



FFCRA FREQUENTLY ASKED QUESTIONS

The answers provided in these FAQs supersede previous DOAS guidance posted 04/02/2020 and are based on current guidance from the US Department of Labor as of 04/01/2020. New or updated answers are signified by grey shading. The answers may change with the release of additional US DOL guidance.

1. What is the Families First Coronavirus Response Act (FFCRA)?

The Families First Coronavirus Response Act (HR 6201) was enacted into law on 3/18/2020 and will go into effect on 04/01/2020. While the Act has many provisions addressing the impact of the COVID-19 outbreak, there are two key provisions that apply to the State as an employer:

1. The Emergency Family and Medical Leave Expansion Act adds a qualifying reason that an employee is eligible for 12 weeks of job-protected family and medical leave if the eligible employee is unable to work or telework and must care for a son or daughter under the age of 18 (or a son or daughter over the age of 18 and incapable of selfcare due to a mental or physical disability) because of a school closure or loss of childcare due to a public health emergency. The new emergency family and medical leave provision also increases eligibility for FML for this limited reason to any employee employed for 30 calendar days or more. While the first 10 days of the emergency family and medical leave may be unpaid, after those 10 days employers must provide 2/3 of the employee's regular rate up to a cap of \$200.00 per day or \$10,000.00 in the aggregate.
2. The Emergency Paid Sick Leave Act provides for 80 hours of a new type of administrative paid leave for 6 qualifying reasons (listed below) relating to absences caused by COVID-19. The Act allows an employee to take leave due to an inability to work or telework because the employee is:
 - 1) subject to a federal, state or local quarantine or isolation order related to COVID-19;
 - 2) advised by a health care provider to self-quarantine due to COVID-19 concerns;
 - 3) experiencing COVID-19 symptoms and seeking medical diagnosis;
 - 4) caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
 - 5) caring for the employee's son or daughter (under age of 18 or over the age of 18 and incapable of self-care) if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or,
 - 6) experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

The 80 hours of emergency paid sick leave must be provided at the employee's regular rate of pay for reasons 1,2, and 3 listed above, capped at \$511.00 per day or \$5,110.00 in

aggregate and at 2/3rds the employee's regular rate of pay for reasons 4,5, and 6 listed above, capped at \$200.00 per day or \$2,000.00 in the aggregate.

The State Personnel Board temporarily adopted SPB Rule 31, *Families First Coronavirus Response Leave*, implementing the provisions of the Families First Coronavirus Response Act. Rule 31 can be accessed on the DOAS / HRA webpage at: <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/state-personnel-board-rules>.

Also available on the DOAS / HRA webpage is a COVID-19 Leave Options Matrix available at the following link in the section titled Families First Coronavirus Response Act: <http://doas.ga.gov/human-resources-administration/human-resources-administration-covid-19-response>.

2. Does the FFCRA apply to every state agency?

Yes. The FFCRA applies to every public employer, including state of Georgia agencies, with one or more employees.

3. If an employee is healthy, but is directed by a medical professional or the employing agency to stay home because he or she has been in direct contact with an individual exposed to COVID-19, and the employee is unable to telework, in what pay/status is the employee placed?

If an employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or is advised by a healthcare provider to self-quarantine due to COVID-19 concerns, he or she may request up to 80 hours of emergency paid sick leave at the employee's regular rate of pay, capped at \$511 per day or \$5,110 total.

Non-temporary, salaried employees may elect to use accrued leave or compensatory time to cover the absence. Note the use of accrued leave or compensatory time will not count against an employee's FFCRA entitlement.

4. If an employee is experiencing COVID-19 symptoms and is seeking medical diagnosis or tests positive for COVID-19, and the employee is unable to telework, in what pay/status is the employee placed?

If an employee is experiencing COVID-19 symptoms and is seeking medical diagnosis he or she may request up to 80 hours of emergency paid sick leave at the employee's regular rate of pay capped at \$511 per day or \$5,110 total.

Non-temporary, salaried employees may elect to use accrued leave or compensatory time to cover the absence. Note the use of accrued leave or compensatory time will not count against an employee's FFCRA entitlement.

5. What leave/pay status should an employee be in if he or she must stay home to care for a child whose school was closed due to COVID-19?

If an employee cannot come to work or telework because he or she is caring for the employee's child because the child's school or place of care is closed or the child's care provider is unavailable

due to public health emergency, he or she will may request up to 80 hours of paid sick leave at 2/3rds the employee's regular rate of pay, capped at \$200 per day or \$2,000 total.

Non-temporary, salaried employees may elect to use accrued annual leave, personal leave, or compensatory time in lieu of emergency paid sick leave to cover the absence. Note the use of accrued leave or compensatory time will not count against an employee's FFCRA entitlement.

Eligible employees (those employed for thirty calendar days or more) may also request to receive emergency family and medical leave for up to 12 work weeks (see below). The employee will receive 2/3rds the employee's regular rate of pay, capped at \$200 per day or \$10,000.00 in the aggregate for the period after the first 10 days that emergency family and medical leave is taken.

Non-temporary, salaried employees may elect to use the emergency paid sick leave, annual leave, personal leave, or compensatory time to cover the initial 10 workdays of emergency family and medical leave.

6. What leave/pay status should an employee be in if he or she must stay home to care for an individual who is subject to quarantine, or isolation and the employee is unable to telework?

An employee who is caring for an individual subject to a federal, state, or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns may request up to 80 hours of paid sick leave at 2/3rds the employee's regular rate of pay, capped at \$200 per day or \$2,000 total.

Non-temporary, salaried employees may elect to use accrued leave or compensatory time to cover eligible absences. Whether the absence is eligible to be covered by accrued sick leave will depend on whether the individual being cared for meets the definition of "immediate family member" in State Personnel Board Rule 16, *Absence from Work*. Note the use of accrued leave or compensatory time will not count against an employee's FFCRA entitlement.

7. Who qualifies as an individual that an employee may take emergency paid sick leave to care for?

The employee must have a genuine need to care for the individual, meaning the employee must have a personal relationship with the individual. The USDOL has explained "personal relationship" means the relationship creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined. For example, an immediate family member or a roommate are individuals with whom such an expectation is present in the relationship.

8. Will emergency paid sick leave count against an employee's accrued leave?

No, the FFCRA provides a new leave requirement in addition to leave already provided by the state effective April 1, 2020.

9. May an employee request to supplement FFCRA leave with state provided accrued leave and/or compensatory time if the request is for a qualifying reason under which the employee is owed 2/3rd of his or her regular rate under the FFCRA in order to receive the additional 1/3rd of pay?

No. Employees must elect whether they are going to use FFCRA leave or eligible accrued leave and/or compensatory time to cover the absence. The only circumstance under which accrued leave and/or compensatory time may run concurrently with FFCRA leave is during the first ten (10) days of emergency family and medical leave which is unpaid under the FFCRA.

10. How is the emergency paid sick leave calculated for part-time employees?

The rate of pay for part-time employees or employees with irregular schedules will be based on the average number of hours the employee worked the six months prior to taking the emergency paid sick leave. Employees who have worked less than 6 months prior to taking the leave are entitled to the average number of hours the employee would reasonably have expected to be scheduled to work over a two-week period upon hire.

11. When calculating pay due to employees under FFCRA, must overtime hours be included?

Yes. The maximum number of hours an employee is owed under the Emergency Paid Sick Leave Act is 80 hours over a two-week period. Such hours may be distributed across the two-week period in whatever manner the employee would normally be scheduled. For example, if the employee normally works 50 hours per week the employee will receive 50 hours the first week of emergency paid sick leave, and the remaining 30 hours the second week.

The Emergency Family and Medical Leave Expansion Act requires employers to pay an employee for the hours the employee would have *normally been scheduled to work*, even if that is more than 40 hours in a week. If an employee normally works more than 40 in a workweek, then the number of hours the employee is owed of emergency family and medical leave is calculated based upon the average number of hours the employee worked the previous 6 (six) months before taking the leave (the calculation for varying schedule employees). If the employee worked less than six (6) months, then the number of hours is based upon the reasonable expectation of the employee had of the number of hours he or she would be scheduled per week upon hire.

12. Can taking emergency family and medical leave or emergency paid sick leave impact an employee's exempt status under the Fair Labor Standards Act (FLSA)?

No. USDOL regulations provide that nothing in the FFCRA should be construed as impacting an employee's exempt status under the FLSA. Specifically, this includes an employee's use of intermittent leave combined with either emergency paid sick leave or emergency family and medical leave. Taking such leave does not undermine the employee's salary basis for purposes exempt status under the FLSA.

13. May an employee take 80 hours of paid sick leave for self-quarantine and then another 80 hours for another reason provided for emergency paid sick leave?

No. An employee may only take two weeks (or ten days) of emergency paid sick leave (80 hours for full-time employees or the number of hours equal to that which a part-time employee normally works over a two-week period) for any combination of qualifying reasons. The total number of hours for which an employee may receive emergency paid sick leave is capped at 80 hours.

14. Who is eligible for the new FFCRA emergency family and medical leave?

Employees who have been employed for at least 30 calendar days may take up to **12 weeks of job-protected leave** to allow an employee who is unable to work or telework to care for the employee's son or daughter (under 18 years of age) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency. An employee is considered to have been employed for at least 30 calendar days if:

- The employee was on payroll the 30 calendar days immediately prior to the day the employee's leave would begin; or,
- The employee was laid off or otherwise terminated on or after March 1, 2020, and rehired or otherwise reemployed on or before December 31, 2020, provided that the employee was on payroll for 30 or more of the 60 calendar days prior the date the employee was laid off or otherwise terminated.

15. How do you determine if an employee has been employed for 30 calendar days for purposes of emergency family and medical leave?

An employee is considered to have been employed for at least 30 calendar days if the employee has been on payroll for the 30 calendar days immediately prior to the day the leave would begin. Note, however, that time a worker performs assigned to a State employer from a temporary staffing firm may be counted towards the 30-calendar days if the State employer subsequently hires the employee on a regular basis.

16. Who is a son or daughter under FFCRA?

Under the FFCRA, a "son or daughter" is the employee own child, which includes biological, adopted, or foster child, as well as a stepchild, a legal ward, or a child for whom the employee is standing in loco parentis. In loco parentis means a child that the employee has day-to-day responsibilities to care for or financially support. [US DOL Fact Sheet #28B's](#) guidance on in loco parentis applies to the FFCRA.

17. Are healthcare providers and emergency responders eligible for the emergency sick leave and new FFCRA emergency family and medical leave?

Health care providers and emergency responders may be excluded by their employer from being able to take paid sick leave and the emergency family and medical leave under the Act.

"Healthcare Provider"

For purposes of what employees may be exempted from being eligible to take emergency paid sick leave or emergency family and medical leave, a healthcare provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering healthcare 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. This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide

services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the State of Georgia determines is a health care provider necessary for the State's response to COVID-19.

State agencies should submit healthcare provider exemption plans to DOAS HRA for consultation via the process accessible on the DOAS webpage at the following link in the section titled Families First Coronavirus Response Act: <http://doas.ga.gov/human-resources-administration/human-resources-administration-covid-19-response>. DOAS HRA will notify the Governor's Office of Planning and Budget of the exemption plan.

“Emergency Responder”

For purposes of what employees may be exempted from being eligible to take emergency paid sick leave or emergency family and medical leave, emergency responder means an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of 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, 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.

State agencies should submit emergency responder exemption plans to DOAS HRA for consultation via the process accessible on the DOAS webpage at the following link in the section titled Families First Coronavirus Response Act: <http://doas.ga.gov/human-resources-administration/human-resources-administration-covid-19-response> DOAS HRA will notify the Governor's Office of Planning and Budget of the exemption plan.

18. Is an employee entitled to be paid during the time period they take the new FFCRA emergency family and medical leave?

After an initial 10-day period, employers must pay employees as following:

- Full-time employees at **two-third the employee's regular rate** for the number of hours the employee would have otherwise been scheduled – capped at \$200/day and \$10,000.00 in the aggregate.
- Part-time employees or those who work irregular schedules are entitled to be paid at **two-third the employee's regular rate** (capped at \$200/day and \$10,000.00 in the aggregate) based on the average number of hours the employee worked the six months prior to taking the emergency family and medical leave. Employees who have worked less than 6 months prior to taking the leave are entitled to the employee's reasonable expectation at hiring of the average number of hours the employee normally would be scheduled to work.

19. Can an employee be paid for the first 10 days of FFCRA emergency family leave?

An employee may elect to use the new emergency paid sick leave for the first 10 days of leave. Alternatively, an employee may elect to use his or her accrued annual or personal leave and/or compensatory time for the 10-day period.

20. Can FFCRA emergency family and medical leave be used intermittently?

Yes, so long as there is an agreement between the employing entity and the employee. Employees may take intermittent leave in any increment that is agreed upon by the employing entity and the employee. State employers are encouraged to be flexible and work with employees on arrangements that maximize productivity while also allowing employees to care for children whose school or place of care is closed, or childcare provider is unavailable.

21. Can an employee take emergency paid sick leave intermittently?

It depends on what qualifying reason the employee is taking emergency paid sick leave.

If the employee is taking emergency paid sick leave for any of the following five reasons and is unable to telework, then the leave cannot be taken intermittently:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- The employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or,
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Once an employee begins taking emergency paid sick leave for one or more of the qualifying reasons listed above because he or she cannot telework, the employee must continue to take the emergency paid sick leave until he or she either (1) uses the full amount of emergency paid sick leave or (2) no longer has a qualifying reason for taking the emergency paid sick leave. If the employee does not exhaust his or her emergency paid sick leave, he or she can take any remaining emergency paid sick leave at a later time for a qualifying reason which arises until December 31, 2020.

If the employee is permitted to telework, then the employing entity and employee can agree that the employee may take emergency paid sick leave intermittently for any qualifying reason for periods that the employee is unable to telework because of the COVID-19 related reason.

If the employee is taking the leave to care for a child whose school or place of care is closed, or whose childcare provider is unavailable, because of COVID-19 related reasons then, yes, emergency paid sick leave may be taken intermittently so long as there is an agreement to do so

between the employing entity and the employee. The emergency paid sick leave may be used to cover time not teleworking or working on an agreed-upon intermittent basis.

22. If an employee has already exhausted his or her FMLA leave for the calendar year, can they still take emergency family and medical leave to care for a son or daughter?

No. FFCRA provides an additional qualifying reason for leave under the FMLA. It does not expand the total amount of time an employee may take under the FMLA.

For example, if an employee took 12 weeks of family and medical leave from November 1, 2019 through Friday, January 24, 2020 to care for a newborn child then the employee has exhausted his or her Family and Medical Leave entitlement in the rolling 12-month period and is not eligible to take emergency family and medical leave under the FFCRA on April 1, 2020.

Note: an employee's previous use of conventional family and medical leave does not impact the employee's eligibility for emergency paid sick leave, which is a new paid leave entitlement in addition to family and medical leave.

23. What documentation can I require from an employee seeking to take emergency family and medical leave?

If an employee takes emergency family and medical leave to care for his or her child whose school or place of care is closed, or childcare provider is unavailable due to COVID-19, the employer may require the employee to provide any additional documentation in support of that leave, to the extent permitted under the certification rules for conventional FMLA requests.

The USDOL indicates that such requirements may include a notice that was posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or childcare provider.

Such documentation includes a signed statement containing the following information:

- the employee's name;
- the date(s) for which leave is requested;
- the qualifying need for leave, including the (1) name of the child being cared for, (2) the name of the school, place of care, or child care provider that is closed or became unavailable due to COVID-19, and (3) a statement representing that no other suitable person is available to care for the child during the period of requested leave; and,
- a statement representing the employee is unable to work or telework because of the qualifying need.

Per [USDOL Factsheet #28G](#), an employer must notify the employee each time a certification is required and may request certification at a later date if it questions the appropriateness of the leave or its duration.

24. What documentation can I require from an employee seeking to take emergency paid sick leave:

An employer may require an employee to provide documentation in support of emergency paid sick leave. Such documentation includes a signed statement containing the following information:

- the employee's name;
- the date(s) for which leave is requested;
- the COVID-19 related qualifying reason for leave; and,
- a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason.

Additional documentation may be required depending on the qualifying need:

- An employee requesting leave due to a quarantine or isolation order to which the employee is subject must provide the name of the government entity that issued the order.
- An employee requesting leave because he or she has been advised by a healthcare provider to self-quarantine must provide the name of the health care provider.
- An employee requesting leave to care for an individual subject to a quarantine or isolation order or who has been advised by a healthcare provider to self-quarantine must provide either the name of the government entity that issued the order to which the individual is subject or the name of the health care provider who advised the individual to self-quarantine, depending on the reason for the request.
- An employee requesting leave to care for his or her child whose school or place of care is closed, or childcare provider is unavailable must provide: (1) the name of the child; (2) the name of the school, place of care, or child care provider that is closed or become unavailable; and, (3) a statement representing that no other suitable person is available to care for a child during the period of requested leave.

25. Are the emergency paid sick leave and emergency family and medical leave requirements retroactive?

No, the emergency paid sick leave and emergency family and medical leave requirements are not retroactive.

26. What notice is an employer required to give employees?

Each state employer must post and keep posted, in conspicuous locations on agency premises where notices to employees are customarily placed, the [FFCRA notice](#) prepared by and approved by the US Secretary of Labor. State employers may satisfy this requirement by emailing or direct mailing the model notice to employees or posting the model notice on an employee information internal or external website until such time the state employer can post the notice on agency premises.

27. Must employers give an employee requesting leave the conventional FMLA notices?

The FFCRA does not require employers to respond to employees who request emergency family and medical leave with notices of eligibility, rights and responsibilities, or written designations that leave counts against the employees' FMLA leave entitlement. However, if your agency has established practices for providing employees with specific notices you are allowed to apply your existing practices to the employees requesting emergency family and medical leave. It is important if you do not utilize such notices to communicate clearly with employees about the effect taking emergency family and medical leave – including that such leave counts against the employees'

FMLA leave entitlement and that the employees will only receive 2/3rd of the employees' regular rate for the time taken after the initial 10 days of leave.

28. Are employees eligible for conventional family and medical leave for a COVID-19 related absence?

Yes. It is possible that an employee's medical condition or an immediate family member's medical condition for COVID-19 related reasons (especially if there are complications) may rise to the level of a serious health condition eligible for conventional family and medical leave. All existing certification requirements and eligibility requirements for such leave remain in effect, including requirements for medical certifications. See [State Personnel Board Rule 23, Family and Medical Leave](#), for guidance on absences qualifying for conventional family and medical leave. Leave taken by an employee for the purpose of avoiding exposure to COVID-19 likely would not be protected under conventional FMLA.

Note: Conventional family and medical leave taken for a qualifying reason *other than to care for a child whose school or place of care is closed, or childcare provider is unavailable due to COVID-19*, is not required to be paid like emergency family and medical leave.

29. When is an employee able to telework under the FFCRA?

Employees may telework when the State employer has approved or permitted the employee to perform his or her work from home or at a location other than the normal workplace. An employee is able to telework if:

- (a) his or her state employer has work for the employee;
- (b) the state employer permits the employee to work from the employee's location; and,
- (c) there are no extenuating circumstances (such as serious COVID-19 symptoms) that prevent the employee from performing that work.

Telework is compensated normally and is not compensated under the paid leave provisions of the FFCRA. Note that employees who are teleworking must record and be compensated for all hours actually worked, including overtime, in accordance with the requirements of the FLSA. However, an employer is not required to compensate employees for unreported hours worked while teleworking for COVID-19 related reasons, unless the employer knew or should have known about such telework.

30. What does it mean to be unable to work, including telework?

An employee is unable to work if the employee cannot perform his or her work, because one of the qualifying reasons set forth in the FFCRA, at the normal worksite, from home or elsewhere.

Note that a State employer may come to an agreement with an employee that he or she may perform the normal number of hours of work, but outside of the normally scheduled work times, then the employee is able to work and leave is not necessary. For instance, a State employer and an employee may agree that an employee may perform the normal number of hours either early in the morning or late at night. Also note that a circumstance may arise where the employee is only able to telework a reduced number of hours, then the State employer and employee may agree on

a schedule under which the employee teleworks less than his or her normal number of scheduled hours and takes leave intermittently for the rest. See Q18 & Q19.

31. Can an employee collect unemployment insurance benefits for time in which he or she is receiving emergency paid sick leave and/or emergency family and medical leave?

No. If an employee is provided emergency paid sick leave or emergency family and medical leave, the employee is not eligible for unemployment insurance benefits.

32. What job restoration rights do employees who take emergency family and medical leave have?

Generally, the FFCRA and the Family and Medical Leave Act (which must be read in conjunction) require employers to provide the same or a nearly equivalent job to an employee who returns to work after taking emergency family and medical leave. However, there is no additional protection from employment actions such as a reduction in force that would have affected the employee regardless of whether he or she took leave. Such an employee may be subject to a reduction in force so long as the employer can show that the employee would have been subject to the RIF even if he or she had not taken the emergency family and medical leave.

HR Professionals may contact the HRA Help Desk at 404-656-2705 or 1-877-318-2772 or the DOAS HRA Policy and Compliance Team at hrapolicy@doas.ga.gov with any questions.