



FFCRA Eligibility around Teleworking, Intermittent Leave, & Furloughs

Teleworking

If an employee is available to telework (work from home), they are considered able to work, and are not entitled to leave. Even if that employee needs to work on a modified schedule (such as starting earlier in the morning, before their children are awake), so long as the employer agrees to this schedule, the employee is considered able to work. Employers are encouraged to be flexible, wherever possible.

If an employer permits an employee to telework, but the employee cannot do so for a qualifying reason (see below), that employee is entitled to paid sick leave, or expanded FMLA depending on the qualifying reason. An employee may take two weeks of paid sick leave for many COVID-19 related reasons. They may take an additional 10 weeks of expanded family medical leave act (FMLA) to care for children at home due to school and childcare closures.

Intermittent Leave

For employees who are teleworking, an employer may allow them to take intermittent leave, particularly if they are unable to work normally scheduled hours. This leave can be taken in any increment so long as it is agreed to by both the employee and employer.

However, if an employee is still going to a physical place of work, they are only eligible for intermittent paid sick leave to care for children at home, and only if the employer agrees. This will fall under the expanded FMLA. For any other qualifying reason, that employee must take all of their Families First Coronavirus Response Act (FFCRA) paid sick leave at the same time, to prevent the spread of COVID-19.

Furloughs

When an employer has closed the worksite and stopped paying employees, they are not obligated to pay their employees leave benefits. This is true regardless of if the workplace was closed before or after April 1st. Employers who furlough employees or reduce their hours have no obligation to pay leave benefits to the furloughed employees.

On the other hand, if the worksite closed while the employee was on leave, the employer must pay the employee's benefits up to the date of the worksite closure.

Stacking Benefits

Employees are not able to stack benefits. For example if they are receiving FFCRA paid sick leave, or expanded FMLA they are not eligible for unemployment insurance. Partial benefits (if their pay or hours have been reduced), may be available depending on the state.

Further, if an employee is eligible for FFCRA paid sick leave or expanded FMLA, as well as paid sick leave by the employer, the employee may choose which to take. If that employee is receiving two-thirds of his or her pay under FFCRA, the employer may be able to "top off" their leave with paid



time off (PTO), in order for the employee to receive full pay. However, an employer may not supplement the pay mandated by the FFCRA with PTO, without the employee's permission. It is worth noting that employers who choose to allow employees to supplement with PTO will only receive a tax credit for the amount of leave they are obligated to pay under the FFCRA, and only up to the dollar caps in the FFCRA

DOL Requirements:

The Department of Labor (DOL) has instructed employers to require employees to provide documentation in support of why they need FFCRA paid sick leave. This documentation is to include:

- Employee name
- Qualifying reason for requesting the leave
- A statement that the employee is unable to work (or telework)
- Date(s) the leave is requested
- Documentation in support of the qualifying reason
 - This may be: a copy of the Federal, State, or local quarantine or isolation order, written documentation from a healthcare provider instructing the employee to self-quarantine, or a copy of a notice from a government, school, or daycare website stating that the school or daycare is closed

Employees seeking expanded FMLA to care for children at home must also provide documentation. Employers who are planning to seek a tax credit to offset these costs need to retain all of these documents in their records.

FFCRA Qualifying Reasons

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 or advised to quarantine or self-isolate
 5. The employee is caring for a child whose school or place of care is closed, or child care provider is unavailable due to COVID-19 precautions
 6. The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services
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