



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

April 22, 2020

Summary of Statutory and Regulatory Requirements in Connection with the Emergency Paid Sick Leave Act (EPSLA) —Application to Federal Employees

Statutes: The Emergency Paid Sick Leave Act (EPSLA), which is division E of the Families First Coronavirus Response Act (“FFCRA”, H.R. 6201, Public Law 116-127, March 18, 2020); the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”, H.R. 748, Public Law 116-136, March 27, 2020).

<https://www.congress.gov/bill/116th-congress/house-bill/6201>

<https://www.congress.gov/bill/116th-congress/house-bill/748>

Regulations: Temporary rule announced on April 1, 2020 by the Department of Labor (DOL) at <https://www.dol.gov/agencies/whd/ffcra> and published in Federal Register, April 6, 2020, at <https://www.govinfo.gov/content/pkg/FR-2020-04-06/pdf/2020-07237.pdf>; corrections to the temporary rule published in Federal Register, April 10, 2020, at <https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07711.pdf>.

DOL Guidance: Fact Sheets, Questions and Answers, Posters, etc. available at <https://www.dol.gov/agencies/whd/pandemic>

Short Summary

The Emergency Paid Sick Leave Act (EPSLA, division E of the FFCRA) provides employees with up to 2 weeks (up to 80 hours) of paid sick leave in specified circumstances related to COVID-19—unless they are in an exempted category as described below. This paid sick leave is in addition to any other paid leave entitlements. Depending on the circumstances, the sick leave is generally paid at the Fair Labor Standards Act (FLSA)-based regular rate of pay for an employee or two-thirds of that rate (subject to statutory limitations on daily and aggregate cash value of paid leave). EPSLA paid sick leave is available for use during the period from April 1, 2020, through December 31, 2020.

NOTE: This summary is focused on the Emergency Paid Sick Leave Act (division E of the FFCRA) and does not address the possible interaction of that Act with the Emergency Family and Medical Leave Expansion Act (division C of the FFCRA). Most Federal employees are not eligible to take expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act. A Federal employee’s eligibility to use leave provided under the Emergency Family and Medical Leave Expansion Act will depend on whether the employee is covered under title I of the Family and Medical Leave Act (FMLA); otherwise qualifies to take the leave; and is not otherwise excluded from coverage. The Office of Personnel Management (OPM) has produced a fact sheet on Federal employee coverage under divisions C and E of the FFCRA. (See <https://www.opm.gov/policy-data-oversight/covid-19/opm-fact-sheet-federal-employee-coverage-under-the-leave-provisions-of-the-families-first-coronavirus-response-act-ffcra.pdf>.)

A. Employee Eligibility

1. EPSLA applies to all Federal civil service employees in the executive, legislative, and judicial branches of the U.S. Government unless they are exempted as allowed under the law (see paragraph 4).
2. Federal civil service employees with an intermittent work schedule are considered “part-time” employees under EPSLA.
3. There is no minimum service requirement. In other words, eligibility is not limited to those who have a minimum amount of service with the employing agency. Any current employee is eligible—unless in an exemption category. A separated employee is not eligible to take EPSLA paid sick leave.
4. Exemptions:
 - a. A Federal agency employing an employee who is a “health care provider” or an “emergency responder” may elect to exclude the employee from taking EPSLA paid sick leave. (See sections 5102(a) and 5111(1) of EPSLA. See DOL special regulatory definitions of those terms in 29 CFR 826.30(c).)
 - b. The Director of the Office of Management and Budget (OMB) may, for good cause, exclude certain categories of Federal employees from taking EPSLA paid sick leave. (See section 5112 of EPSLA, as added by section 3604(b) of the CARES Act, Public Law 116-136, March 27, 2020.)

B. Covered Time Period

1. EPSLA paid sick leave may only be used during the period from April 1, 2020, through December 31, 2020.
2. EPSLA paid sick leave may not carry over beyond December 31, 2020.
3. Use of EPSLA paid sick leave must cease at the commencement of the employee’s next scheduled work shift immediately following the termination of the employee’s qualifying circumstance.

C. Qualifying Circumstances

1. Subject to the conditions and limitations set forth in this summary, an employing agency must provide to each employee EPSLA paid sick leave to the extent that the employee is unable to work (including telework) due to a need for leave because of one of the following circumstances:
 - (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
NOTE: The term “subject to a quarantine or isolation order” is defined in 29 CFR 826.10.

- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

NOTE: The term “health care provider” has the same meaning given that term in 29 CFR 825.102 for this purpose.

- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

- (4) The employee is caring for an individual who is subject to an order as described in paragraph (1) or has been advised as described in paragraph (2).

Note: Under DOL regulations, the term “individual” means an employee’s immediate family member, a person who regularly resides in the employee’s home, or a similar person with whom the employee has a personal relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined.

- (5) The employee is caring for his or her son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, for reasons related to COVID-19.

NOTE: The term “son or daughter” has the meaning given that term in section 101(12) of FMLA (29 U.S.C. 2611(12))—i.e., a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability. The terms “child care provider”, “place of care”, and “school” are defined in 29 CFR 826.10(a).

- (6) The employee is experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

NOTE: No such condition has been specified at this time.

NOTE: DOL regulations and guidance should be consulted regarding qualifying circumstances, including 29 CFR 826.20(a)(2)-(9). Some key issues addressed in DOL regulations and guidance are highlighted below.

2. Qualifying Circumstances (1)-(2)

- a. An employee may not take EPSLA paid sick leave if he/she unilaterally decides to self-quarantine for an illness without medical advice, even if he/she has COVID-19 symptoms.
- b. For purposes of EPSLA, a Federal, State, or local quarantine or isolation order includes quarantine or isolation orders, as well as shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority that cause an employee to be unable to work (including telework). However, in general, State or local government stay-at-home orders do not apply to Federal employees when they are traveling for official purposes.

3. Qualifying Circumstance (3)

- a. In order to take EPSLA paid sick leave under qualifying circumstance (3), an employee must be experiencing any of the following symptoms of COVID-19: fever, dry cough, shortness of breath, or other COVID-19 symptom identified by the U.S. Centers for Disease Control and Prevention.

- b. The condition of “seeking a medical diagnosis from a health care provider” is limited to time the employee is unable to work because the employee is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a test for COVID-19.
4. Qualifying Circumstance (5)
- a. This qualifying circumstance applies only when an employee needs to, and actually is, caring for the employee’s son or daughter and if the employee is unable to work (including telework) as a result of providing care. Generally, an employee does not need to take such leave if a co-parent, co-guardian, usual child care provider, or other suitable person is available to provide the care the child needs.
 - b. An employee may not take EPSLA paid sick leave to care for his or her son or daughter unless, but for a need to care for the child, the employee would be able to perform work for his/her employer, either at the employee’s normal workplace or by telework. An employee caring for his/her child may not take EPSLA paid sick leave where the employer does not have work for the employee.
 - c. Schools and places of care are considered “closed” if the physical location where children normally receive instruction/care is closed, even if some or all instruction is being provided online or through some other type of “distance learning.”

D. Hours of Leave That May be Credited

1. The maximum amount of EPSLA paid sick leave that may be credited for any employee is 80 hours. This is a per-employee limit. Thus, an employee is limited to a total of 80 hours even if the employee changes jobs and has a different employer, or has multiple qualifying circumstances.
2. Employees are eligible for a certain number of leave hours based on their work schedule, but the leave is only credited to them at the time of usage. An employee may use less than the number of hours for which the employee is eligible.
3. A **full-time employee** is eligible for 80 hours of EPSLA paid sick leave.
 - a. A full-time employee is defined in DOL regulation as an employee who is normally scheduled to work at least 40 hours each workweek. An employee with a flexible or compressed work schedule under which the employee is normally scheduled to work at least 80 hours over two workweeks meets this requirement.
 - b. An employee who does not have a normal weekly schedule may also be considered a full-time employee if he or she is scheduled to work (including the hours of any type of leave, including leave without pay), on average, at least 40 hours per workweek. This weekly average is generally computed over the 6-month period ending on the day on which the employee first takes the EPSLA paid sick leave. However, if the employee has fewer than 6 months of service with the employing agency, the average number of hours per workweek is computed over the entire period of employment.

- c. An employee with an uncommon tour of duty (as described in 5 CFR 630.210) is limited to 80 hours of leave due to the statutory limit, even if the employee has more than 80 hours in the biweekly tour of duty used for leave charging purposes.
- 4. A **part-time employee** (including an employee with an intermittent work schedule) is eligible for the number of hours of EPSLA paid sick leave that is equal to the number of hours that the employee works, on average, over a 2-week period.
 - a. Any employee who is not a full-time employee (as discussed above) is a part-time employee.
 - b. If a part-time employee has a normal weekly schedule, the employee is eligible for the number of EPSLA paid sick leave hours equal to the number of hours that the employee is normally scheduled to work over 2 workweeks. A part-time employee's normal tour of duty established for leave charging purposes is considered the normal schedule.
 - c. If a part-time employee lacks a normal work schedule, the 2-week average hours will be based on hours worked during the 6-month period ending on the day on which the employee first takes the EPSLA paid sick leave. Thus, the employee will be eligible for the number of EPSLA paid sick leave hours equal to 14 times the average number of hours that the employee was scheduled to work per calendar day over the 6-month period. For this purpose, hours for which the employee took leave of any type (including leave without pay) will be treated as hours of work.
 - d. If a part-time employee has fewer than 6 months of service with the employing agency, the 2-week average hours will be based on the "reasonable expectation" of the employee at the time of hiring of the average number of hours that the employee would normally be scheduled to work. The reasonable expectation may be documented by an agreement between the employing agency and employee at the time of hiring. If there is no such agreement, the employee is eligible for the number of EPSLA paid sick leave hours equal to 14 times the average number of hours per calendar day that the employee was scheduled to work over the entire period of employment, including hours for which the employee took leave of any type (including leave without pay).
- 5. When computing average hours under this section—
 - a. exclude periods of time representing off-season periods for an employee with a seasonal work schedule;
 - b. the average must be rounded to the nearest hourly increment (i.e., fraction such as 1/10th or 1/4th of an hour) that corresponds to the hourly increment used under the timekeeping system applicable to the employee; and
 - c. for an employee whose hours of work are not tracked, the employing agency must make a reasonable estimate of average hours worked based on available information.

E. Use of Leave

1. General. An employing agency must allow an employee to use EPSLA paid sick leave during an absence from employment—when the employee is unable to work (including telework)—due to a need for leave in a qualifying circumstance (see section C).

NOTE: The term “telework” means work the employing agency permits or allows an employee to perform while the employee is at home or at a location other than the employee’s normal workplace. An employee is able to telework if his or her agency has work for the employee; the agency permits the employee to work from the employee’s location; and there are no extenuating circumstances (such as serious COVID-19 symptoms) that prevent the employee from performing that work. Telework may be performed during normal hours or at other times agreed by the agency and employee. See definition in 29 CFR 826.10.

2. Scheduled hours. The employee must have scheduled hours of work to use EPSLA paid sick leave.
 - a. A seasonal employee is not scheduled to work during the off-season and, thus, may not use EPSLA paid sick leave during off-season periods.
 - b. An employee who is furloughed is not scheduled to work while in furlough status and, thus, may not use EPSLA paid sick leave during furlough periods.
 - c. An employee who is suspended is not scheduled to work while in suspension status and, thus, may not use EPSLA paid sick leave during the suspension period.
 - d. An employee who is on leave without pay for service in the uniformed services (“Absent-US”) is not scheduled to perform civilian work while serving in the uniformed services and, thus, may not use EPSLA paid sick leave during periods of service in the uniformed services.
 - e. An employee who is on leave without pay (LWOP) while in receipt of workers’ compensation benefits is not scheduled to work during such a LWOP period and, thus, may not use EPSLA paid sick leave during any such LWOP period.
 - f. An employee who is already on LWOP under FMLA or for some other reason is not scheduled to work during such a LWOP period and thus, may not use EPSLA paid sick leave during any such LWOP period (unless the LWOP is solely due to the need to take leave because of a qualifying circumstance identified in section C).
3. Leave tour. Each employee with an established full-time or part-time work schedule (i.e., excluding employees with an intermittent work schedule) has a biweekly tour of duty established for leave charging purposes. Such employees must be absent during the hours of that tour (i.e., an “absence from employment”) to receive EPSLA paid sick leave. The hours in the full-time or part-time tour of duty established for leave charging purposes are considered to be the hours the employee is “normally scheduled to work” for purposes of providing EPSLA paid sick leave (see section 5110(5)(A) of EPSLA). EPSLA paid sick leave may not be used during overtime hours, except for overtime hours within an uncommon tour of duty.
4. Holidays. A holiday is a nonworkday; thus, EPSLA paid sick leave may not be used on a holiday. It also may not be used on any other nonworkday established by Federal statute, Executive order, or administrative order.

5. Other paid leave. EPSLA paid sick leave may not be used during any period of time for which an employee is using paid leave under title 5 of the United States Code. There is no authority under title 5 to provide paid leave for hours for which the employee is receiving compensation. Thus, an employee cannot receive two types of paid leave for the same hours. Nor is there authority under title 5 to provide a partial leave payment for the same hours for which an employee is receiving EPSLA paid sick leave at a rate that is lower than an employee's normal leave payment (e.g., at the two-thirds rate or a rate reduced by the applicable daily limit on EPSLA leave). Under title 5, an hour of absence must be accounted for by a full hour of paid leave and a full payment for that hour.
6. Work schedules. Most employees will have a normal work schedule where the scheduled hours of work for each workday are fixed; however, there are exceptions. Below, we provide information on various types of work schedules.
 - a. Employees with regular full-time and part-time work schedules have fixed scheduled hours of work each workday that are part of the tour of duty established for leave charging purposes.
 - b. Employees with a compressed work schedule have fixed hours per day for specified days.
 - c. Employees with a flexible work schedule may have fixed basic work requirement hours per day or may be allowed to elect to vary basic work requirement hours by day. In the case of a flexible work schedule under which an employee may elect to vary daily work hours, the employing agency may allow the employee to determine (within agency-established limits) the scheduled hours during which EPSLA paid sick leave will be used on a given day.
 - d. Full-time employees with an uncommon tour of duty (as described in 5 CFR 630.210) have a fixed number of shifts with fixed hours per shift. All hours in the uncommon tour of duty are in the tour of duty established for leave charging purposes. Such an employee will be limited to an aggregate of 80 hours of EPSLA paid sick leave.
 - e. For employees with an intermittent work schedule, scheduled hours of work are subject to change, since the employee does not have an established tour of duty. A supervisor must schedule hours of work in order for an intermittent employee to use EPSLA paid sick leave.
7. Increments. EPSLA paid sick leave is used in the same hourly increments (hours and specified fractions of an hour) as regular paid leave. Unless an employee is allowed to use EPSLA paid sick leave intermittently (see paragraph 8), EPSLA paid sick leave must be taken in full-day increments—as long as the employee has enough EPSLA paid sick leave remaining to cover a full day.
8. Intermittent use. If the employing agency and the employee agree, an employee may take EPSLA paid sick leave intermittently (i.e., in separate periods of time, rather than one continuous period) only under the following conditions:
 - a. If the employee is reporting to the normal worksite, the employee may take leave intermittently only if the leave is taken for qualifying circumstance (5).

NOTE: Once the employee who is reporting to the normal worksite begins taking EPSLA paid sick leave for qualifying circumstances (1), (2), (3), (4) and/or (6), the employee must use the permitted days/hours of leave consecutively until the employee no longer has a qualifying reason to take the leave or until the leave is exhausted.

- b. If an employing agency directs or allows an employee to telework, or the employee normally works from home, the employee may take EPSLA paid sick leave intermittently for any qualifying circumstance, but only when the employee is unavailable to telework because of a COVID-19 related reason.
 - c. On workdays when EPSLA paid sick leave does not cover all scheduled hours, an employee may have a mix of work hours, EPSLA paid sick leave, or personal leave.
9. Notice by employee. After the first workday (or portion thereof) an employee receives EPSLA paid sick leave, an employing agency may require the employee to follow reasonable notice procedures in order to continue receiving leave. (See 29 CFR 826.90 for details regarding employee notice.)
10. Documentation. An employee is required to provide the employing agency with documentation containing certain information to support the taking of EPSLA paid sick leave.
- a. General information:
 - (1) Employee's name;
 - (2) Date(s) for which leave is requested;
 - (3) Qualifying COVID-19-related reason for the leave; and
 - (4) Oral or written statement that the employee is unable to work because of the qualifying COVID-19-related reason for leave.
 - b. To take EPSLA paid sick leave for qualifying circumstance (1), an employee must additionally provide the employing agency with the name of the government entity that issued the quarantine or isolation order.
 - c. To take EPSLA paid sick leave for qualifying circumstance (2), an employee must additionally provide the employing agency with the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
 - d. To take EPSLA paid sick leave for qualifying circumstance (4), an employee must additionally provide the employing agency with either:
 - (1) The name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject; or
 - (2) The name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.
 - e. To take EPSLA paid sick leave for qualifying circumstance (5), an employee must additionally provide:
 - (1) The name of the son or daughter being cared for;
 - (2) The name of the school, place of care, or child care provider that has closed or become unavailable due to COVID-19; and

(3) A representation that no other suitable person will be caring for the employee's son or daughter during the period for which the employee takes EPSLA paid sick leave.

11. Employee right. An employee has the right to use EPSLA paid sick leave before using other paid leave available to the employee. An employing agency may not interfere with this right.
12. No conditions. An employing agency may not require, as a condition of providing EPSLA paid sick leave, that an employee search for or find a replacement employee to cover the hours during which the employee is using the leave.
13. No payment for unused leave. An employee must use EPSLA paid sick leave to receive pay for it. EPSLA does not require or authorize an unused amount of available EPSLA sick leave to be converted to a cash payment or any other reimbursement to the employee upon separation from agency employment or expiration of EPSLA on December 31, 2020. For agencies who are subject to the compensation-related provisions of title 5, United States Code, payment for unused EPSLA paid sick leave is prohibited because the agency would lack authority to provide any such payment or reimbursement.
14. Service credit. A period during which EPSLA paid sick leave is used is creditable service for the same purposes as other paid leave. EPSLA paid sick leave hours count as hours of work toward title 5 and FLSA overtime thresholds.
15. Retroactive use. An employee may request, and an employing agency must grant, EPSLA paid sick leave for which the employee is eligible to cover a past period of leave without pay occurring during the period of April 1, 2020, through December 31, 2020.

F. Payment for Leave

1. General. The amount of pay for EPSLA paid sick leave depends on (1) the hourly rate and (2) the number of hours of leave used. The hourly rate payable for hours of EPSLA paid sick leave is generally equal to an employee's average hourly regular rate determined under the FLSA or two-thirds of that rate, depending on the applicable qualifying circumstance. The average FLSA-based hourly regular rate is determined as described below. The number of hours of EPSLA paid sick leave that may be used on a workday is generally based on the employee's established tour of duty for leave charging purposes; however, a daily average of hours may need to be computed, as described below. Daily and aggregate limits on pay for EPSLA paid sick leave are also described below.
2. Full rate. For qualifying circumstances (1), (2), and (3), the EPSLA paid sick leave is paid at an hourly rate equal to an employee's FLSA-based hourly regular rate.
3. Partial rate. For qualifying circumstances (4), (5), and (6), the EPSLA paid sick leave is paid at an hourly rate equal to two-thirds of an employee's FLSA-based hourly regular rate.

4. Higher full minimum wage. Notwithstanding the above requirements, the hourly rate for qualifying circumstances (1), (2), and (3) may not be less than the Federal FLSA minimum wage (29 U.S.C. 206(a)(1)) or an applicable State or local minimum wage, if greater.
 - a. The current Federal FLSA minimum wage is \$7.25.
 - b. A State or local minimum wage is applicable to a Federal employee only when expressly required by Federal law or regulation or when a Federal agency exercises its discretion under a broad compensation authority to make a State or local minimum wage applicable. When a Federal agency has such discretion, it may elect (but is not obligated) to apply a State or local minimum wage to employees under its administratively determined pay system.
5. Higher two-thirds minimum rate. Notwithstanding the above requirements, the hourly rate for qualifying circumstances (4), (5), and (6) may not be less than two-thirds of the Federal minimum wage (29 U.S.C. 206(a)(1)) or two-thirds of an applicable State or local minimum wage.
 - a. Two-thirds of the current Federal FLSA minimum wage is \$4.83 ($\$7.25 \times 2/3$).
6. Daily and aggregate limits. Notwithstanding the hourly rates specified above, the pay received by an employee for EPSLA paid sick leave may not exceed the following daily and aggregate limitations—
 - a. \$511 per day and \$5,110 in the aggregate for one or more of the qualifying circumstances (1), (2), or (3); or
 - b. \$200 per day and \$2,000 in the aggregate for one or more of the qualifying circumstances (4), (5), or (6).

NOTE 1: Leave taken for qualifying circumstances (4), (5), and (6) also counts towards the \$511 daily limit and the \$5,110 aggregate limit. For example, an employee who has already received \$2,000 in paid sick leave to take care of his or her child would only have \$3,110 left to take paid sick leave to self-quarantine. Taking leave for qualifying circumstances (1), (2), and (3) would count only towards the \$511 daily and \$5,110 aggregate limits, and not towards the \$200 daily and \$2,000 aggregate limits applicable to qualifying circumstances (4), (5), and (6).

NOTE 2: Agencies should be mindful that employees with higher rates of pay are more likely to reach the daily limit. In the case of leave used for an 8-hour workday, the \$511 daily limitation would be exceeded if the employee's hourly rate exceeds \$63.87 and the \$200 daily limitation would be exceeded if the employee's two-thirds hourly rate exceeds \$25.00 (i.e., the full hourly rate exceeds \$37.50).

7. Average FLSA regular rate. An employee's average FLSA-based hourly regular rate is calculated by—
 - a. using the methods contained in 29 U.S.C. 207(e) and 29 CFR parts 531 and 778 to compute the regular rate for each full workweek in which the employee has been employed during the 6-month period ending on the day on which EPSLA paid

- sick leave is first used—or if the employee has been employed by the employing agency for fewer than 6 months, during the entire period of employment; and
- b. computing the average of the weekly regular rates derived above, weighted by the number of hours worked for each workweek.
8. Title 29 vs. title 5 FLSA computation. The FLSA hourly regular rate computation under title 29 differs from the method used under title 5 FLSA rules as follows:
- a. Under title 29, only actual hours of work are considered in calculating the regular rate. Any nonwork periods, such as leave, are excluded from total hours worked.
 - b. Under title 29, payments for occasional periods when no work is performed (e.g., paid leave, paid holidays) are excluded from total remuneration.
9. Hours in leave payment computation. An employee must have scheduled hours of work to use EPSLA paid sick leave. (See “Use of Leave” section.) In some cases, EPSLA paid sick leave must be used in full workday increments. Thus, all the hours in the employee’s daily tour of duty established for leave charging purposes would be covered by EPSLA paid sick leave—unless the employee has exhausted the leave for which he or she is eligible. In the case of a flexible work schedule under which an employee can elect the number of basic work requirement hours of work (subject to agency-established limits) on a given day, those elected hours become scheduled hours during which leave can be taken. In the case of an intermittent employee, a supervisor must schedule hours of work in order for the employee to use EPSLA paid sick leave.

G. Additional Requirements/Provisions

1. Posting of notice. Each employing agency shall post and keep posted, in conspicuous places on agency premises where notices to employees are customarily posted, the model notice prepared by the Department of Labor. This posting requirement may be satisfied by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website. (See Federal employee poster at https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Federal.pdf.)
2. Prohibited acts under EPSLA section 5104. An employing agency may not discharge, discipline, or in any other manner discriminate against any employee who—
 - a. takes paid sick leave in accordance with EPSLA; or
 - b. has filed any complaint or instituted (or caused to be instituted) any proceeding under or related to EPSLA (including a proceeding that seeks enforcement of EPSLA), or has testified (or is about to testify) in any such proceeding.
3. Effect on rights and benefits. Nothing in EPSLA may be construed, in any way, to diminish the rights or benefits to which an employee is entitled under any (a) other Federal law; (b) collective bargaining agreement; or (c) existing agency policy.
4. Investigation and data gathering. The Department of Labor may investigate and gather data to ensure compliance with EPSLA in the same manner as authorized by sections 9 and 11 of the FLSA (29 U.S.C. 209 and 211).

5. Recordkeeping. An employing agency is required to retain all documentation provided by the employee (see 29 CFR 826.100 and 826.140) for 4 years, regardless of whether leave was granted or denied. If an employee provided oral statements to support his or her request, the agency is required to document and maintain such information in its records for 4 years.

H. Enforcement

1. An employing agency who violates section 5102 of EPSLA (dealing with requirement to provide EPSLA paid sick leave) will be—
 - a. considered to have failed to pay minimum wages in violation of section 6 of the FLSA (29 U.S.C. 206); and
 - b. subject to the penalties described in sections 16 and 17 of the FLSA (29 U.S.C. 216 and 217) with respect to such violation.
2. An employing agency who willfully violates section 5104 of EPSLA (dealing with prohibited acts described in section G.2) will be—
 - a. considered to be in violation of section 15(a)(3) of the FLSA (29 U.S.C. 215(a)(3)); and
 - b. subject to the penalties described in sections 16 and 17 of the FLSA (29 U.S.C. 216 and 217) with respect to such violation.



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Employee Services

Fact Sheet: Federal Employee Coverage under the Leave Provisions of the Families First Coronavirus Response Act (FFCRA) (Public Law 116-127, March 18, 2020)

Division E—Emergency Paid Sick Leave Act

Division E of the FFCRA provides up to two weeks (up to 80 hours) of emergency paid sick leave to all Federal civil service employees in specified circumstances related to COVID-19—unless they are in an exempted category as described below. This paid sick leave is in addition to any other paid leave entitlements. Depending on the circumstances, the sick leave is paid at the Fair Labor Standards Act (FLSA)-based regular rate of pay for an employee or two-thirds of that rate (subject to statutory limitations on daily and aggregate cash value of paid leave). Paid sick leave under division E is available for use during the period from April 1, 2020, through December 31, 2020. The Department of Labor issued regulations under the emergency paid sick leave law, and has posted information and guidance on the leave provisions of the Act at <https://www.dol.gov/agencies/whd/pandemic>.

A Federal agency employing a health care provider or an emergency responder may elect to exclude such employee from coverage under division E.

The Director of the Office of Management and Budget (OMB) may, for good cause, exclude certain categories of Federal employees from coverage under division E.¹

Division C—Emergency Family and Medical Leave Expansion Act²

Division C of the FFCRA provides for expanded family and medical leave (“expanded FMLA leave”) during the period from April 1, 2020, through December 31, 2020, because a covered employee (see coverage discussion below) is unable to work in person or telework due to a need to care for the employee’s eligible child (i.e., a “son or daughter” as defined in Department of Labor regulations) because the child’s school or place of care has been closed or the child’s care provider is unavailable as a result of the COVID-19 public health emergency. Division C further provides that the first 10 days of expanded FMLA leave is unpaid leave; however, an employee has the right to substitute either paid sick leave under division E or accrued paid leave for that initial unpaid leave. After the first two workweeks (usually 10 workdays), the employer must provide partially paid leave for any additional expanded FMLA leave (up to 10 weeks)—unless the employee elects or the employer requires the employee to concurrently use certain categories of an employee’s accrued leave (at the normal rate) with expanded FMLA leave, which would allow the worker to receive full pay. The leave is paid at two-thirds of the employee’s FLSA-based regular rate of pay (subject to statutory limitations on the daily and aggregate cash value of paid leave), except that concurrent use of accrued leave is paid at the full amount under the employer’s policies.

¹ See section 5112 of division E of the FFCRA, as added by section 3604(b) of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136, March 27, 2020).

² **Important:** Most Federal employees are not eligible for expanded FMLA leave, which is applicable only to certain Federal employees covered by title I of FMLA.

This expanded family and medical leave law is regulated by the Department of Labor, which has posted information and guidance on the leave provisions of the Act at <https://www.dol.gov/agencies/whd/pandemic>.

Coverage of Federal employees under division C depends on several factors:

- The employee must be covered by title I of FMLA, which is codified in title 29, United States Code, and generally administered by the Department of Labor.
- The employee must have been employed for at least 30 calendar days with the employer from whom leave is being requested. (Note: The normal FMLA requirements—that the employee have at least 12 months of service and at least 1,250 hours of service with the employer during the previous 12-month period—do not apply.)
- The employee is not exempted under section 3105 of FFCRA, which allows an employer to exclude from coverage an employee who is a health care provider or an emergency responder.
- The employee is not in a category for which the agency has obtained an exclusion from coverage from the Director of OMB.

Table A, below, identifies categories of Federal employees who are not eligible for the expanded family and medical leave under FFCRA because they are covered under title II of the FMLA, which is codified in title 5 of the United States Code. Table B, below, identifies Federal employees who are covered under division C of the FFCRA, because they are covered under title I of FMLA. Employees who otherwise qualify for coverage under division C may be exempted, as described above and in the following paragraph.

Table A Federal Employees Who Are Covered by the Family and Medical Leave Act (FMLA) Provisions in Title 5, United States Code and Who, Therefore, <u>Are Not Covered</u> by the Expanded Family and Medical Leave Provisions Enacted in Division C of the Families First Coronavirus Response Act (FFCRA)	
Category	Notes
<p>Any employee appointed in the civil service who meets the definition of “employee” in 5 U.S.C. 2105, but <u>excluding</u>—</p> <ul style="list-style-type: none"> • employees not covered by the title 5 annual and sick leave system, except as otherwise provided in this table; • employees of the District of Columbia Government, the Government Accountability Office (GAO), and the Library of Congress (LOC); and • temporary or intermittent employees. 	<p>See 5 U.S.C. 6381(1)(A) and 6301(2).</p> <p>NOTE 3: Employees with intermittent work schedules are specifically excluded by language in section 6381(1)(A) but also would have been excluded based on the reference to section 6301(2)(ii).</p> <p>The following categories of employees are excluded from coverage under the title 5 FMLA provisions based on exclusion from the title 5 annual and sick leave system:</p>

Category	Notes
<p>NOTE 1: Employees of the United States Postal Service and the Postal Regulatory Commission are not considered employees for the purpose of title 5 leave provisions. (See 5 U.S.C. 2105(e).) Other Executive branch employees are covered by title 5 FMLA provisions unless a specific exclusion applies to them. (See the right column and NOTE 5 at the end of this table.)</p> <p>NOTE 2: Judicial branch employees are generally covered by title 5 leave provisions, including title 5 FMLA provisions. (Except for certain article I courts, the Administrative Office of the United States Courts is responsible for addressing leave coverage issues for Judicial branch employees.)</p>	<ul style="list-style-type: none"> • an employee of either House of Congress or of the two Houses (section 6301(2)(vi)); • a leave-exempt Presidential appointee as described in section 6301(2)(x)-(xiii); and • other employees described in section 6301(2)(iii), (vii), or (viii). <p>NOTE 4: See more information on Legislative branch employees in the row below dealing with employees of the Government Publishing Office.</p>
<p>An employee of the Veterans Health Administration who is covered by a leave system established under 38 U.S.C. 7421, excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See reference to section 6301(2)(v) in 5 U.S.C. 6381(1)(A) and OPM regulations at 5 CFR 630.1201(b)(3)(i) and (4).) Note: See also 38 U.S.C. 7421</p>
<p>A Department of Defense teacher holding a “teaching position” as defined in 20 U.S.C. 901, excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See reference to section 6301(2)(ix) in 5 U.S.C. 6381(1)(A) and OPM regulations at 5 CFR 630.1201(b)(3)(ii) and (4).)</p>
<p>An employee of a nonappropriated fund instrumentality associated with the armed forces, as described in 5 U.S.C. 2105(c), excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See 5 U.S.C. 2105(c)(1)(E) and OPM regulations at 5 CFR 630.1201(b)(3)(iii) and (4).)</p>
<p>An employee of the Government Publishing Office (GPO), excluding any temporary or intermittent employee.</p>	<p>GPO employees are civil service employees covered by the title 5 annual and sick leave system. This is the only category of employees in the Legislative branch covered by the title 5 FMLA provisions. The first row of this table identified exclusions of GAO employees, Library of Congress employees, and employees of the two Houses. Other Legislative branch employees are excluded because they are covered by the title 29 FMLA provisions pursuant to the Congressional Accountability Act of 1995. (See 2 U.S.C. 1301(3), 1302(a)(5), and 1312.) The Office of Congressional Workplace Rights administers the title 29 FMLA provisions for covered Legislative branch employees. GPO employees are not covered by the Congressional Accountability Act.</p>

Category	Notes
<p>A Transportation Security Administration (TSA) employee who serves as a Transportation Security Officer (i.e., screeners), excluding any temporary or intermittent employee.</p>	<p>See section 7606 of subtitle A of title LXXVI of division F of Public Law 116-92, S. 1790, December 20, 2019. Section 7606 amended a law addressing the coverage of TSA screeners under various personnel laws, and expressly provided that TSA screeners are covered by the title 5 FMLA provisions. (See amendment to section 111(d)(2) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note).) TSA screeners are not covered by the title 5 annual and sick leave system.</p>
<p>NOTE 5: Some Federal employees would be otherwise covered by the title 5 FMLA provisions but for coverage under special personnel authorities possessed by their employing agency. Those special personnel authorities fall into one of two categories: (1) the law excludes their employees from coverage under the title 5 leave provisions; or (2) the law gives the agency discretionary authority to determine whether their employees are covered under the title 5 leave provisions. Agencies with special personnel authorities are responsible for informing their employees regarding whether the title 5 FMLA provisions apply. The general rule is that Federal employees who are not covered by the title 5 FMLA provisions are covered by the title 29 FMLA provisions (i.e., title I of FMLA). (See 29 U.S.C. 2611(2)(B)(i) and 29 CFR 825.109(c).) However, an agency with special personnel authorities may have a basis for determining that its employees are exempt from both the title 5 and the title 29 FMLA provisions.</p>	

<p align="center">Table B Federal Employees Covered by the Expanded Family and Medical Leave Provisions Enacted in Division C of the Families First Coronavirus Response Act (FFCRA)</p>	
Category	Notes
<p>Employees of the United States Postal Service or the Postal Regulatory Commission</p>	<p>They are not covered by the title 5 FMLA provisions based on 5 U.S.C. 2105(e), read with 29 U.S.C. 2611(2)(B)(i).</p>
<p>Legislative branch employees, <i>except</i> employees of the <i>Government Publishing Office</i>.</p>	<p>See information on Legislative branch employees in Table A.</p>
<p>An employee with an intermittent work schedule (i.e., not part-time or full-time, no guarantee of any hours of work in any pay period).</p>	<p>See 5 U.S.C. 6381(1)(A), read with 29 U.S.C. 2611(2)(B)(i).</p>
<p>An employee with a temporary appointment (i.e., an appointment with a time limitation of one year or less).</p>	<p>See 5 U.S.C. 6381(1)(A), read with 29 U.S.C. 2611(2)(B)(i). No FMLA leave would be available after the temporary appointment ends.</p>
<p>An employee of an Executive branch agency who is <u>not</u> covered by title II of FMLA (i.e., title 5 FMLA provisions)—unless the agency has exercised a special personnel authority in statute to</p>	<p>See 29 U.S.C. 2611(2)(B)(i) and 29 CFR 825.109(c). See Table A—in particular, the first row and NOTE 5. Agencies with special personnel authorities are responsible for informing their</p>

Category	Notes
exempt its employees from coverage under title I of FMLA (i.e., title 29 FMLA provisions).	employees regarding whether the FMLA provisions under title 5 or title 29 apply and whether division C of the FFCRA applies.
<p>NOTE: The Director of OMB may, for good cause, exclude certain categories of Federal Executive branch employees from the paid expanded family and medical leave. The OMB Director's exemption authority does not provide a complete exemption from division C; rather it applies only to the paid leave provisions in section 110(b) of title I of FMLA. This means that these employees would still be entitled to receive FMLA job-protected unpaid leave under 29 U.S.C. 2612(a)(1)(F).</p>	

Department of Labor Regulations – Family and Medical Leave Act

§ 825.109 Federal agency coverage.

(a) Most employees of the government of the United States, if they are covered by the FMLA, are covered under Title II of the FMLA (incorporated in Title V [5], Chapter 63, Subchapter 5 [V] of the United States Code) which is administered by the U.S. Office of Personnel Management (OPM). OPM has separate regulations at 5 CFR Part 630, Subpart L. Employees of the Government Printing Office are covered by Title II. While employees of the Government Accountability Office and the Library of Congress are covered by Title I of the FMLA, the Comptroller General of the United States and the Librarian of Congress, respectively, have responsibility for the administration of the FMLA with respect to these employees. Other legislative branch employees, such as employees of the Senate and House of Representatives, are covered by the Congressional Accountability Act of 1995, 2 U.S.C. 1301.

(b) The Federal Executive Branch employees within the jurisdiction of these regulations include:

- (1) Employees of the Postal Service;
- (2) Employees of the Postal Regulatory Commission;
- (3) A part-time employee who does not have an established regular tour of duty during the administrative workweek; and,
- (4) An employee serving under an intermittent appointment or temporary appointment with a time limitation of one year or less.

(c) Employees of other Federal executive agencies are also covered by these regulations if they are not covered by Title II of FMLA.

(d) Employees of the judicial branch of the United States are covered by these regulations only if they are employed in a unit which has employees in the competitive service. For example, employees of the U.S. Tax Court are covered by these regulations.

(e) For employees covered by these regulations, the U.S. Government constitutes a single employer for purposes of determining employee eligibility. These employees must meet all of the requirements for eligibility, including the requirement that the Federal Government employ 50 employees at the worksite or within 75 miles.

Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136, March 27, 2020)

SEC. 3604. OMB WAIVER OF PAID FAMILY AND PAID SICK LEAVE.

(a) **FAMILY AND MEDICAL LEAVE ACT OF 1993.**—Section 110(a) of title I of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.) (as added by division C of the Families First Coronavirus Response Act) is amended by adding at the end the following new paragraph:

“(4) The Director of the Office of Management and Budget shall have the authority to exclude for good cause from the requirements under subsection (b) certain employers of the United States Government with respect to certain categories of Executive Branch employees.”.

(b) **EMERGENCY PAID SICK LEAVE ACT.**—The Emergency Paid Sick Leave Act (division E of the Families First Coronavirus Response Act) is amended by adding at the end the following new section:

“SEC. 5112. AUTHORITY TO EXCLUDE CERTAIN EMPLOYEES.

“The Director of the Office of Management and Budget shall have the authority to exclude for good cause from the definition of employee under section 5110(1) certain employees described in subparagraphs (E) and (F) of such section, including by exempting certain United States Government employers covered by section 5110(2)(A)(i)(V) from the requirements of this title with respect to certain categories of Executive Branch employees.”.