

FAQ: What Cities Need to Know About Implementing Changes to Paid Sick Leave and Family and Medical Leave

The answers to the FAQs below are based on the understanding of the FFCRA as of April 1, 2020. Additional guidance and regulations may be issued afterwards which clarify or change these answers. Please feel free to review additional Department of Labor FAQs here: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Question: Do we automatically give employees 80 hours of paid sick leave even if they are only out for 4 working days, or is it up to 80 hours?

Answer: up to 80 hours

Question: Can the 80 hours of paid sick leave be used intermittently?

Answer: Yes, if you are working from home and the employer agrees. If they are working onsite, the rules are more complicated. See Department of Labor FAQs 20, 21, and 22.

Question: Does a shelter-in-place order by the Governor qualify under reason #1 for the Emergency Sick Leave?

Answer: No

Question: Is a governor ordered shelter in place considered an isolation order?

Answer: No

Question: Does the expanded FMLA apply to local governments with more than 500 employees?

Answer: Both the emergency sick leave and expanded FMLA applies to governments irrespective of size. Section 5110 of the FFCRA says that the term covered employer in the emergency sick leave provisions apply to "in the case of a public agency or any other entity that is not a private entity or individual, employs 1 or more employees"

The emergency family leave is an amendment to the FMLA and the Department of Labor regulations, 29 CFR 825.104(a) states in relevant part: "Public agencies are covered employers without regard to the number of employees employed."

Questions 52 & 53 of the Department of Labor guidance talk about public sector applicability and don't reference size limitations.

Question: Does the expanded FMLA apply to local governments with less than 50 employees?

Answer: According to the DOL, certain provisions may not apply to certain employers with fewer than 50 employees. Additional FFCRA regulations are expected in April 2020. See information from the Wage and Hour Division of the DOL here:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

Question: Can the 2 weeks of paid emergency leave run concurrent with the 12 weeks of FMLA?

Answer: Yes, if it is for the care of a child.

Question: If an employee was placed on leave by their doctor due to high-risk classification (pregnancy, cancer, etc.), are they eligible for the Emergency Paid Sick Leave and FMLA?

Answer: No, that does not fit in any of the categories; they could qualify under old FMLA or they should use the employers leave policies. They may be entitled to an accommodation depending on the circumstances.

Question: Should essential workers (i.e. refuse and water treatment) be deemed "emergency responders" for the purpose of having them exempted from this policy?

Answer: It is an employer's choice to exempt and not the State's. Question 57 of the Department of Labor guidance includes a detailed definition of emergency responder that could help determine this.

Question: Could an employee use short term disability (for a new baby) after exhausting the new FMLA sick leave (for other young children whose schools are closed)?

Answer: If they are disabled, yes; depends on your plan.