

Families First Coronavirus Response Act

Chat Questions:

1. I have an employee taking her husband to a medical appointment in Denver on April 3rd. Because of the State of Colorado and counties that are hot; she has been ordered by Health Administrator to go on 14 day quarantine as soon as she comes home. She has applied for FMLA, does not have a whole lot of accrued time built up. How does that FMLA work with Emergency COVID-19 leave?

If her the time needed for her husband is due to something that would qualify as a “serious health condition” under traditional FMLA, she could take unpaid FMLA and could substitute any paid time available. She would only qualify for the 100% paid Emergency Paid Sick Leave if she is also seeking a diagnosis. If it is solely to care for her husband who has been advised to quarantine, she would potential be eligible for 2 weeks of Emergency Sick Leave at 2/3 pay.

If the certification confirms her husband has a serious health condition, she can exercise her rights under FMLA for up to 12 weeks but the pay would depend on if she meets the qualifications for Emergency Paid Sick Leave (or additional time available after that 2 weeks).

Keep in mind, the bill is unclear if we can force her to use the Emergency Paid Sick Leave but if your policy indicates that they must use any paid time available before they take unpaid time, you may be able to make that argument. If she doesn't have much time available, she may want to use it.

However, the paid FMLA extension does not apply to this situation. Only the Emergency Paid Sick Leave.

2. Must be the employee's child: As in foster, step, etc?

The bill does not specify; however, it is reasonable to assume they will use the same definition as FMLA which does include foster and step children.

3. Does your presentation trump County policy? If county policy is willing to pay employee regular hours normally worked while on quarantine and if our county would move to Phase 4, only essential employees work. So, Commissioners have discussed continuing to pay employees for their time away from work because they are not essential, can't work from home and would come to work if it were not for COVID-19.

Employers are always allowed to be more benevolent and offer more benefits than federal law as long as it is applied consistently. However, if an employee request Emergency Paid Sick Leave and Emergency Childcare FMLA, you must apply it if the leave qualifies.

4. 4. So the Emergency FMLA leave (12 weeks) is in addition to the traditional FMLA leave (12 weeks)? So an employee could have 24 weeks of FMLA leave in a year?

No, my apologies for not clarifying. It still counts as their total 12 weeks of FMLA. They are only allowed 12 weeks in the 12 month period specified by the employer regardless of the reason (the only exception is military caregiver leave which is 26 weeks).

5. Can counties take off the amount of PSL from the employer FICA amount for payment of payroll tax?

No, this is the tax credit reserved only for private employers.

5. Any documentation required for closed daycare?

No, there is no certification or requirements listed in the bill. I would ask them to complete a "request form" asking the names and locations of their child's school and / or daycare and ask them to provide the announcement but unless the DOL issues additional guidance, you can't require it... only request it. I would also ask them to sign an acknowledgement (as part of the request form) that they attest they are taking time for emergency childcare needs due to the closing of a school or daycare.