



## Families First Coronavirus Response Act

### FAQ for Public School Systems

3.23.20

1. Are public school systems covered by the Families First Coronavirus Response Act?

Yes. All public employers, as well as private employers with fewer than 500 employees, are covered.

2. What new leave is required by the Families First Coronavirus Response Act?

- Emergency Paid Sick Leave

Full-time employees are entitled to 80 hours of paid sick leave (part-time employees are entitled to the number of hours the employee works on average over a two-week period). This emergency paid sick leave is in addition to any other leave already provided to the employee.

An employee may take emergency paid sick leave if the employee is unable to work (or telework) because the employee is subject to a government quarantine or isolation order due to COVID-19, the employee has been told by a health care provider to self-quarantine due to COVID-19, or the employee has symptoms of COVID-19 and is seeking a medical diagnosis. Emergency paid sick leave taken for any of those reasons will be paid at the employee's regular rate of pay as determined under the FLSA but may not exceed \$511 per day or \$5,110 in total.

An employee also may take emergency paid sick leave if the employee is unable to work (or telework) because the employee is caring for someone who is quarantined or isolated due to COVID-19 or the employee is caring for a son or daughter whose school or place of care is closed, or the whose child care provider is unavailable, due to COVID-19. Emergency paid sick leave taken to care for others will be paid at two-thirds the employee's regular rate of pay but may not exceed \$200 per day or \$2,000 in total.

- Emergency Family and Medical Leave Expansion

The Family and Medical Leave Act has been amended temporarily to allow employees to take FMLA leave if the employee is unable to work (or telework) due to a need to care for his or her son or daughter who is under the age of 18 whose school or place of care has been closed, or whose **paid** child care provider is unavailable, due to COVID-19. The first ten days of such leave may be unpaid, or the employee may choose to substitute accrued paid leave. However, there is no provision allowing the employer to **require** the employee to substitute accrued paid leave. After the first 10 days, the employee will be paid for leave at two-thirds of the employee's regular rate of pay, not to exceed \$200 per day or a total of \$10,000.

3. What are the effective dates?

The legislation goes into effect no later than April 2, 2020. Emergency FMLA leave is available only for as long as a federal, state, or local COVID-19 state of emergency is in effect and in any event only

through December 31, 2020. Emergency paid sick leave is available only through December 31, 2020.

4. Must an employee have been employed by the school system for a certain amount of time before becoming eligible to use the new types of leave?

Emergency paid sick leave is available for immediate use by the employee regardless of how long the employee has worked for the school system.

Employees must have been employed by the school system for at least 30 calendar days before they are eligible to use emergency FMLA leave.

5. What is the meaning of “regular rate of pay” for purposes of emergency sick or emergency FMLA leave for (1) employees with fluctuating workweeks and (2) exempt employees?

The regular rate of pay is to be determined as under the FLSA. Where an employer cannot be sure how many hours an employee would have worked each week because the employee’s work schedule varied greatly from week to week, the employer should calculate the employee’s average number of scheduled hours for the six-month period preceding the day on which emergency FMLA leave began, including any days in which the employee was on leave of any kind. “Regular rate of pay” is not a concept applicable to exempt employees under the FLSA and the new law does not explain how to calculate the regular rate for exempt employees for purposes of emergency sick or emergency FMLA leave.

6. May the school system require an employee to search for a replacement employee to cover the hours during which the employee is using emergency paid sick leave?

No.

7. May the school system require an employee to use other accrued paid leave before the employee uses the emergency paid sick leave?

No.

8. Does unused emergency paid sick leave carry over to the next year?

No.

9. What are school systems’ obligations with regard to FICA taxes on paid emergency sick leave and paid emergency FMLA leave?

Wages paid as emergency FMLA leave or emergency paid sick leave are not considered wages for purposes of the social security tax portion of the FICA tax. Therefore, the employee portion of the social security tax should not be withheld when paying an employee for emergency FMLA leave (after the first 10 days) or emergency paid sick leave. The school system does not need to

contribute its matching portion of the social security tax either. The Medicare tax portion of the FICA tax still must be withheld from employee's emergency leave wages and employers must still contribute their matching contribution of the Medicare tax.

10. Will school systems receive federal funds to cover the cost of providing this additional leave?

The current law does not provide funding to school systems. Though private employers will receive a federal payroll tax credit to offset costs, the tax credit does not apply to public employers.

11. What notice requirements exist?

Employers must post a notice of the law's requirements in conspicuous places in the workplace. The Department of Labor will make a model notice available.

After the first workday an employee receives emergency paid sick time, the school system may require the employee to follow reasonable notice procedures to continue receiving emergency paid sick time.

In the case of emergency FMLA leave, employees must provide notice of foreseeable leave as is practicable.