



Member Quick Guide to COVID-19 Leave Provisions and COVID-19 Medical Documentation Under State and Federal Law

INTRODUCTION

This is a summary of the frequently asked questions regarding the COVID-19 leave programs and maintaining COVID-19 medical documentation, under both the State and Federal laws. A single page chart for both State and Federal leave programs have also been made available for your convenience and can be accessed on the CSEA website. Should you have additional questions, please contact your local official or labor relations specialist.

NYS COVID-19 LEAVE FAQ

What benefits can I use for COVID-19 quarantine leave?

If you are under a mandatory or precautionary order of quarantine or isolation issued by the State, New York State Department of Health, local Board of Health, or other authorized government entity you may be eligible for job-protected sick leave and compensation through a combination of disability and Paid Family Leave benefits.

If you work for a public employer: All public employers (for example, town, public school, public college or university, district, county, city, village, fire district and state), must provide at least 14 days of paid sick leave, regardless of how many employees they have.

What is the maximum pay I will receive for COVID-19 quarantine leave?

If you work for a public employer or an employer with more than 100 employees as of January 1, 2020, you are entitled to at least 14 calendar days of paid sick leave at your regular rate of pay.

How many days of leave are part-time employees required to be paid for?

Part-time employees should be paid for the number of days/amount of time during 5 or 14 day period that they are required to receive pay that they would

I have been quarantined due to Coronavirus/COVID-19. Can I take Paid Family Leave/disability benefits quarantine leave for myself?

Yes, if you are under a mandatory or precautionary order of quarantine or isolation issued by the State, department of health, local board of health, or government entity, you may be eligible to take disability and Paid Family Leave benefits for yourself unless you are not showing symptoms and are physically able to work through remote access or similar means. You must use your available quarantine paid sick leave before taking Paid Family Leave and disability benefits, and then you can apply for these benefits for the remainder of your quarantine.

I'm able to work from home but I'm under a mandatory or precautionary quarantine. Am I eligible for quarantine leave?

No, if you are not showing symptoms and are physically able to work through remote access or similar means you are not eligible for quarantine leave.

Do I have to apply for COVID-19 quarantine leave?

You do not have to apply for paid sick days if your employer is required to offer them. If you run out of sick days from your employer, then you would need to apply for Paid Family Leave and disability benefits for compensation during the rest of your quarantine.

My employer isn't giving me the required number of sick days for COVID-19 quarantine leave. What do I do?

If your employer is not providing you with the required number of sick days for COVID-19 quarantine leave, you may file a complaint with the Department of Labor at: www.labor.ny.gov/COVIDcomplaint

My employer isn't paying me my full wages for the sick days I'm taking during my COVID-19 quarantine leave. What do I do?

If your employer is not properly paying you for your sick days for COVID-19 quarantine leave, you may file a complaint with the Department of Labor at: www.labor.ny.gov/COVIDcomplaint

My employer is directing me to report to work but I work for a non-essential business. What do I do?

If you work for a non-essential business, you may not be forced to go to the worksite or otherwise threatened if you do not work at a place other than your

- the applicable State or local minimum wage.

In these circumstances, you are entitled to a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period.

If you are taking paid sick leave because you are: (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 your 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, you are entitled to compensation at 2/3 of the greater of the amounts above.

Under these circumstances, you are subject to a maximum of \$200 per day, or \$2,000 over the entire two week period.

If you are taking expanded family and medical leave, you may take paid sick leave for the first two weeks of that leave period, or you may substitute any accrued vacation leave, personal leave, or medical or sick leave you have under your employer's policy. For the following ten weeks, you will be paid for your leave at an amount no less than 2/3 of your regular rate of pay for the hours you would be normally scheduled to work. If you take paid sick leave during the first two weeks of unpaid expanded family and medical leave, you will not receive more than \$200 per day or \$12,000 for the twelve weeks that include both paid sick leave and expanded family and medical leave when you are on leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. If you take employer-provided accrued leave during those first two weeks, you are entitled to the full amount for such accrued leave, even if that is greater than \$200 per day.

What is my regular rate of pay for purposes of the FFCRA?

For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your regular rate over a period of up to six months prior to the date on which you take leave. If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.

Can an employer require employees to take paid leave he or she may have under an existing paid leave policy concurrently with expanded family and medical leave under the EFMLEA?

Yes. After the first two workweeks (usually 10 workdays) of expanded family and medical leave under the EFMLEA, an employer may require that an employee take the same hours of expanded family and medical leave and existing leave that, under the employer's policies, would be available to the employee in that circumstance. This would likely include personal leave or paid time off, but not medical or sick leave the employee (or a covered family member) is not ill.

In this circumstance, an employer must pay an employee the full amount to which he or she is entitled under the employer's existing paid leave policy for the period of leave taken. The employer must pay an employee at least 2/3 of his or her pay for subsequent periods of expanded family and medical leave taken, up to \$200 per workday and \$10,000 in the aggregate, for expanded family and medical leave. If an employee exhausts all preexisting paid vacation, personal, medical, or sick leave, the employer would need to pay an employee at least 2/3 of his or her pay for subsequent periods of expanded family and medical leave taken, up to \$200 per day and \$10,000 in the aggregate.

What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?

When requesting paid sick leave or expanded family and medical leave, you must provide your employer either orally or in writing the following information:

- Your name;
- The date(s) for which you request leave;
- The reason for leave; and
- A statement that you are unable to work because of the above reason.

If you request leave because you are subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally provide the name of the government entity that issued the order. If you request leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should additionally provide the name of the health care provider who gave advice.

prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your employer may agree that you can take expanded family medical leave intermittently while teleworking.

You may take intermittent leave in any increment, provided that you and your employer agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?

It depends on why you are taking paid sick leave and whether your employer agrees. Unless you are teleworking, paid sick leave 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:

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

Unless you are teleworking, once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of

If my employer reduces my scheduled work hours, can I use paid sick leave or expanded family and medical leave for the hours that I am no longer scheduled to work?

No. If your employer reduces your work hours because it does not have work for you to perform, you may not use paid sick leave or expanded family and medical leave for the hours that you are no longer scheduled to work. This is because you are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19. You may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents you from working your full schedule.

May I collect unemployment insurance benefits for time in which I receive pay for paid sick leave and/or expanded family and medical leave?

No. If your employer provides you paid sick leave or expanded family and medical leave, you are not eligible for unemployment insurance.

If I elect to take paid sick leave or expanded family and medical leave, must my employer continue my health coverage? If I remain on leave beyond the maximum period of expanded family and medical leave, do I have a right to keep my health coverage?

If your employer provides group health coverage that you've elected, you are entitled to continued group health coverage during your expanded family and medical leave on the same terms as if you continued to work. If you are enrolled in family coverage, your employer must maintain coverage during your expanded family and medical leave. If you do not return to work at the end of your expanded family and medical leave, check with your employer to determine whether you are eligible to keep your health coverage on the same terms (including contribution rates). If you are no longer eligible, you may be able to continue your coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

Does leave taken under the Families First Act count against the 12 weeks afforded under FMLA?

Yes.

If I take paid sick leave under the Emergency Paid Sick Leave Act, does that count against other types of paid sick leave to which I am entitled under State or local law, or my employer's policy?

an emergency responder necessary for that State's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

When am I eligible for paid sick leave to self-quarantine?

You are eligible for paid sick leave if a health care provider directs or advises you to stay home or otherwise quarantine yourself because the health care provider believes that you may have COVID-19 or are particularly vulnerable to COVID-19, and quarantining yourself based upon that advice prevents you from working (or teleworking).

When am I eligible for paid sick leave to care for someone who is subject to a quarantine or isolation order?

You may take paid sick leave to care for an individual who, as a result of being subject to a quarantine or isolation order, is unable to care for him or herself and depends on you for care and if providing care prevents you from working and from teleworking.

Furthermore, you may only take paid sick leave to care for an individual who genuinely needs your care. Such an individual includes an immediate family member or someone who regularly resides in your home. You may also take paid sick leave to care for someone if your relationship creates an expectation that you would care for the person in a quarantine or self-quarantine situation, and that individual depends on you for care during the quarantine or self-quarantine.

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

Can more than one guardian take paid sick leave or expanded family and medical leave simultaneously to care for my child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons?

You may take paid sick leave or expanded family and medical leave to care for your child only when you need to, and actually are, caring for your child if you

CONFIDENTIALITY OF COVID- 19 MEDICAL INFORMATION UNDER FEDERAL LAW

May an employer store in existing medical files information it obtains related to COVID-19, including the results of taking an employee's temperature or the employee's self-identification as having this disease, or must the employer create a new medical file system solely for this information?

The Americans with Disabilities Act (ADA) requires that all medical information about a particular employee be stored separately from the employee's personnel file, thus limiting access to this confidential information. An employer may store all medical information related to COVID-19 in existing medical files. This includes an employee's statement that he has the disease or suspects he has the disease, or the employer's notes or other documentation from questioning an employee about symptoms.

If an employer requires all employees to have a daily temperature check before entering the workplace, may the employer maintain a log of the results?

Yes. The employer needs to maintain the confidentiality of this information.

May an employer disclose the name of an employee to a public health agency when it learns that the employee has COVID-19?

Yes.

May a temporary staffing agency or a contractor that places an employee in an employer's workplace notify the employer if it learns the employee has COVID-19?

Yes. The staffing agency or contractor may notify the employer and disclose the name of the employee, because the employer may need to determine if this employee had contact with anyone in the workplace.

6/12/20