

New COVID-19 Symptoms and Q&As: Updates to Emergency Leave Under the FFCRA

Over the past week, the Centers for Disease Control and Prevention (CDC) and the Department of Labor (DOL) have each issued updates related to the Families First Coronavirus Response Act (FFCRA). The following are key takeaways for employers.

Additional COVID-19 Symptoms

On April 27, 2020, the CDC added six symptoms to its official COVID-19 list. The list of symptoms now include:

- Fever
- Dry cough
- Shortness of breath
- Chills
- Repeated shaking with chills
- Muscle pain
- Headache
- Sore throat
- New loss of taste or smell

An employee can qualify for Emergency Paid Sick Leave (EPSL) under the FFCRA if they “experience COVID-19 symptoms and seek a medical diagnosis.” To qualify for EPSL using this qualifying reason, an employee must be experiencing “fever, dry cough, shortness of breath or any other COVID-19 symptoms identified by the U.S. Centers for Disease Control and Prevention,” *and* they must be affirmatively taking steps to obtain a medical diagnosis, including making, waiting for or attending an appointment for a test for COVID-19.

Before April 27, 2020, the CDC only listed three COVID-19 symptoms: fever, dry cough and shortness of breath. Thus, employees not experiencing one of the three symptoms could not take leave because they were experiencing COVID-19 symptoms and seeking a medical diagnosis. However, due to the CDC’s expanded

POSTED:

Apr 28, 2020

RELATED PRACTICES:

[Labor and Employment](#)

<https://www.reinhartlaw.com/practices/labor-and-employment>

[Corporate Law](#)

<https://www.reinhartlaw.com/practices/corporate-law>

RELATED PEOPLE:

[Michael J. Gentry](#)

<https://www.reinhartlaw.com/people/michael-j-gentry>

[Shannon M. Toole](#)

<https://www.reinhartlaw.com/people/shannon-toole>

list of symptoms, employees may now take EPSL if they are experiencing any of the nine aforementioned CDC-approved symptoms and are seeking a medical diagnosis.

New Department of Labor Questions & Answers

The DOL has continued to update its list of Questions and Answers (Q&A) regarding the FFCRA. The following are highlights from the DOL's most updated Q&A.

- **Calculating EPSL for employees with irregular hours.** If an employee works an irregular schedule and it is not possible to determine what hours he or she would normally work over a two-week period, an employer must estimate the employee's number of hours. The estimate must be based on the average number of hours an employee was scheduled to work **per calendar day (not workday)** over the six-month period ending on the first day of paid sick leave. This average must include all scheduled hours, including both hours actually worked and hours for which the employee took leave.
- **Calculating Expanded FMLA (E-FMLA) for employees with irregular hours.** If an employee works an irregular schedule such that it is not possible to determine the number of hours he or she would normally work on a given day, *and the employee has been employed for at least six months*, the employer must determine the employee's average workday hours, including any leave hours. The average must be based on the number of hours the employee was scheduled to work **per workday (not calendar day)** divided by the number of workdays over the six-month period ending on the first day of the employee's paid expanded family and medical leave. This average must include all scheduled hours, including both hours actually worked and hours for which the employee took leave.
- **Requiring employees to use existing leave.**
 - An employer **may not require** employer-provided paid leave to run concurrently with—that is, cover the same hours as—EPSL.
 - An employer **may require** that any paid leave available to an employee under the employer's policies, which by policy would permit an employee to care for his or her child or children because their school or place of care is closed (or child care provider is unavailable) due to a COVID-19 related reason to run concurrently with E-FMLA. In this situation, the employer must pay the employee's full pay during the leave until the employee has



exhausted available paid leave under the employer's plan—including vacation and/or personal leave (typically not sick or medical leave).

- An employee **may elect**—*but may not be required by the employer*—to take EPSL or paid leave under the employer's plan for the first two weeks of unpaid E-FMLA, but not both.
- During the 10 days of unpaid E-FMLA leave, an employee **may choose**—*but the employer may not require the employee*—to use paid leave under the employer's policies that would be available to the employee to take in order to care for the employee's child or children because their school or place of care is closed or the child care provider is unavailable due to a COVID-19 related reason concurrently with the unpaid leave.

If you have a question regarding the FFCRA and how it impacts your business and employees, please call your Reinhart attorney.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.