13-231(b)(1)(c)(2). No matter what strategy is used to help employees with this issue, be mindful of the precedent being set. It is vital that decisions be made in a way that is fair and nondiscriminatory.

## Q How long should employees stay away from work related to COVID-19?

A Based on CDC guidelines, here are the current suggestions for return to work:

- **Employee has tested positive**
  - Employee has been fever-free for 3 days without medication;
  - Any respiratory symptoms have improved (e.g., coughing, congestion, runny nose, etc.); and
  - It has been 10 days since symptoms first appeared or positive test received.
- **Employee was symptomatic but tested negative**
  - 14 days after symptoms began (in case of false negative)
- **Employee was symptomatic but not tested**
  - Employee has been fever-free for 3 days without medication;
  - Any respiratory symptoms have improved (e.g., coughing, congestion, runny nose, etc.); and
  - It has been 10 days since symptoms first appeared.
- **Employee had close contact with a positive person (within 6 feet for more than 15 minutes) but not symptomatic**
  - 14 days from exposure
- **Employee had close contact with a positive person (within 6 feet for more than 15 minutes) and is symptomatic but not tested**
  - 14 days from exposure

These guidelines are subject to change so check the CDC's website for the most up to date information.

## Questions About Privacy

### Q We have just been notified by an employee that he has tested positive for COVID-19. What should we do now?

A There are no specific requirements for what to do if you learn an employee is positive, but here are some best practices to consider, subject to your local counsel's advice:

- Be sensitive to the employee and keep the information confidential.
- Find out when the employee was last in the building and where he was in the building.
- Talk with the employee about staff or students with whom he may have been in "close contact".
- Encourage--but don't require--the employee to notify those "close contacts" directly.
- Alternatively, ask the employee if he will permit a designated administrator to notify those close contacts of the potential exposure -- while maintaining the employee's confidentiality.
- If you intend to notify the general school or building population, tell the employee ahead of time. Assure him that his identity will be protected.
- Remind the employee of his leave options, including emergency paid sick leave and accrued sick leave.
- Determine whether certain areas of the building need to be shut down to deep clean and the impact of that on students or staff.

After a week or so has passed, it would be a good idea to check in on the employee and see how they are doing.

**Q Do we have to notify people if we learn a positive case was in the building? Are we responsible for contact tracing?**

**A** No, but it may be advisable. There is a difference between a general notification to the impacted school or building community and contact tracing. The Alabama Department of Public Health is the only entity that should do contact tracing—the process of notifying persons who have been in close contact (within 6 feet for more than 15 minutes) with a person who has tested positive for COVID-19. The ADPH will also advise those close contacts of how long to quarantine and what next steps to take. Of course, the ADPH may reach out to the school system to assist with gathering contact information.

If a member of your school community tests positive, it is suggested but not required that the system also notify the building population. Providing this notification may serve to reduce the rumor mill and promote confidence and transparency.

If you do make a notification, remember that we must protect the confidentiality of medical information. You should never provide an employee's (or student's) name or any other information that could potentially identify the person. For example, you should not identify a particular classroom or office where the positive employee worked as that would make it easier to determine who the positive employee is. Before you send out any such notification, work closely with your local counsel on the message.

**Here is what a message to the general building population may look like:**

*This morning, we were notified that a person in this building tested positive for COVID-19. Due to privacy laws, we are unable to identify the person, but this person was last in the building on Tuesday, September 22. Over the next several days, please monitor your own symptoms. If you develop potential COVID-19 symptoms, please notify your supervisor and stay home. Contact your healthcare provider to determine if you need to be tested. The Department of Public Health may reach out to you as part of their contact tracing to notify anyone who may have interacted with this person. If necessary, questions about leave should be directed to your supervisor or the HR Department.*

**Q If we have an employee test positive for COVID19, are we required to report that to the Department of Public Health?**

**A** No. The healthcare provider who administered the test will report the positive result to the Health Department.

**Q Do we have to keep COVID-19 related medical information separate from the personnel file?**

**A** Yes. In fact, the Americans with Disabilities Act requires all medical information be kept separately and confidentially from the regular personnel file. COVID-19 related medical information can include a temperature log, a leave request, a request for accommodations, a doctor's note or any other document that may reveal private medical information.

## Q Are schools subject to HIPAA considerations?

A Generally, no. HIPAA—the Health Insurance Portability and Accountability Act—only applies to certain entities: health plans, healthcare clearinghouses and healthcare providers that transmit certain health information electronically. Even when school healthcare professionals collect information, they typically do not handle “covered transactions”, e.g. billing a healthcare plan. However, healthcare information should still be treated as confidential and with the utmost care.

## Employees at High Risk

### Q What conditions tend to place an employee at higher risk for serious illness if they contract COVID-19?

A According to the CDC, people with the following conditions tend to be at higher risk of serious illness if they contract COVID-19:

- Over age 65
- Heart conditions
- Chronic kidney disease
- COPD (chronic obstructive pulmonary disease)
- Sickle cell
- Type 2 diabetes
- Weakened immune system from organ transplant
- Obesity (BMI of 30 or higher)

Other diseases and conditions, e.g. pregnancy, may place employees at a higher risk, but information continues to develop about this new disease. Check back with the CDC for updates.

### Q How do we handle employees who have risk factors?

A If an employee reports risk factors which make COVID-19 exposure more dangerous, the employer should work with local counsel to determine if those risk factors may constitute a “disability” under the Americans with Disabilities Act. If the risk factor is a disability, the employer will then be required to consider potential accommodations, e.g. remote work, adjusted work hours or location to reduce contact with others, etc. It is vital to have a good faith exchange with the employee to determine what options may be available. It is also vital that accommodations be offered in a fair and nondiscriminatory fashion.

**NOTE:** Employees are not guaranteed a particular or requested accommodation. Work with local counsel to determine what accommodations may be appropriate

### Q Can we prohibit older employees from coming to work since age is a risk factor?

A No. The EEOC has issued guidance that prohibits employers from barring older employees from the workplace as a violation of the Age Discrimination in Employment Act—even if the purpose is to protect the employee. Of course, the employer can make alternative arrangements to allow the employee to work in another setting, including teleworking.

**Q Can we prohibit a pregnant employee from coming to work?**

**A** No. This would be a violation of the Pregnancy Discrimination Act, even if done to protect the employee. Of course, the employer can make alternative arrangements to allow the employee to work in another setting, including teleworking.

**Q We have an employee who we believe has a risk factor, but the employee has not requested any accommodation. Do we have to offer an accommodation?**

**A** No. If the employee does not request an accommodation, the employer is under no obligation to offer one. Moreover, the employer cannot block an employee from the workplace based solely on a perceived risk factor. Doing so may be a violation of the Americans with Disabilities Act. If the employer wants to offer an accommodation, the accommodation should be offered to employees regardless of a perceived disability.

**Q We have an employee who lives with someone at high risk if they contract COVID-19. The employee has asked to telework. Are we required to offer this accommodation?**

**A** No. Under the Americans with Disabilities Act, employers are not required to accommodate employees merely because they are associated with those who may have a disability. While employers cannot discriminate against employees associated with disabled individuals, accommodation is not required. Of course, the employer can always choose to accommodate these employees. Be sure that accommodations are offered in a fair, consistent and nondiscriminatory manner. Also, it may be helpful to document your rationale for granting or denying an accommodation in case questions are raised later.

## Practical Concerns

**Q If we have an employee that tests positive and we need to shut down the building or an area, who needs to be sent home?**

**A** If you learn an employee has tested positive, those with whom they had close contact should likely be sent home. Talk with the employee to determine where they were in the building and with whom they had close contact. "Close contact" is someone they have been within 6 feet of for more than 15 minutes. For example, if they sat at a teacher's lunchroom table on the day they develop symptoms, the teachers sitting at the same table would be close contacts. If they taught a class, those children would likely be close contacts. If they sat in the teacher's lounge during a planning period, teachers that were there at the same time would be close contacts. The Alabama Department of Public Health will still be responsible for contact tracing, but the administration should consider sending those employees home for 14 days pending notification and further instructions by the ADPH.

**Q How do we handle employees who are concerned about returning to our schools for fear of contracting COVID-19?**

**A** Fear of contracting COVID-19 is not a valid reason to refuse to come to work, but employers should remain sensitive to their employees and their concerns. We recommend a 4-step process:

- If an employee expresses concern about returning to the workplace, have a conversation with him and determine if there's a way to allay those concerns, e.g. change in work environment, schedule or duties which reduce contact with others, etc.
- If changes cannot be made to the work environment, consider if there are any remote work options that may be appropriate.
- If remote work is not an option, the employee may use his accrued personal or vacation leave. Emergency paid sick leave under the FFCRA is not an option because "fear" is not one of the six reasons for taking such leave. Also accrued sick leave would not be an option under Alabama state law.
- If none of these options resolve the situation, the employer can consider an unpaid leave of absence or even termination based on the employee's failure to perform the essential functions of his job, but this should be used as a last resort.

If accommodations are offered, be mindful of the precedent being set and make sure you offer these accommodations in a fair and nondiscriminatory manner. Also, periodically evaluate the situation to determine if changes need to be made.

**Q An employee tested positive for COVID-19 after reporting to work for several days while awaiting test results. We have now learned that the employee intentionally withheld the fact that he was symptomatic and was awaiting test results. Can we discipline the employee?**

**A** Generally, yes. If you have instructed employees to report COVID-19 symptoms and they fail or refuse to do so, they can be disciplined for insubordination and intentionally placing staff and students in harm's way. As always, it is important to have a conversation with an employee to seek an explanation before deciding on potential discipline.

**Q Should we direct our employees to report other employees who appear to be symptomatic?**

**A** No. You can encourage or require employees to report their own symptoms but requiring employees to report on one another will inevitably lead to excessive conflict, fear or even bullying in the workplace.

**Q Should we require a doctor's note or fitness for duty certification when employees have been out due to symptoms, exposure or positive tests?**

**A** The employer can require documentation to ensure employees are fit to return to work after an absence, but employers should remain flexible with this requirement so healthcare providers are not overwhelmed with these requests. A request can be mandatory if an employer believes an employee is abusing pandemic concerns and flexibilities, but be sure to document a legitimate, nondiscriminatory reason for making the request.

**Q An employee has reported that a coworker appears symptomatic. The employee is refusing to work until the coworker has been tested and/or removed. Can they do that?**

**A** No. The employer is not required to mandate a test or exclude an employee based on the claims or comfort of a coworker. The supervisor can, however, discretely observe the employee or privately approach the employee to ask if they are symptomatic. Any such inquiry should be handled sensitively and confidentially. There is no need to report back to the employee who complained. If there appears to be no basis for the complaint, the complaining employee will be required to work or take available personal or vacation leave. Otherwise, the failure to perform their job may be grounds for discipline.

**Q We want employees to stay home when they are sick but we need them to report to work when they are well. While most employees will do the right thing, how do we handle employees who try to hide their symptoms so they can work and not worry about their jobs or their pay? How do we handle employees who pretend to be symptomatic so they can stay home?**

**A** This will prove to be one of the greatest challenges as there is no perfect way to verify an employee's health status. For that reason, it is vital that supervisors make employees feel comfortable and secure enough to stay home when they are sick. One way to do that is let employees know what will happen so they know what to expect, e.g. what leave may be available, whether remote working or some other accommodation if they become symptomatic or test positive for COVID-19, etc.

If an employee reports to work and the supervisor has reason to believe the employee is symptomatic, he can approach the employee discretely and ask if he is symptomatic, has been exposed to COVID19 or has been tested. The employee's temperature can also be taken. If there is good reason to believe the employee is symptomatic, the supervisor can require they leave the workplace and encourage (not require) the employee to seek a test or medical treatment. The employee may use available emergency paid sick leave or accrued sick, personal or vacation leave, as applicable. Employees who falsely claim to have COVID-19 symptoms do so at their own peril if they are caught. To request leave, they will generally have to certify that they are eligible for leave. It is dangerous to make false statements or submit forged documents as doing so could lead to termination or other serious consequences. While we do not believe every employee should be required to submit a doctor's note for illnesses given the strains on the medical system, a supervisor can request a doctor's note if there is reason to believe an employee is being dishonest about their symptoms or diagnosis. If we require an employee to see a doctor, we may be required to pay the cost of an examination.

Also, if a supervisor believes an employee may be misrepresenting their illness, the supervisor may consider checking the employee's social media or other resources to determine if the employee is actually quarantining. If a supervisor has these concerns, it is important to work closely with local counsel to strategize on how to address the problem.

**Q Can the board be held liable if we require employees to return to work and someone contracts COVID-19 from a student or employee?**

**A** Likely not. We expect to see these types of lawsuits as schools and other industries reopen, but we do not expect them to be successful. Our boards still enjoy absolute immunity from lawsuits and our board members and board employees still enjoy strong discretionary function immunity. Additionally, the Governor issued an executive order which provided immunity for private businesses and governmental entities for COVID-19 transmission. As long as we make reasonable efforts to protect stakeholders and avoid unnecessary risks, we enjoy this immunity. Finally, it will be difficult for an employee to establish that they were infected by someone in the workplace, as opposed to a grocery store or even in their own home by a family member.

## Health of Others

**Q An employee reported that her husband has tested positive but she is not symptomatic and has not sought a test. Should she come to work?**

**A** No. According to CDC guidance, employees who have had significant exposure to a positive person should stay away from the workplace for 14 days after their last exposure. Significant exposure includes an employee who has had close contact with (within 6 feet for more than 15 minutes), lives with, has had intimate contact with or has provided care for a person who has been diagnosed with COVID-19. Available leave depends on the employee's circumstances:

- If the healthcare provider advises her to quarantine in light of her exposure, she may be eligible for emergency paid sick leave or accrued sick, personal or vacation leave.
- If the employee is caring for her husband, she may be eligible for emergency paid sick leave or accrued sick, personal or vacation leave.
- Absent symptoms or a doctor's order, the employee will not be eligible to use emergency paid sick leave or accrued sick leave, but may use personal or vacation leave.

If the employee is ineligible for leave, she can be placed on unpaid leave of absence at the employer's option. Remember to make these decisions in a fair and nondiscriminatory manner.

**Q An employee reported that her husband has a coworker that has tested positive. Neither husband nor wife are symptomatic and neither has sought a test. Should she come to work?**

**A** Yes. While there may have been potential exposure to COVID-19, the wife's exposure was not close enough to warrant exclusion from the workplace. The employee should be advised to monitor her symptoms and should seek a test if she or her healthcare provider feel it is necessary.

# FFCRA - General

**Q** What type of leave is provided by the FFCRA?

**A** The FFCRA provides two types of leave: emergency paid sick leave and expanded FMLA leave.

**Q** For what reasons can employees take leave under the FFCRA and how much leave can they take?

**A**

Related to	Reason for leave	Employee	Leave	Maximum Pay	Notes
Self	1-Subject to federal, state or local quarantine order	Full or part time employee	Emergency Paid Sick Leave	100% pay for 10 work days up to \$511/day	
Self	2-Advised to quarantine by health care provider	Full or part time employee	Emergency Paid Sick Leave	100% pay for 10 work days up to \$511/day	Accrued sick leave is also available
Self	3-Experiencing symptoms and seeking a diagnosis	Full or part time employee	Emergency Paid Sick Leave	100% pay for 10 work days up to \$511/day	Accrued sick leave is also available
Others	4-Caring for a person subject to quarantine order from govt. officials or health care provider	Full or part time employee	Emergency Paid Sick Leave	67% pay for 10 work days up to \$200/day	Accrued sick leave is also available
Others	5-Caring for child whose school or daycare is closed or whose childcare provider is unavailable due to COVID-19	Full or part time employee	Emergency Paid Sick Leave	67% pay for 10 work days up to \$200/day	1st 10 days of expanded FMLA leave may run concurrently with emergency paid sick leave or accrued sick leave at employee's option. Total of 12 weeks. Applies only to children under the age of 18.
		Full time or part time employee employed for at least 30 days	Expanded FMLA Leave	1st 10 days are unpaid, then 67% pay for 10 weeks up to \$200/day	
Others	6-Experiencing similar condition as specified by HHS	Full or part time employee	Emergency Paid Sick Leave	67% pay for 10 work days up to \$200/day	No conditions have been specified so far

## **Q Which employees are eligible for leave under the FFCRA?**

**A** All employees, both full time and part time, are eligible for emergency paid sick leave. Employees, both full time and part time, who have been employed for at least 30 days before the leave would begin are eligible for expanded FMLA leave.

## **Q Can the system require the employee to use accrued sick, personal or vacation leave before using FFCRA leave?**

**A** No. The employee is entitled to use leave provided by the FFCRA before and in addition to accrued sick or personal leave. In the event the employee may lose pay using FFCRA leave because of income caps, the employee may supplement his pay with accrued sick, personal or vacation leave.

## **Q If an employee needs leave under the FFCRA, what are they required to do?**

**A** The employee should submit a written request as soon as the need becomes known—using a form or any other written method—that provides the following information:

- Employee's name;
- Dates of leave requested;
- Reason for the leave;
- A statement that the employee is unable to work for the reason provided;
- A request to apply accrued leave to supplement pay, if necessary; and
- Any other information relevant to the request, e.g.
  - If the request is due to a quarantine order, the name of the entity that issued the order;
  - If the request is due to a healthcare provider quarantine directive, the name of the provider;
  - If the request is due to school or daycare closure or unavailability of the childcare provider due to COVID-19, the name of the child, the facility that has been closed/individual unavailable and a statement that no suitable person is available to care for the child.

## **Q Can an employee take leave under the FFCRA more than once?**

**A** Yes. Leave may be used intermittently, but once the employee has exhausted their 10 days of emergency paid sick leave and/or the additional 10 weeks of extended FMLA leave for childcare, they can no longer claim it. As a reminder, the leave under the FFCRA is set to expire December 31, 2020, unless extended by Congress.

## **Q Can the employee use the maximum amount of FFCRA leave or only as much as they need?**

**A** The employee can only use as much leave as they need to address the condition which caused the leave. For example, if the employee takes emergency paid sick leave and expanded FMLA leave because a positive case caused her daycare to close, but the daycare reopens 3 weeks later, she is only entitled to use the 2 weeks of emergency paid sick leave and 1 week of expanded FMLA leave.

**Q Are school boards entitled to tax credits to cover the cost of FFCRA leave?**

**A** No. Many private employers are entitled to tax breaks to reimburse the cost of employees taking leave under the FFCRA, but school boards and other governmental entities are not eligible.

**Q What constitutes a “quarantine order” for purposes of emergency paid sick leave?**

**A** A “quarantine order” refers to a quarantine order, isolation order or stay-at-home order issued by a governmental entity, e.g. an executive order issued by the Governor.

## **FFCRA - Emergency Paid Sick Leave**

**Q An employee had symptoms related to COVID-19, but did not seek a test and does not plan to seek a test. He merely wants to self-quarantine. Is he eligible to take emergency paid sick leave?**

**A** No. The FFCRA says that a symptomatic employee can take emergency paid sick leave only if he is seeking a test. However, if the employee quarantines based on a doctor’s order—whether or not he seeks a test—he is eligible for emergency paid sick leave.

**Q An employee wants to take emergency paid sick leave to care for a family member who has been diagnosed with COVID-19. Can the employee use this leave even if the person is not the employee’s child or spouse?**

**A** Yes. One of the reasons an employee can take emergency paid sick leave under the FFCRA is to care for an “individual” diagnosed with COVID-19. An “individual” is a member of the employee’s immediate family, a person who lives at the employee’s home on a regular basis or a person who has a relationship with the employee that creates a reasonable expectation that the employee would provide care for that person.

**Q An employee has asked to take emergency paid sick leave to care for his wife who has been diagnosed with COVID-19. Under the FFCRA, he will earn 67% of his normal salary up to \$200/day. He would like to use his accrued sick leave so his paycheck is not reduced. Can he do that?**

**A** Yes. The employee will be eligible for 2 weeks of emergency paid sick leave earning 67% of his normal salary up to \$200/day. Because caring for a sick spouse is an allowable reason to use accrued sick leave under Alabama state law, he can use 1/3 of his accrued sick leave per day to maintain his full salary pursuant to the board's policy. Therefore, if he takes the full 2 weeks, he will use 3 1/3 days of accrued sick leave. Because many systems allow leave only in specified increments, e.g. quarter day, half day, full day, the supplemental leave can be rounded up to provide the employee with a full day's pay while also complying with your local policy.

**Q An employee’s husband has tested positive for COVID-19. She wants to use emergency paid sick leave to care for him, but she makes more than the \$200/day cap. Can she use her accrued sick leave so she can make her full salary?**

**A** Yes. The employee is eligible for 2 weeks of emergency paid sick leave. She would make 67% of her regular salary up to \$200/day. The employee may opt to use accrued sick leave to supplement her pay to her normal amount. Instructions and 2 examples follow:

1. Calculate the employee’s regular daily rate and multiply by 67%.

2. If this amount is more than \$200/day cap and employee wants to use accrued leave to supplement, calculate how much the employee will need to earn to supplement each day:

$$\text{regular daily rate} - \$200/\text{day cap} = \text{daily rate overage}$$

3. Figure the employee’s regular hourly rate.

$$\text{Regular daily rate} / \text{hours worked per day} = \text{regular hourly rate}$$

4. Calculate the number of accrued leave hours needed to supplement the EPSL.

$$\text{Daily rate overage} / \text{regular hourly rate} = x \text{ hours of accrued sick leave use per day of EPSL (round up to allowable increment)}$$

### EXAMPLE 1

Sarah plans to take 2 weeks of extended paid sick leave to care for her husband diagnosed with COVID-19. She is entitled to 2/3 of her regular salary up to \$200/day for 10 work days. Her regular salary is \$350/day.

$$\$350/\text{day} * 67\% = \$234.50/\text{day}$$

2/3 of Sarah’s pay is more than the \$200/day she will earn using EPSL so she would like to use her accrued sick leave to supplement her EPSL so that she won’t lose pay.

Sarah’s pay will need to be supplemented at a rate of

$$(\$350/\text{day regular salary} - \$200/\text{day EPSL cap}) = \$150/\text{day}.$$

If Sarah works 8 hours/day, her hourly rate is

$$(\$350/\text{day} / 8 \text{ hours} = ) \$43.75/\text{hour}.$$

To supplement the \$150/day deficit, Sarah needs to use

$$(\$150/\text{day} / \$43.75/\text{hour} = ) \text{ (round up to allowable increment)}$$

**3.43 hours of accrued sick leave per day**

### EXAMPLE 2

Katie plans to take 2 weeks of extended paid sick leave to care for her husband diagnosed with COVID-19. She is entitled to 2/3 of her regular salary up to \$200/day for 10 work days. Her regular salary is \$400/day.

$$\$400/\text{day} * 67\% = \$268/\text{day}$$

2/3 of Katie’s pay is more than the \$200/day she will earn using EPSL so she would like to use her accrued sick leave to supplement her EPSL so that she won’t lose pay.

Katie’s pay will need to be supplemented at a rate of

$$(\$400/\text{day regular salary} - \$200/\text{day EPSL cap} = ) \$200/\text{day}.$$

If Katie works 8 hours/day, her hourly rate is

$$(\$400/\text{day} / 8 \text{ hours} = ) \$50.00/\text{hour}.$$

To supplement the \$200/day deficit, Katie needs to use

$$(\$200/\text{day} / \$50.00/\text{hour} = )$$

**4 hours of accrued sick leave per day**

**Q I have just been informed that a teacher has tested positive for COVID-19. Is the system obligated to reach out to the teacher to advise her of her right to emergency paid sick leave?**

**A** No. The system is required to post the FFCRA poster in the workplace or on its website or send it to all employees electronically. There is no requirement to notify an impacted employee of the availability of the leave, but a system can certainly remind the employee of the leave.

**Q I have just been informed that a teacher has tested positive for COVID-19. The teacher does not wish to use emergency paid sick leave and would rather use her accrued sick leave. Are employees required to use emergency paid sick leave?**

**A** No. If the employee fails or declines to request the leave, the system is under no obligation to place the employee on leave under the FFCRA.

**Q Can employees use emergency paid sick leave once or intermittently? For example, a custodian took a week of emergency paid sick leave in April because their child's school closed due to COVID-19. In August, they develop potential symptoms of COVID-19 and plan to be tested—another permissible reason to use leave. Can they take the second week?**

**A** Yes. Intermittent leave is permitted up to the maximum allowable leave.

## **FFCRA - Expanded FMLA Leave**

**Q What if an employee already took 12 weeks of FMLA leave this year for a non-COVID-19 related reason? Are they still eligible for expanded FMLA leave based on a need for childcare?**

**A** No. If an employee already took 12 weeks of FMLA leave this year for a non-COVID-19 reason, they are not eligible for expanded FMLA leave for childcare. They are, however, still eligible for emergency paid sick leave if they have a qualifying reason.

**Q I have husband-and-wife employees who have lost their childcare due to COVID-19. Can both take expanded FMLA leave to care for their child?**

**A** No. Expanded FMLA leave can only be used when there is no suitable person available to care for the child. One employee can take the leave for this purpose but the other cannot or the employees can split the leave in any way they choose based on their family and work needs. It is important that the employer not assume the wife will take the leave.

**Q An employee wants to take expanded FMLA leave because his child's daycare closed due to COVID-19. The child is a 4 year old step child. Is this a covered "child" for expanded FMLA leave purposes?**

**A** Yes. For purposes of taking expanded FMLA leave, "child" includes a biological child, adopted child, step child or legal ward, as long as the child is under age 18 or suffering from a physical or mental disability that makes the child incapable of caring for himself.

**Q An employee’s infant child is normally cared for by a relative. The relative is quarantined. Does the employee qualify for expanded FMLA leave even though the child is not enrolled in school or daycare?**

**A** Yes. Expanded FMLA leave can be triggered by the closure of a child’s school or daycare provider, or the unavailability of the childcare provider as a result of COVID-19, which can include a relative, nanny, babysitter or other person who cares for the child, whether licensed or not and whether paid or not.

## Regular FMLA Leave

**Q If an employee tests positive for COVID-19, are they entitled to use regular FMLA leave?**

**A** It depends. Depending on the severity of the COVID-19 symptoms, it may be a “serious health condition” which entitles the employee to leave under the Family and Medical Leave Act. This would be traditional FMLA leave separate and apart from expanded FMLA leave which can be used for childcare purposes. To be eligible for traditional FMLA leave, the employee has to have worked for the employer for at least a year and worked at least 1,250 hours during that year. The employee may use up to 12 weeks of unpaid leave to care for himself or a family member. If the employee is positive but does not have severe symptoms, he will likely not be eligible for traditional FMLA leave.

## FFCRA - Traditional FMLA Leave

**Q An employee wants to take traditional FMLA leave or accrued sick leave because his child’s daycare closed due to COVID-19. Is this allowed?**

**A** No. The closure of a child’s daycare due to COVID-19 is not an eligible reason to use traditional FMLA leave or accrued sick leave if the child is healthy. If the employee has exhausted the 12 weeks available of emergency paid sick leave and expanded FMLA leave, he would have to take personal, vacation or unpaid leave.

## Reminders

- Advise your employees that they need to report potential COVID-19 symptoms or positive tests. The CDC guidelines for impacted employees will make staffing difficult, but it is imperative that employees report symptoms or we risk outbreaks in our schools.
- Make sure you’ve posted the Families First Coronavirus Response Act (FFCRA) poster in your workplace. The notice can also be sent to your employees via email or placed on the system’s website or intranet.
- Consider appointing a designated COVID-19 contact in your building to confidentially receive reports of COVID-19 symptoms or test results from employees.
- Clearly identify positions that may be eligible for temporary or long-term teleworking and those that are not, e.g. bus drivers, CNP workers, etc.
- Prioritize the health and safety of your stakeholders, be fair and sensitive to the concerns of your employees and accept that flexibility will be required this year.