

# **New Federal Expanded Family and Medical Leave Act (Expanded FMLA) and Emergency Paid Sick Leave (EPSL) Provisions**

## **Frequently Asked Questions**

**IMPORTANT:** These FAQs are intended for guidance only and limited to the information available at the time written and will be updated as new information becomes available. For additional guidance, go to <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

### **Overview**

#### **1) Why are there new expanded Family and Medical Leave Act (FMLA) and Emergency Paid Sick Leave (EPSL) provisions?**

On March 18, 2020, President Trump Signed H.R. 6201 “Families First Coronavirus Response Act” (FFCRA) into law. This law responds to the coronavirus (COVID-19) outbreak by expanding the use of FMLA and providing emergency paid sick leave under certain circumstances.

#### **2) What is “expanded FMLA”?**

“Expanded FMLA” refers to the new qualifying need and benefits provided under FMLA as established by H.R. 6201 FFCRA. The details of expanded FMLA are discussed below.

#### **3) What is “EPSL”?**

“EPSL” refers to the new emergency paid sick leave benefits established by H.R. 6201 FFCRA. The details of EPSL are discussed below.

### **Expanded FMLA**

#### **4) Am I eligible for the benefits established by expanded FMLA?**

Employees who have worked for the State for the 30 calendar days immediately prior to the day leave would begin are eligible for the benefits established under expanded FMLA. For example, if an employee wants to take leave on April 1, 2020, an employee would need to have been employed by the State as of March 2, 2020. These benefits are available to full- and part-time regular, contractual, and temporary State employees.

Please note, the provisions under expanded FMLA apply only to eligibility for expanded FMLA and do not change eligibility requirements or rules under regular FMLA.

#### **5) Are essential employees eligible for expanded FMLA?**

Essential employees should explore the State funded child care options available by visiting the following link: <https://earlychildhood.marylandpublicschools.org/state->

[funded-child-care-essential-personnel](#). If an employee is not qualified for this program, the employee may be eligible for expanded FMLA benefit.

The State has elected to not exclude any eligible employees, including health care providers and emergency responders, from expanded FMLA or EPSL benefits, as allowed by FFCRA. However, the State retains the authority and discretion to exclude certain employees from these benefits on a facility basis in response to acute staffing shortages, as approved by the appointing authority.

**6) For what purpose can expanded FMLA be used?**

Expanded FMLA may be used if an employee is unable to work, including telework, due to the need to care for a son or daughter under 18 if the child’s school or place of care has been closed, or child care provider is unavailable, due to a public health emergency.

In order for an employee to take expanded FMLA to care for a son or daughter aged 15-17, the employee must show special circumstances for approval to take such leave. Employees may also take expanded FMLA leave to care for adult children age 18 or older if the child is incapable of self-care because of a mental or physical disability.

**7) Who qualifies as a “son or daughter” for expanded FMLA?**

A “son or daughter” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing *in loco parentis* – someone with day-to-day responsibilities to care for or financially support a child. A son or daughter also includes an adult son or daughter who is 18 years of age or older who has a mental or physical disability, and is incapable of self-care because of that disability.

**8) May I take expanded FMLA to care for a child other than my own child?**

No. Expanded FMLA is only available to care for your own “son or daughter”.

**9) May I take expanded FMLA or EPSL to care for my child who is 18 years old or older?**

It depends. Under expanded FMLA and EPSL, an employee may take leave to care for one (or more) of your children when his or her school or place of care is closed, or a child care provider is unavailable, due to COVID-19 related reasons. This leave may only be taken to care for your non-disabled child if he or she is under the age of 18.

If your child is 18 years of age or older with a disability, and cannot care for him or herself due to that disability, you may take expanded FMLA and EPSL to care for him or her if his or her school or place of care is closed, or child care provider unavailable, due to COVID-19 reasons, and you are unable to work or telework as a result.

**10) What is “place of care”?**

A “place of care” is a physical location in which care is provided for your child. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

**11) What is a “child care provider”?**

A “child care provider” is someone who cares for your child. This includes individuals paid to provide child care, like nannies, au pairs, and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis, such as grandparents, aunts, uncles, or neighbors.

**12) Can more than one guardian take expanded FMLA or EPSL simultaneously to care for a child whose school or place of care is closed, or child care provider unavailable, due to COVID-19 related reasons?**

An employee may take expanded FMLA or EPSL to care for a child only when you need to, and actually are, caring for the child if you are unable to work or telework as a result of providing care. Generally, you do not need to take such leave if a co-parent, co-guardian, or usual child care provider is available to provide the care your child’s needs.

Essential employees should explore the State funded child care options available by visiting the following link: <https://earlychildhood.marylandpublicschools.org/state-funded-child-care-essential-personnel>.

**13) My child’s school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home. Is it still “closed”?**

Yes. If the physical location where your child received instruction or care is now closed, the school or place of care is considered to be “closed” for purposes of expanded FMLA and EPSL. This is true even if some or all instruction is being provided online or whether, through another format such as “distance learning” your child is still expected or required to complete assignments.

**14) How long can I take leave under expanded FMLA?**

It depends. An employee may take a total of 12 weeks of leave during a 12-month period under FMLA, including expanded FMLA. If an employee has not used any FMLA leave during the 12-month period, then the employee is eligible for 12 weeks under expanded FMLA. If the employee takes some, but not all 12, weeks under expanded FMLA by December 31, 2020, the employee may take the remaining portion of FMLA leave for qualifying reasons, as long as the total time taken does not exceed 12 weeks in the 12-month period.

For example, if an employee takes 4 weeks of expanded FMLA leave in April 2020 to care for a child whose school is closed due to a COVID-19 related reason, these 4 weeks count against the entitlement to 12 weeks of FMLA leave in a 12-month period. Using this example, an employee would have 8 weeks of FMLA leave remaining in the 12-month period. Please note that expanded FMLA is only available until December 31, 2020; after that, an employee may only take regular FMLA leave.

It is important to also note that an employee is entitled to EPSL regardless of how much leave is taken under FMLA. EPSL is not a form of FMLA leave and therefore does not count toward the 12 weeks in the 12-month period cap, unless taken concurrently with the first 2 weeks of expanded FMLA (which may otherwise be unpaid), then those two weeks do count towards the 12 weeks in the 12-month period.

Additionally, please note that if an employee chooses to take EPSL for the qualifying reason of caring for a non-disabled child under the age of 18 whose school or place of care is closed or child care provider is unavailable due to COVID-19 precautions, the employer may require the employee to begin using expanded FMLA leave concurrently with the EPSL.

#### **15) How much will I be paid under expanded FMLA?**

The first 10 days for which an employee takes leave under expanded FMLA are unpaid, but an employee is allowed (but not required) to use accrued paid leave during this time (including annual, personal, and compensatory, as available). EPSL may also be used during this time.

For the remaining 10 weeks of leave, employees are required to use accrued leave (including annual, personal, and compensatory) concurrently with expanded FMLA. Once an employee exhausts their accrued leave, the State will provide an amount that is not less than 2/3 of an employee's regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work.

#### **16) Is all leave under FMLA now paid leave?**

No. The only type of FMLA that is paid leave is expanded FMLA when such leave exceeds 10 days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

#### **17) If I am ill or taking care of someone who is ill, can I use the benefits under expanded FMLA?**

No, expanded FMLA provisions do not apply to an employee's illness or taking care of someone due to illness, but other FMLA and EPSL provisions may apply.

**18) When will expanded FMLA benefits be available?**

Expanded FMLA benefits are available starting April 1, 2020, and apply to leave taken between April 1, 2020 and December 31, 2020.

**19) May expanded FMLA leave benefits be applied retroactively?**

No.

**20) Can I use expanded FMLA benefits if I have a condition that puts me at higher risk in relation to the coronavirus (COVID-19)?**

No, expanded FMLA benefits pertain specifically to the need of an employee to be home to care for a child whose school and child care facilities are closed due to a public health emergency.

**21) How much notice do I need to give under expanded FMLA provisions?**

If your need for the leave was foreseeable, you must provide your agency with notice to use expanded FMLA as soon as practicable. If you are unable to personally give notice, your spokesperson (e.g. spouse, adult family member, or other responsible party) may provide the notice.

**22) What documentation is required to request expanded FMLA?**

Employees must provide at least oral notice of the need for leave, and sufficient information for your agency to determine whether the leave requested is for a qualifying reason, including:

- (1) Employee's name.
- (2) Date or dates which leave is requested.
- (3) A statement of whether expanded FMLA, EPSL, or both are requested.
- (4) A statement that the employee is unable to work or telework due to the need to care for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.
- (5) Name and age of child (or children) to be cared for.
- (6) Name of school or place of care that is unavailable.
- (7) Statement that no other person will be providing care for the child during the period being requested.

Supervisors may require, and employees are encouraged, to fill out The *Request for Expanded Family and Medical Leave Act Form*, found here:

<https://dbm.maryland.gov/employees/Pages/FFCRA.aspx>.

## **Emergency Paid Sick Leave (EPSL)**

### **23) Who is eligible for EPSL?**

Regular, contractual, and temporary State employees are eligible immediately for EPSL. There is no work time requirement.

### **24) Are essential employees eligible for EPSL?**

The State has elected to not exclude any eligible employees, including health care providers and emergency responders, from expanded FMLA or EPSL benefits, as allowed by FFCRA. However, the State retains the authority and discretion to exclude certain employees from these benefits on a facility basis in response to acute staffing shortages, as approved by the appointing authority.

### **25) How is EPSL different from the paid sick leave I receive from the State?**

EPSL is granted only in specific circumstances as it relates to a public health emergency. Additionally, the covered pay rate varies under EPSL depending on the qualifying reason for the leave. EPSL is not eligible to be carried over from one year to the next.

### **26) What are the qualifying reasons for which I can use EPSL?**

An employee is eligible for EPSL if they are unable to work, including telework, due to the following qualifying reasons:

- (1) The employee is subject to a federal, State, or local quarantine or isolation order related to COVID-19;
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (3) The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (4) The employee is caring for an individual subject to an order described in (1) or has been advised as described in (2);
- (5) The employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions.

or

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

Please note that if an employee chooses to take EPSL for qualifying reason (5) above, the employer may require the employee to begin using expanded FMLA leave concurrently with the EPSL.

**27) How do I know if I can receive EPSL for a federal, State, or local quarantine or isolation order related to COVID-19?**

For purposes of the FFCRA, 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 causes an employee to be unable to work, including telework, even though your employer has work that you could perform absent the order. For example, if an employee is on mandatory telework, but circumstances prevent an employee from working (such as a power outage), the employee may be eligible for EPSL.

Employees who are currently on paid administrative leave qualify for EPSL if, as a result of a qualifying condition, they cannot be available by phone if their supervisor has work for the employee to do. If the employee cannot be available, the employee must request leave.

**28) Who is a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for EPSL?**

The term “health care provider”, as used to determine individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for EPSL, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

This definition of health care provider is not meant to apply to State workers that may be excluded from EPSL or expanded FMLA benefits under certain circumstances.

**29) When am I eligible for EPSL to self-quarantine?**

An employee is eligible for EPSL if a health care provider directs or advises you to stay home or otherwise quarantine yourself due to COVID-19 precautions, and quarantining yourself based upon that advice prevents you from working or teleworking.

**30) If I am told to leave my job site because I have a fever, or recent onset of cough that I cannot attribute to allergies or smoking, shortness of breath, or other flu-like symptoms, do I qualify for EPSL?**

Under this scenario, an employee may qualify for EPSL under the following qualifying reasons: (1) a health care provider advises the employee to self-quarantine due to

concerns related to COVID-19; or (2) an employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

Being told to leave your job site is not sufficient to qualify you for EPSL. Additional steps are necessary.

**31) If I have received a laboratory-confirmed positive for COVID-19, do I qualify for EPSL?**

Under this scenario, an employee would qualify for EPSL under the qualifying reason that the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

**32) If I have come into close contact (within 6 feet) for a prolonged period (longer than 3 minutes) with a person suspected of having COVID-19 or who has been lab-confirmed positive for COVID-19, do I qualify for EPSL?**

Under this scenario, an employee may qualify for EPSL under the following qualifying reasons: (1) a health care provider advises the employee to self-quarantine due to concerns related to COVID-19; or (2) an employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. Being told to leave your job site is not sufficient to qualify you for EPSL. Additional steps are necessary.

Effective April 8, 2020, the Centers for Disease Control and Prevention (CDC) has issued new guidance for management of critical infrastructure workers who may have been exposed to COVID-19. The new guidance allows critical infrastructure workers to continue working after a potential exposure to COVID-19, provided they remain asymptomatic and additional precautions are implemented to protect them and the community. The State has updated its guidance to reflect the new recommendations.

**33) If I have returned from a cruise ship or river cruise, traveled out-of-state, or traveled internationally, am I eligible for EPSL?**

Under any travel-related scenario, an employee may qualify for EPSL under the following qualifying reasons: (1) the employee is subject to a federal, State, or local quarantine or isolation order related to COVID-19; (2) a health care provider advises the employee to self-quarantine due to concerns related to COVID-19; or (3) an employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

An employee may not take EPSL if the employee unilaterally decides to self-quarantine for an illness without medical advice, even if the employee has COVID-19 symptoms. Additional steps are necessary to qualify for EPSL.

Effective April 8, 2020, the Centers for Disease Control and Prevention (CDC) has issued new guidance for management of critical infrastructure workers who may have been exposed to COVID-19. The new guidance allows critical infrastructure workers to



continue working after a potential exposure to COVID-19, provided they remain asymptomatic and additional precautions are implemented to protect them and the community. The State has updated its guidance to reflect the new recommendations.

**34) If I become ill with COVID-19 symptoms, decide to quarantine myself for two weeks, and then return to work without seeking a medical diagnosis or the advice of a health care provider, am I eligible for EPSL?**

No. If an employee becomes ill with COVID-19 symptoms, an employee may take EPSL only to seek a medical diagnosis or if a health care provider otherwise advises to self-quarantine. If an employee tests positive for COVID-19 or is advised by a health care provider to self-quarantine, an employee is eligible for EPSL.

You may not take EPSL if you unilaterally decide to self-quarantine for an illness without medical advice, even if you have COVID-19 symptoms. You also may not take EPSL for an illness not related to COVID-19.

**35) If I have tested positive with COVID-19 but I am eligible and able to telework, do I have to take EPSL?**

No. If an employee has tested positive but the symptoms are not severe enough to prevent the employee from teleworking, and the employee is eligible to telework, then an employee is not required to use EPSL.

**36) When am I eligible for EPSL to care for someone who is subject to a quarantine or isolation order?**

An employee may take EPSL to care for an individual who, as a result of being subject to quarantine or isolation order, is unable to care for him or herself and depends on you for care, and providing the care prevents you from working or teleworking.

An eligible individual includes immediate family member, roommate, or similar person with whom the employee has a relationship that creates the expectation that the employee would care for the person if he or she self-quarantined or was quarantined.

You may not take EPSL to care for someone with whom you have no relationship. Nor can you take EPSL to care for someone who does not expect or depend on your care during his or her quarantine.

**37) Can an employee be eligible for both EPSL and expanded FMLA to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons?**

An eligible employee may take both EPSL and expanded FMLA to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. When taken together, EPSL provides paid leave for the initial

2 weeks of otherwise unpaid leave at 2/3 of an employees' regular rate of pay. In lieu of EPSL, an employee may also use their own accrued leave for the first 2 weeks under expanded FMLA, or elect unpaid leave during this time.

If an employee is eligible for both EPSL and expanded FMLA, the employee will be designated accordingly, and the two types of leave will run concurrently. EPSL will provide paid leave for the initial two weeks of otherwise unpaid expanded FMLA leave at 2/3 of an employee's regular rate of pay. At the conclusion of the initial two weeks, the eligible employee will then take expanded FMLA for as long as their expanded FMLA-qualifying condition exists up to 12 weeks during a 12-month period, as outlined in [question 14/15] above.

**38) Can an employee use expanded FMLA for a COVID-19 related reason for which EPSL is available?**

Yes. Expanded FMLA only applies for one qualifying reason: when an employee is on leave to care for a child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons; however, an employee can take EPSL for either this same reason or five (5) other qualifying reasons. Therefore, as outlined in question 14 above, there will be occasions on which the two types of leave run concurrently, when they are each taken for the qualifying reason related to child care.

**39) May I take EPSL to care for a child other than my child?**

It depends. EPSL that is provided to care for one (or more) of your children when their place of care is closed (or child care provider is unavailable) due to COVID-19 reasons, may only be taken to care for your own "son or daughter".

However, EPSL is available to care for an individual subject to federal, State, or local quarantine or isolation orders related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. If you have a need to care for a child who meets these criteria, you may be eligible for EPSL if you are unable to work or telework as a result of providing care.

**40) When am I eligible for EPSL based on a "substantially similar condition" specified by the U.S. Department of Health and Human Services?**

The U.S. Department of Health and Human Services has not yet identified any "substantially similar condition" that would allow an employee to take EPSL. If HHS does identify any such condition, the U.S. Department of Labor will issue guidance and FAQs will be updated.

**41) How much EPSL is provided for employees who meet one of the qualifying reasons?**

Full-time employees are eligible for up to 80 hours (10 days) of EPSL. Part-time employees are eligible for the number of hours that the employee is normally scheduled to work over that period.

**42) How much will an employee be paid while taking EPSL?**

It depends on why the employee is taking leave. If an employee is taking EPSL because an employee is unable to work, including telework, as a result of (1) being subject to a federal, State, or local quarantine or isolation order related to COVID-19; (2) having been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) experiencing symptoms of COVID-19 and are seeking medical diagnosis, an employee will receive 100% of their regular rate of pay.

If an employee is taking EPSL because the employee is unable to work, including telework, as a result of (1) caring for an individual who is subject to a federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (2) caring for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or (3) experiencing any other substantially similar condition that may arise, as specified by the Secretary of Health and Human Services, an employee is entitled to compensation at 2/3 of regular rate of pay.

**43) May an employee take 80 hours of EPSL for self-quarantine, and then another amount of EPSL for another qualifying reason?**

No. An employee may take up to two weeks – or ten days – (80 hours for a full-time employee, or the number of hours that an employee is normally scheduled to work over a two-week period for a part-time employee) of EPSL for any combination of qualifying reasons. However, the total number of hours for which an employee may receive EPSL is capped at 80 hours/10 days.

**44) Will I be required to use my accrued leave provided by the State prior to using EPSL?**

No, employees are not required to use their accrued leave offered by the State prior to using EPSL, if the employee meets one of the qualifying conditions.

**45) If an employee uses EPSL, does that count against other types of paid sick leave to which an employee is entitled from the State?**

No. EPSL is in addition to other leave provided by the State.

**46) When will EPSL be available?**

EPSL benefits are available April 1, 2020, and apply to leave taken between April 1, 2020 and December 31, 2020.

**47) May EPSL benefits be applied retroactively?**

No.

**48) How much notice do I need to give to use EPSL?**

For any reason other than child care when your child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, you must follow your agency's usual and customary notice and procedural requirements for requesting leave after the first workday for which you use EPSL, absent unusual circumstances.

If you are taking EPSL for child care reasons, and your need for the leave was foreseeable, you must provide your agency with notice to use EPSL or expanded FMLA as soon as practicable. If you are unable to personally give notice, your spokesperson (e.g. spouse, adult family member, or other responsible party) may provide the notice.

**49) What documentation is required to request EPSL?**

Employees must provide at least oral notice of the need for leave, and sufficient information for your agency to determine whether the leave requested qualifies for EPSL, including:

- (1) Employee's name.
- (2) Date or dates which leave is requested.
- (3) A statement of whether expanded FMLA, EPSL, or both are requested.
- (4) A statement that the employee is unable to work or telework due to a qualifying reason under EPSL.
- (5) Identification of the qualifying reason that the employee feels eligible for EPSL under, including:
  - a) The employee is subject to a federal, State, or local quarantine or isolation order related to COVID-19.
  - (b) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
  - (c) The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
  - (d) The employee 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.
  - (e) The employee is caring for a son or daughter whose school or place of care is closed, or child care provider unavailable, due to COVID-19 precautions.

(f) The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

(6) A brief description of an employee's circumstances and how they apply to the qualifying reason to use EPSL.

(7) The name of the health care professional advising quarantine, if applicable to the qualifying reason.

(8) If EPSL is being requested for child care reasons, then the following information is required:

(a) A statement that the employee is unable to work or telework due to the need to care for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

(b) Name and age of child (or children) to be cared for.

(c) Name of school or place of care that is unavailable.

(d) Statement that no other person will be providing care for the child during the period being requested.

Supervisors may require an employee, and employees are encouraged, to fill out The *Emergency Paid Sick Leave Request Form*, found here:

<https://dbm.maryland.gov/employees/Pages/FFCRA.aspx>.

### **Usage of Expanded FMLA and EPSL**

#### **50) What does it mean to be unable to work, including telework, for COVID-19 reasons?**

An employee is unable to work or telework if the State has work for an employee and one of the COVID-19 qualifying reasons set forth in FFCRA prevents the employee from being able to perform that work, under normal circumstances at a normal worksite or by means of telework.

If the appointing authority or supervisor agrees that an employee will work normal hours, but outside of normally scheduled hours (for instance, early in the morning or late at night), then an employee is considered able to work and leave is not necessary unless a COVID-19 qualifying reason prevents an employee from working that schedule.

Employees who are currently on paid administrative leave qualify for EPSL or EFMLA if, as a result of a qualifying condition, they cannot be available by phone if their supervisor has work for the employee to do. If the employee cannot be available, the employee must request leave.

#### **51) If an employee is unable to telework, are they entitled to EPSL or expanded FMLA?**

If teleworking is permitted but an employee is unable to perform tasks or work the required hours because of one of the qualifying reasons for EPSL or expanded FMLA,

then an employee is entitled to the leave established under these provisions. If an employee is able to telework, EPSL and expanded FMLA is not available.

**52) May an employee take EPSL or expanded FMLA intermittently while teleworking?**

Yes, if the appointing authority or supervisor allows it and the employee is unable to telework a normal schedule of hours due to one of the qualifying reasons.

**53) May an employee take EPSL or expanded FMLA intermittently while working at their usual worksite (as opposed to teleworking)?**

It depends on why the leave is being taken and if the appointing authority or supervisor agrees. Unless an employee is teleworking, EPSL for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

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

Unless teleworking, an employee must continue to take EPSL each day until either (1) the full amount is used; or (2) the employee no longer has a qualifying reason for taking EPSL. This limit is imposed because if an employee is sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave to keep from spreading the virus to others.

If an employee no longer has a qualifying reason for taking EPSL before the 80 hours is exhausted, the employee may take any remaining EPSL for a qualifying reason at a later time, until December 31, 2020.

In contrast, if an employee and appointing authority or supervisor agree, an employee may take EPSL and expanded FMLA intermittently if taking leave to care for a child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if an employee's child is home and agrees to take leave on Mondays, Wednesdays and Fridays, but returns to the normal worksite or teleworks on Tuesdays and Thursdays.

**54) Are employees who otherwise would be eligible for expanded FMLA or EPSL excluded from these benefits as a result of the public health emergency (such as health care providers or emergency responders)?**

Although the FFCRA permits employers to exempt both “health care providers” and “emergency responders” from expanded FMLA or EPSL benefits, the State at this time has elected to not exclude any eligible employees from expanded FMLA or EPSL benefits. However, the State retains the authority and discretion to exclude employees who can be said to be health care providers and emergency responders from these benefits on a facility basis in response to acute staffing shortages as approved by the appointing authority.

**55) May I take EPSL or expanded FMLA if I am receiving workers’ compensation or temporary disability benefits?**

Generally, no, unless you were able to return to work, including light duty, before taking leave. If you receive workers’ compensation or temporary disability benefits because you are unable to work, you may not take EPSL or expanded FMLA. However, if you were able to return to work, including light duty, and a qualifying reason prevents you from working, you may qualify for EPSL or expanded FMLA, as the situation warrants.