

Overview of COVID-19 Leave
Prepared by Laura A. Abrams, Esq.
General Counsel, The Ohio Plan, Inc.
April 10, 2020

A. FAQs

APPLICATION OF NEW FEDERAL LEAVES TO PUBLIC EMPLOYERS

Question #1: What is the Federal Family First Coronavirus Response Act (FFCRA)?

Answer: The FFCRA is legislation enacted by the Federal Government to provide various types of leave during the COVID-19 pandemic. It includes 2 pieces of legislation which provide additional paid leave to employees during this time. They are:

1. The Emergency Paid Sick Leave Act (EPSLA); and
2. The Emergency Family and Medical Leave Expansion Act (EFMLEA)

For ease of reference throughout these materials, we will refer to leave granted by the EPSLA as “**COVID-19 Paid Sick Leave**” and leave granted by the EFMLEA as “**COVID-19 Paid FMLA Leave**.”

Question #2: Do both types of new leave apply to Public Employers?

Answer: Yes, both types of new leave apply to ALL Public Employers who employ 1 or more employees.

Question #3: Are Public Employers eligible for an exemption from the new leaves if they have under 50 employees and if the leave will create a hardship for the Public Employer?

Answer: No, only private employers are eligible for an exemption based on number of employees and hardship considerations.

APPLICATION OF NEW FEDERAL LEAVES TO PUBLIC EMPLOYEES

Question #4: Are all public employees entitled to take both types of leave?

Answer: Each type of leave must be analyzed differently:

1. **COVID-19 Paid Sick Leave** applies to all employees, regardless of whether they are full or part-time, and regardless of how many hours they have worked or how long they have worked for the Public Employer. Public Employers *have the option* to exempt employees who are Health Care Providers or Emergency Responders from using **COVID-19 Paid Sick Leave** (see Question #5).
2. **COVID-19 Paid FMLA Leave** applies to all employees who have worked for the Public Employer for at least 30 days, regardless of whether they are full or part-time and regardless of the number of hours they have worked for the public employer. Public Employers *have the option* to choose to exempt employees who are Health Care Providers or Emergency Responders from using **COVID-19 Paid FMLA Leave** (see Question #5).

Question #5: Who qualifies as a “Health Care Provider” and “Emergency Responder” who can be exempted from both types of COVID-19 leave?

Answer: The Department of Labor (DOL) has provided the following definitions for these terms:

1. **Health Care Provider:** a health care provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.
2. **Emergency Responder:** an emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of patients, or others needed for the response to 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 whom the highest official of a State or territory, including the District of Columbia, determines is an emergency responder necessary for that State's or territory's or the District of Columbia's response to COVID-19.

Question #6: Must a Public Employer take official action to exempt Health Care Providers and/or Emergency Responders from being eligible for COVID-19 Paid Sick Leave and/or COVID-19 Paid FMLA Leave?

Answer: Yes, these exemptions are **options** – they are not automatic. If the public employer takes no action, the laws will be applied as written and all of their Health Care Providers and Emergency Responders will be eligible to take both **COVID-19 Paid Sick Leave** and **COVID-19 Paid FMLA Leave**.

Question #7: What type of action must a Public Employer take to exempt Health Care Providers and/or Emergency Responders from using COVID-19 Paid Sick Leave and/or COVID-19 Paid FMLA Leave?

Answer: Neither the laws themselves nor the regulations promulgated by the DOL state how any employer should exempt these employee classifications from the application of **COVID-19 Paid Sick Leave** and/or **COVID-19 Paid FMLA Leave**. However, it is best that a policy of some kind be developed that specifically states which categories of employees are declared exempt. It is not a good idea to simply include the DOL definition of either category. Public Employers should list the exempt employee categories using their particular job titles. Further, if personnel policies are typically approved by the legislative authority of the Public Employer, this policy should be approved in that manner as well. If the legislative authority is unable to meet quickly, the policy can be developed and distributed to employees and ratified by the legislative authority at its first opportunity.

COVID-19 PAID SICK LEAVE EXPLAINED

Question #8: When can employees take COVID-19 Paid Sick Leave?

Answer: Assuming the employee is not exempt (see Questions 4-7), a public employee may take **COVID-19 Paid Sick Leave** if the employee is not able to work (or telework) for any of the following six COVID-19 Related Reasons:

1. The employee is subject to an official quarantine/isolation order;
2. The employee has been advised by a health care provider to self-quarantine;
3. The employee is experiencing symptoms and seeking a medical diagnosis;
4. The employee has bona fide need to care for an individual who is subject to an order as described in subparagraph (1) or advice as described in paragraph (2);
5. The employee has a bona fide need to care for minor child (or adult child incapable of self-care) due to closure of school/place of care/daycare; and/or
6. Similar conditions as determined by Sec. of Health & Human Services.

Question #9: How much COVID-19 Paid Sick Leave can each eligible employee take?

Answer: Eligible full-time employees are entitled to 80 hours of **COVID-19 Paid Sick Leave**. Generally, eligible part-time employees are entitled to the average number of hours they generally work per week for two weeks. Pursuant to 29 CFR §826.21(b), the average for part-time employees is determined as follows:

1. PT employee with a regular schedule & employed for at least 6 months: the employee receives leave for the number of hours the employee is normally scheduled to work over 2 work weeks.
2. PT employee with varying schedule & employed for at least 6 months: the employee receives leave for the number of hours equal to 14 times the average number of hours the employee was scheduled to work each calendar day over the 6-month period ending on the date on which employee began leave.
3. PT employee employed for less than 6 months: the employee receives leave for the number of hours equal to 14 times the number of hours the employee and employer agreed to at the time of hiring that the employee would work each calendar day.
4. PT employee employed for less than 6 months with no agreement as to number of hours: the employee receives leave for the number of hours equal to 14 times the average number of hours per calendar day the employee worked over entire period of employment.

It should be noted that the DOL's use of 14 days rather than 10 days for the standard workweek will result in an overpayment of some PT employees who work few hours in a standard work week. In such cases, public employers should consider using the alternate method authorized by the DOL in the overview preceding the original release of the regulations (85 FR 19331, Discussion III (B) Paid Leave Entitlements). This section states that "an employer may also use twice the number of hours that an employee was scheduled to work per workweek, averaged over a six-month period" as the basis for determining the actual **COVID-19 Paid Sick Leave** for PT employees with varying schedules.

Question #10: Can employees take 80 hours (or PT equivalent) of COVID-19 Paid Sick Leave for one reason and then take another 80 hours (or PT equivalent) for a different reason?

Answer: No. Employees are only entitled to a **TOTAL** of 80 hours (or 2 weeks for PT) of **COVID-19 Paid Sick Leave**, no matter how many reasons they have to take the leave. Employees must elect the basis for their leave, prior to taking the leave.

Question #11: Can employees use part of the 80 hours (or PT equivalent) of COVID-19 Paid Sick Leave for one reason, say their own quarantine, come back to work after the quarantine is over, and later use the remainder of their 80 hours (or PT equivalent) of COVID Paid Sick Leave for another quarantine or other qualifying reason?

Answer: Yes. Each employee is entitled to a **TOTAL** of 80 hours (or 2 weeks' pay for PT) of **COVID-19 Paid Sick Leave**. They can use that leave any time prior to December 31, 2020 for as many reasons as they qualify for.

Question #12: Can employees carry over or be paid out for any unused COVID-19 Paid Sick Leave after December 31, 2020?

Answer: No. **COVID-19 Paid Sick Leave** is only available for use for qualifying leaves until December 31, 2020. Such leave cannot be banked, carried over or paid out.

Question #13: How much are employees paid while they are on COVID-19 Paid Sick Leave?

Answer: The wages paid to employees on **COVID-19 Paid Sick Leave** varies depending on the reason each employee is on leave:

1. *Employees on leave due to their own quarantine or symptoms (see Question #8, Reasons 1-3):* Paid at full pay based on their regular rate of pay, up to a maximum of \$511 per day or \$5,110 in total.
2. *Employees on leave to care for others or to stay at home with minor children out of school (see Question #8 Reasons 4-6):* Paid at 2/3rds of regular rate of pay, up to a maximum of \$200 per day and \$2,000 in total.

Question #14: Can Employees elect, or Public Employers require employees, to substitute paid accrued leaves for COVID-19 Paid Sick Leave or to use up their accrued paid leaves before using COVID-19 Paid Sick Leave?

Answer: No. **COVID-19 Paid Sick Leave** is an additional entitlement to employees and it **MUST** be used before any other available leaves. Employees who remain quarantined/sick or who need to care for others who are quarantined/sick after the conclusion of their **COVID-19 Paid Sick Leave** would be entitled to applicable accrued sick leaves and traditional FMLA Leave (if the illnesses qualify as "serious health condition" for the employee or his/her eligible family member). Employees who continue to need leave to care for a minor child or adult incapable of self-care who is home due to a school/daycare closure resulting from the COVID-19 emergency may use **COVID-19 Paid FMLA Leave** upon the conclusion of their **COVID-19 Paid Sick Leave**.

Question #15: Can Public Employers allow employees to supplement their wages by utilizing paid accrued leaves to make up the 1/3 difference between COVID-19 Paid Sick Leave and their normal wages?

Answer: Yes. Public Employers may allow employees to supplement their 2/3rds pay for **COVID-19 Paid Sick Leave** with their accrued paid leaves. However, employees should be required to elect to use these leaves if they want to do so and an explanation of how the accrued leave deduction will be calculated should be provided. Public Employers wishing to permit wage supplementation should modify their existing policies to allow for that use of accrued leaves.

Question #16: Can COVID-19 Paid Sick Leave be used intermittently (in other than one continuous period)?

Answer: Yes, but intermittent leave can only be authorized for leave taken to care for the employee's minor child or adult child who is incapable of self-care who is home due to a school/daycare closure due to the COVID-19 emergency **AND** only if both the employer and employee agree that the leave may be taken intermittently. Such agreements need not be in writing, but it is advisable that they are. **COVID-19 Paid Sick Leave** for all other reasons must be taken in one

continuous period until the reason for the leave has ceased or until the **COVID-19 Paid Sick Leave** runs out. (Note: if not all of the **COVID-19 Paid Sick Leave** is used for any one reason, a second such leave can be taken for any qualifying reason).

Question #17: What documentation can Public Employers require prior to granting a request for COVID-19 Paid Sick Leave?

Answer: The DOL has indicated that medical certifications should not be requested to validate requests for **COVID-19 Paid Sick Leave**. Rather, Public Employers should require employees to provide a signed form providing the specific reason and dates for the requested leave, and, supplying the following additional information/documentation (as applicable for the leave requested):

1. Name of entity issuing any official quarantine/isolation order (and copy of order, if written); or
2. Name of health care provider advising the self-quarantine; or
3. Statement that employee is experiencing symptoms and name of health care provider from whom employee is seeking a medical diagnosis; or
4. Name and relationship of the individual for whom the employee will be providing care and the information provided in #1 or #2 above; or
5. Name, age, relationship of child or adult incapable of self-care requiring care, name of school, place of care, or child care provider that is closed (including written notice if possible); and
6. Statement that no other suitable person is available to care for the child or adult incapable of self-care.

Question #18: Must the Public Employer continue health care coverage for employees during COVID-19 Paid Sick Leave?

Answer: Yes, Public Employers must continue the employee's coverage under any group health plan on the same conditions and at the same level as coverage would have been had the employee not taken the leave.

Question #19: Are employees still required to pay their health insurance premiums while on COVID-19 Paid Sick Leave?

Answer: Yes. Employees are responsible for their health care insurance premiums to the same level they were prior to taking the leave. If the employee's wages while on leave are insufficient to pay the full amount of the premium, the employer may require the employee to pay the premium deficit amount to the employer or directly to the insurance carrier.

Question #20: Are employees entitled to return to the same or equivalent position upon their return from COVID-19 Paid Sick Leave?

Answer: Generally, yes. Employees are entitled to return to the same or equivalent position, but they are not protected from employment actions (such as layoffs) that would have affected them even if they hadn't taken the leave.

Question #21: What are the recordkeeping requirements for documentation regarding COVID-19 Paid Sick Leave?

Answer: Employers must retain all documentation related to requests for leave (granted and denied) for a period of 4 years. Employers must also document and maintain all oral statements in support of requests for leave for a period of 4 years.

Additional documentation is required to claim tax credits, but these requirements are not relevant here as such credits are not available to Public Employers.

COVID-19 PAID FMLA LEAVE EXPLAINED

Question #22: When can Employees take COVID-19 Paid FMLA Leave?

Answer: Assuming the employee is not exempt (see Questions 4-7), a public employee may take **COVID-19 Paid FMLA Leave** if the employee is not able to work (or telework) for any of the following COVID-19 Related Reason:

1. The employee has a bona fide need to care for minor child (or adult child incapable of self-care) due to the closure of the child's school/place of care/daycare.

Bona fide need to care for a minor child (or adult child incapable of self-care) means that the employee's presence is reasonably necessary. If another parent or other appropriate caregiver is home with the child, the leave may be denied. Additionally, it may not be necessary in all circumstances to grant leave requests to care for children ages 15-17.

Question #23: How much COVID-19 Paid FMLA Leave can each employee take?

Answer: Full and part-time employees are entitled to a total of 12 weeks of leave, including leave taken for Traditional FMLA Leave. The number of hours of leave to which each employee is entitled is based upon the number of hours that the employee is normally scheduled to work over the period for which leave is requested. This determination for both full and part-time employees is made as follows:

1. Employees with normal work schedules & employed at least 6 months: for each day where leave is taken, the employee receives leave for the number of hours the employee is normally scheduled to work on those days.
2. Employees with variable work schedules who have worked for the employer for at least 6 months: for each day where leave is taken, the employee receives leave for the average number of hours the employee was scheduled to work each workday, over the 6-month period ending on the date on which employee began leave.
3. Employees who have worked for the employer for less than 6 months: for each day where leave is taken, the employee receives leave for the average number of hours the employee and employer agreed to at the time of hiring that the employee would work each workday.
4. Employees who have worked for the employer for less than 6 months with no agreement as to the number of hours to be worked by employee: for each day where leave is taken, the employee receives leave for the average number of hours per workday the employee worked over entire period of employment.

Question #24: Can employees take 12 weeks of COVID-19 Paid FMLA Leave and also take 12 weeks of Traditional FMLA Leave for issues related to their "serious health condition" or that of an eligible family member, or for the birth or placement of a child?

Answer: No. The employee is entitled to a **TOTAL** of 12 weeks of **COVID-19 Paid FMLA Leave** and traditional FMLA Leave. If the employee already utilized 6 weeks of traditional FMLA Leave for the birth of her child, then she only has 6 weeks remaining to use for **COVID-19 Paid FMLA Leave**.

Question #25: Can employees use 2 weeks of COVID-19 Paid Sick Leave and then use an additional 12 weeks of COVID-19 Paid FMLA Leave?

Answer: No. While employees may use both **COVID-19 Paid Sick Leave** and **COVID-19 Paid FMLA Leave**, the leaves run concurrently so that the employee is only entitled to a total of 12 weeks to care for a minor child or adult child incapable of self-care who is home due to a school/daycare closure caused by the COVID-19 emergency.

Question #26: How much are employees paid while they are on COVID-19 Paid FMLA Leave?

Answer: The rate of pay varies depending on the length of time of the leave. For the first 2 weeks, **COVID-19 Paid FMLA Leave** is unpaid unless the employee elects to substitute:

1. **COVID-19 Paid Sick Leave** (paid at 2/3rds of regular pay) up to amount remaining after use for other reasons, if any; or
2. If the employee has exhausted his/her **COVID-19 Paid Sick Leave** (or any portion thereof), then he/she may substitute employer-provided accrued leaves (paid at full regular pay) for the unpaid leave. (Leaves run concurrently).

For the remaining 10 weeks, except where accrued paid leave is substituted (see Question #27), the employee is paid at 2/3^{rds} of regular pay, up to maximum of \$200 per day and \$10,000 in total.

Question #27: Can employees elect, or Public Employers require employees, to substitute paid accrued leaves for the remaining 10 weeks of COVID-19 Paid FMLA Leave?

Answer: Yes. According to the DOL Regulations (29 CFR 826.23(c) and .24(d)), employees may elect, or employers may require employees, to use accrued leaves which would be available to employees to care for their children while home from school/daycare due to the COVID-19 emergency, such as vacation or personal leave. Such paid leave is paid at full pay and runs concurrent with the **COVID-19 Paid FMLA Leave**. Any wages paid after exhaustion of accrued paid leaves would be paid at the 2/3^{rds} rate until the conclusion of the **COVID-19 Paid FMLA Leave**.

Question #28: Can COVID-19 Paid FMLA Leave be used intermittently (in other than one continuous period)?

Answer: Yes, but only if both the employer and employee agree that the leave may be taken intermittently. Such agreements need not be in writing, but it is advisable that they are.

Question #29: What documentation can Public Employers require prior to granting a request for COVID-19 Paid FMLA Leave?

Answer: Public Employers should require employees to provide a signed form providing the specific reason and dates for the requested leave, and, supplying the following additional information/documentation (as applicable for the leave requested):

1. Minor-specific information: Name, age, relationship of minor or adult incapable of self-care requiring care;
2. School/Daycare Information: Name of school, place of care, or child care provider that is closed (including written notice if possible);
3. Declaration of Need:
 - a. Statement that no other suitable person is available to care for the minor child or adult incapable of self-care;
 - b. Statement of special circumstances which make it necessary for employee to be home to care for minor age 15-17 years of age; and/or
 - c. Statement of basis for adult child's inability to provide self-care.

Question #30: Must the Public Employer continue health care coverage for employees during COVID-19 Paid FMLA Leave?

Answer: Yes, Public Employers must continue the employee's coverage under any group health plan on the same conditions and at the same level as coverage would have been had the employee not taken the leave.

Question #31: Are employees still required to pay their health insurance premiums while on COVID-19 Paid FMLA Leave?

Answer: Yes. Employees are responsible for their health care insurance premiums to the same level they were prior to taking the leave. If the employee's wages while on leave are insufficient to pay the full amount of the premium, the employer may require the employee to pay the premium deficit amount to the employer or directly to the insurance carrier.

Question #32: Are employees entitled to return to the same or equivalent position upon their return from COVID-19 Paid FMLA Leave?

Answer: If the Public Employer employs 25 or more eligible employees, employees are entitled to return to the same or equivalent position upon their return from leave. However, employees are not protected from employment actions (such as layoffs) that would have affected them even if they hadn't taken the leave.

If the Public Employer has fewer than 25 eligible employees, the employer may deny job restoration rights if ALL of the following apply:

1. The Employee took **COVID-19 Paid FMLA Leave**;
2. The position held by the employee when leave commenced does not exist after that time due to economic conditions or changes in operating conditions affecting employment and caused by the public health emergency;
3. The employer makes reasonable efforts to restore the employee to an equivalent position (benefits and terms); and
4. The reasonable efforts failed and the employer makes reasonable efforts for a year to contact the employee if an equivalent position becomes available.

In addition, employers may deny job restoration to 'Key' employees in the same manner as they can with traditional FMLA.

Question #33: What are the recordkeeping requirements for documentation regarding COVID-19 Paid FMLA Leave?

Answer: Employers must retain all documentation related to requests for leave (granted and denied) for a period of 4 years. Employers must also document and maintain all oral statements in support of requests for leave for a period of 4 years.

Additional documentation is required to claim tax credits, but these requirements are not relevant here as such credits are not available to Public Employers.

B. Chart Summarizing Leave Issues

	COVID-19 Paid Sick Leave¹	COVID-19 Paid FMLA Leave²	Coordination with Other Leaves
Which Public Employers Must Provide the New Leave?	All public employers who employ one or more employees. No hardship exemption is available for public employers, even if under 50 employees	All public employers who employ one or more employees. No hardship exemption is available for public employers, even if under 50 employees	No change to Traditional FMLA: Public employers under 50 employees remain exempt from <i>traditional FMLA leaves</i>
Which Public Employees are Eligible for the New Leave?	All public employees (part-time & full-time), regardless of how long employee has worked for the public employer or how many hours employee has worked. Except employers have the option, by official action, to exclude Health Care Providers and Emergency Responders.	All public employees (part-time & full-time) who have worked with the public employer for at least 30 days. Except employers have the option, by official action, to exclude Health Care Providers and Emergency Responders.	No change to Traditional FMLA: Public employees requesting <i>traditional FMLA leave</i> must still have worked for the public employer for at least 1 year and must have worked at least 1,250 hours during the 12-month period preceding the leave
What are the Qualifying Reasons for the New Leave?	Employee is not able to work (or telework) for any of the following <u>Six</u> COVID-19 Related Reasons: <ol style="list-style-type: none"> Employee is subject to an official quarantine/isolation order. Employee has been advised by a health care provider to self-quarantine. Employee is experiencing symptoms and seeking a medical diagnosis. Employee has bona fide need to care for an individual who is subject to an order as described in subparagraph (1) or advice as described in paragraph (2). Employee has a bona fide need to care for minor child (or adult child incapable of self-care) due to closure of school/place of care/daycare. Similar conditions as determined by Sec. of Health & Human Services. 	Employee is not able to work (or telework) for <u>One</u> COVID-19 Related Reason: <ol style="list-style-type: none"> Employee has a bona fide need to care for his/her minor child (or adult child incapable of self-care) due to closure of school/place of care/daycare. <p>Bona fide need to care for a minor child means that the employee’s presence is reasonably necessary. If the other parent or another appropriate caregiver is home with the child, the leave may be denied.</p> <p>If both parents work for the same employer, except in extraordinary circumstances, only one parent may qualify for the leave.</p>	
Must Employees Provide their Reason for Requesting Leave?	Yes, employees must choose the qualifying reason for the leave requested. If multiple qualifying reasons apply, the employee must choose a reason for each leave.	Yes, but employees do not have to choose. There is only one qualifying reason for this type of leave.	

	COVID-19 Paid Sick Leave¹	COVID-19 Paid FMLA Leave²	Coordination with Other Leaves
What Documentation can the Public Employer Require to Approve Leave?	<p>Per DOL guidance, do not request medical certifications for this leave.</p> <p>Signed form providing the specific reason and dates for the requested leave, and, as applicable for the leave requested:</p> <ol style="list-style-type: none"> 1. Name of entity issuing any official quarantine/isolation order (and copy of order, if written); or 2. Name of health care provider advising the self-quarantine; or 3. Statement that employee is experiencing symptoms and name of health care provider from whom employee is seeking a medical diagnosis; or 4. Name and relationship of the individual for whom the employee will be providing care and the information provided in #1 or #2 above; or 5. Name, age, relationship of child requiring care, name of school, place of care, or child care provider that is closed (including written notice if possible), and statement that no other suitable person is available to care for the child. 	<p>Signed form providing:</p> <ol style="list-style-type: none"> 1. Dates of the requested leave; 2. Name, age, relationship of child (or adult incapable of requiring self-care) requiring care; 3. Name of school, place of care, or child care provider that is closed (including written notice if possible); 4. Statement that no other suitable person is available to care for the child; 5. Statement of basis for adult child's inability to provide self-care; and/or 6. Statement of special circumstances supporting need to care for minors 15-17 years of age. 	<p>No change to Traditional FMLA: Medical Certifications can still be required for Traditional FMLA Leave.</p>

	COVID-19 Paid Sick Leave ¹	COVID-19 Paid FMLA Leave ²	Coordination with Other Leaves
<p style="text-align: center;">How Much Paid Leave is Provided?</p>	<p>Full-Time Employees: Total of 80 hours of sick leave (regardless of multiple qualifying reasons for leave).</p> <p>Part-Time Employees: Amount of leave varies to reflect the average hours for each PT employee as follows:</p> <ol style="list-style-type: none"> <u>Regular Schedule & employed for at least 6 months:</u> employee receives leave for the number of hours the employee is normally scheduled to work over 2 workweeks. <u>Varying schedule & employed for at least 6-months:</u> employee receives leave for the number of hours equal to 14 times the average number of hours the employee was scheduled to work each calendar day over the 6-month period ending on the date on which employee began leave. <u>Employed for less than 6 months:</u> employee receives leave for the number of hours the employee and employer agreed to at the time of hiring that the employee would work each calendar day. <u>Employed for less than 6 months with no agreement as to number of hours:</u> employee receives leave for the number of hours equal to 14 times the average number of hours per calendar day the employee worked over entire period of employment. <p>It should be noted that the DOL’s use of 14 rather than 10 days for the standard workweek will result in an overpayment of some PT employees who work few hours in a standard workweek. In such cases, public employers should consider using the alternate method authorized by the DOL in 85 FR 19331, Discussion III (B) Paid Leave Entitlements. This section states that “an employer may also use twice the number of hours that an employee was scheduled to work per workweek, averaged over a six-month period” as the basis for determining the actual COVID-19 Paid Sick Leave for PT employees with varying schedules.</p>	<p>Total of 12 weeks of leave, including leave taken for Traditional FMLA Leave, based on the number of hours that the employee (FT and PT) is normally scheduled to work over the period.</p> <p>Determining the “scheduled number of hours”:</p> <ol style="list-style-type: none"> <u>Employees with normal work schedules (FT & PT) & who have worked for at least 6 months:</u> for each day where leave is taken, employee receives leave for the number of hours the employee is normally scheduled to work on those days. <u>Employees with variable work schedules who have worked for the employer for at least 6 months:</u> for each day where leave is taken, employee receives leave for the average number of hours the employee was scheduled to work each workday, over the 6-month period ending on the date on which employee began leave. <u>Employees who have worked for less than 6 months:</u> for each day where leave is taken, employee receives leave for the average number of hours the employee and employer agreed to at the time of hiring that the employee would work each workday. <u>Employees who have worked for less than 6 months with no agreement as to number of hours:</u> for each day where leave is taken, employee receives leave for the average number of hours per workday the employee worked over entire period of employment. <p>The duration of eligible leave can be computed in hourly rather than daily increments.</p>	<p>Use of Accrued Leaves for Extended COVID-19 Illnesses/Quarantines: Employers may allow employees to utilize employer-provided paid leaves AFTER conclusion of COVID-19 Paid Sick Leave. Leaves should be requested and approved based on normal employer policies. Employers CANNOT require employees to use or substitute accrued leaves for COVID-19 Paid Sick Leave.</p> <p>Intersection between COVID-19 Paid Sick Leave and COVID-19 Paid FMLA Leave: Employees who need leave to care for a minor child (adult who is incapable of self-care) may use both types of leave. The leaves will run concurrently.</p> <p>Traditional FMLA: Employees who are otherwise eligible for Traditional FMLA Leave are entitled to FMLA leave after the conclusion of COVID-19 Paid Sick Leave to continue caring for themselves or their spouses, children or parents if their COVID-19 condition qualifies as a “serious health condition.”</p> <p>COVID-19 Paid FMLA Leave taken counts against an employee’s 12-workweeks of traditional FMLA leave. COVID-19 Paid FMLA Leave does not extend an employee’s total FMLA leave entitlement.</p>

	COVID-19 Paid Sick Leave¹	COVID-19 Paid FMLA Leave²	Coordination with Other Leaves
How Much are Employees Paid for Leave?	<p>Employees Taking Leave for Their Own Illness/Quarantine: Full Pay up to a maximum of \$511 per day and \$5,110 in total</p> <p>Employees Taking Leave to Care for Others: 2/3rds of their regular pay; up to a maximum of \$200 per day and \$2,000 in total.</p> <p>Supplemental Wages: Employers may allow employees to utilize employer-provided paid leaves to supplement the employee wages to provide full pay for the employees who would otherwise be paid at 2/3rds of regular pay.</p>	<p>First 2 Weeks³: The first 2 weeks of leave are unpaid unless the employee elects to substitute:</p> <ol style="list-style-type: none"> COVID-19 Paid Sick Leave (paid at 2/3rds of regular pay) up to amount remaining after use for other reasons, if any; or If the employee has exhausted his/her COVID-19 Paid Sick Leave (or any portion thereof), then he/she may substitute employer provided accrued leaves (paid at full regular pay) for the unpaid leave. (Leaves run concurrently). <p>Remaining 10 Weeks: Employee paid at 2/3rds of regular pay, up to maximum of \$200 per day and \$10,000 in total.</p> <p>Substitution of Accrued Leaves: According to the DOL Regs. 826.23(c) and .24(d), employees may elect, or employers may require employees, to use accrued leaves which would be available to employees to care for their children while home from school/daycare due to the COVID-19 emergency, such as vacation or personal leave. Such paid leave is paid at full pay and runs concurrent with the COVID-19 Paid FMLA Leave.</p>	
Can the Leaves be Taken Intermittently?	<p>Employees may only take leave intermittently (in other than one continuous period) if:</p> <ol style="list-style-type: none"> the employee is taking leave to care for his/her minor child (adult incapable of self-care); and both the public employer and the employee agree to intermittent leave. <p>The agreement need not be in writing, but the understanding must be clear.</p>	<p>Employees may only take leave intermittently (in other than one continuous period) if both the public employer and the employee agree to intermittent leave.</p> <p>The agreement need not be in writing, but the understanding must be clear.</p>	
Must Public Employer Continue Health Care Coverage During the Leave?	<p>Yes, employers must maintain employee's coverage under any group health plan on the same conditions and to the same level as coverage would have been provided if the employee did not take the leave.</p> <p>Employees continue to be responsible for their portion of premiums as if they did not take the leave. If payment during leave is insufficient to obtain the full premium through payroll deduction, the employer may obtain payment for the employee or have the employee submit the payment directly to the health insurance carrier.</p>		

	COVID-19 Paid Sick Leave¹	COVID-19 Paid FMLA Leave²	Coordination with Other Leaves
Is Employee Entitled to Return to Same Position upon Conclusion of Leave?	Generally, yes. Employees are entitled to return to the same or equivalent position, but they are not protected from employment actions (such as layoffs) that would have affected them even if they hadn't taken the leave.	<p>Employers with 25 or more Eligible Employees: Employees are entitled to return to the same or equivalent position, but they are not protected from employment actions (such as layoffs) that would have affected them even if they hadn't taken the leave.</p> <p>Employers with fewer than 25 Eligible Employees: may deny job restoration rights if ALL of the following apply:</p> <ol style="list-style-type: none"> 1. Employee took COVID-19 Paid FMLA Leave; 2. Position held by the employee when leave commenced does not exist due to economic conditions or changes in operating conditions affecting employment and caused by the public health emergency; 3. Employer makes reasonable efforts to restore the employee to an equivalent position (benefits and terms); and 4. Reasonable efforts failed and employer makes reasonable efforts for a year to contact the employee if an equivalent position becomes available. <p>In addition, employers may deny job restoration to "Key" employees in the same manner as they can with traditional FMLA.</p>	
What are the Recordkeeping Requirements?	<p>Employers must retain all documentation related to requests for leave (granted and denied) for a period of 4 years.</p> <p>Employer must document and maintain all oral statements in support of requests for leave for a period of 4 years.</p> <p><i>Additional documentation to claim tax credits is not summarized because such credits are not available to Public Employers.</i></p>		

¹ Officially known as paid sick leave pursuant to the Emergency Paid Sick Leave Act (EPSLA) as enacted by the federal Family First Coronavirus Response Act (FFCRA)

² Officially known as Public Health Emergency Leave pursuant to the Emergency Family and Medical Leave Expansion Act (EFMLEA) as enacted by the federal Family First Coronavirus Response Act (FFCRA)

³ The EFMLEA uses the terms "10 days." This language was changed by the DOL in 29 C.F.R. §826.24 to ensure consistency between the EFMLEA and the EPSLA. See DOL Discussion 85 FR 19333 ("Accordingly, pursuant to the Secretary's authority to issue regulations "to ensure consistency" between the two types of paid leave under the FFCRA, § 826.24 states that the unpaid period for expanded family and medical leave lasts for two weeks rather than ten days.").