



FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) Frequently Asked Questions

Please Note: The federal Families First Coronavirus Response Act (FFCRA) and corresponding Division of Personnel (DOP) policy are set to expire December 31, 2020. Any reference to the Act or policy in the material below will not be applicable to events occurring on or after January 1, 2021. However, employees may still be entitled to leave under the federal Family and Medical Leave Act, West Virginia Parental Leave Act, and/or the DOP *Administrative Rule (143CSR1)*.

DEFINITIONS:

“Emergency paid sick leave” – Paid leave under the Emergency Paid Sick Leave Act and is an additional 80 hours of paid sick leave separate from an employee’s accrued sick leave balance.

“Emergency family and medical leave (emergency FMLA)” – Leave under the Emergency Family and Medical Leave Expansion Act.

- 1. What is the effective date of the [Families First Coronavirus Response Act \(FFCRA\)](#)?**
April 1, 2020 and the provisions of the FFCRA will apply through December 31, 2020.
- 2. Are the Emergency Paid Sick Leave and Emergency FMLA Act requirements retroactive?**
No. April 1, 2020 is the effective date for both provisions from the FFCRA.
- 3. Do agencies and employees covered under the West Virginia Division of Personnel (DOP) qualify under the Act?**
Yes, certain public sectors including agencies covered under the DOP are included under the FFCRA.
- 4. Are 1,000-hour temporary employees eligible for the Emergency Paid Sick Leave Act and emergency FMLA?**
Yes, temporary employees are eligible for emergency paid sick leave. Temporary employees are eligible for emergency FMLA upon satisfying the 30-calendar day eligibility requirement.
- 5. Who is a son or daughter under the FFCRA?**
Under the FFCRA, a “son or daughter” is an employee’s own child, which includes a biological, adopted, or foster child, stepchild, a legal ward, or a child for whom the employee is standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child.

In light of Congressional direction to interpret definitions consistently, the U.S. Department of Labor (U.S. DOL) Wage and Hour Division clarifies that under the FFCRA a “son or daughter” is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability.

For additional information on adult children, view the U.S. DOL Fact Sheet #28K: "Son or Daughter" 18 years of age or older under the Family and Medical Leave Act: [DOL Fact Sheets #28k](#).

6. Do employees qualify for leave for a COVID-19 related reason even if they have already used some or all their leave under the Family and Medical Leave Act (FMLA)?

Eligible employees are entitled to emergency paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave an employee has taken under the preexisting FMLA. However, an employee’s eligibility for emergency FMLA depends on how much preexisting FMLA leave the employee has already taken during the previous 12-month period (rolling 12-month period measured backward) from the date of the request for the emergency FMLA leave. An employee may take a total of 12 workweeks for preexisting FMLA or emergency FMLA reasons during a 12-month period. If an employee has taken some, but not all, 12 workweeks of their leave under FMLA during the previous 12-month period, they may take the remaining portion of leave available. If an employee has already taken 12 workweeks of FMLA leave during the previous 12-month period from the date of the new request, they may not take additional leave under the Emergency FMLA.

For example, assume the employee was eligible for preexisting FMLA leave and only took a total of two weeks of such leave in the previous 12-month period to undergo and recover from a surgical procedure. The employee therefore has 10 weeks of FMLA leave remaining. Because emergency FMLA is a type of FMLA leave, an employee would be entitled to take up to 10 weeks of emergency FMLA, rather than 12 weeks due to the two weeks of FMLA leave already taken during the previous 12-month period. Any emergency FMLA an employee would take would count against their entitlement to preexisting FMLA leave.

If an employee takes some, but not all 12 workweeks of the preexisting FMLA and emergency FMLA by December 31, 2020, the employee may take the remaining portion of preexisting FMLA leave for a serious medical health condition, as long as the total time taken does not exceed 12 workweeks in the previous 12-month period from the date of the request for leave. Emergency FMLA is available only until December 31, 2020; after that, employees may only take FMLA leave.

Please note: employees may only request emergency FMLA under the Emergency Family and Medical Leave Expansion Act if they are unable to work or telework and require leave to care for their child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

7. Is all leave under the FMLA now paid leave?

No. The only type of FMLA that is paid leave is emergency FMLA under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee is unable to work or telework and requires leave 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.

8. If an employee takes emergency paid sick leave under the Emergency Paid Sick Leave Act, does that count against any sick leave an employee has already accrued?

No. The 80 hours of emergency paid sick leave under the Emergency Paid Sick Leave Act is in addition to other sick leave accrued in accordance with section 14.4.a. of the DOP's [Administrative Rule](#). The emergency paid sick leave may be used for any of the COVID-19 related reasons provided in the [FFCRA](#), including during the first 10 days for those employees who are eligible and request leave under the Emergency Family and Medical Leave Act to care for their child whose school or place of care is closed, or a child care provider is unavailable, due to COVID-19.

9. How many days must employees have been employed to be eligible for the Emergency Family and Medical Leave Expansion Act?

Employees must be employed for 30 calendar days to be eligible for this provision under the Act. An employee has been considered to be employed by the agency for at least 30 calendar days if the agency had the employee on its payroll for the 30 calendar days immediately prior to the day the employee's leave would begin.

10. How many days must employees have been employed to be eligible for the 80 hours of emergency paid sick leave under the Emergency Paid Sick Leave Act?

There is no minimum number of hours the employee must have been employed to qualify for the provisions under the Emergency Paid Sick Leave Act.

11. Since most of my workforce is teleworking, where do I electronically "post" the notice for employee rights for emergency paid sick leave and emergency FMLA?

Each covered employer must post a notice of the FFCRA requirements in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or directly mailing this notice to employees or posting this notice on an employee information internal or external website. The poster may be found on DOP's website, [Posting Requirements](#).

12. May an employee use emergency FMLA for any COVID-19 related reason?

No. The Emergency Family and Medical Leave Expansion Act applies only when an employee is on leave to care for their child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons. However, certain COVID-19 related reasons would qualify as a serious health condition under the preexisting FMLA and be available to employees who meet the eligibility requirements under FMLA.

13. What document(s) does an employee need to give their agency to receive emergency paid sick leave or emergency FMLA?

Employees are required to provide information and/or supporting documentation with their requests for emergency FMLA and emergency paid sick leave.

For emergency paid sick leave and emergency FMLA for the employee:

- Name;
- Date of leave;
- A statement of the COVID-19 related reason they are requesting leave and written support for such reason; and
- A statement that the employee is unable to work or telework.

For emergency paid sick leave and emergency FMLA due to quarantine:

- The name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and
- If the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

For emergency paid sick leave and emergency FMLA for quarantine because of school or child-care closure:

- The name and age of the child (or children);
- The name of the school that has closed or place of care that is unavailable, and
- A representation that no other suitable person is available to provide care for the child. If the need to provide care is for a child older than eighteen, a statement that special circumstances exist requiring the employee to provide the care. For example, the documentation may exist in the form of a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to the employee from an employee or official of the school, place of care, or child care provider.

Agencies must retain notice and documentation supporting the need of emergency paid sick leave or emergency FMLA, including any documentation required where an employee may be taking unpaid leave that runs concurrently with emergency paid sick leave if taken for the same reason.

For example, if an employee is taking leave beyond the two weeks of emergency paid sick leave because of the employee's medical condition for COVID-19-related reasons and it rises to the level of a serious health condition, the employee must continue to provide medical certifications under the FMLA as required by the DOP Family and Medical Leave Act/Parental Leave Act policy (DOP-P23).

The DOP-L4A contains the required information to satisfy the need for leave requirements issued from the U.S. DOL. Employees, or if needed in certain situations a family member, must complete the DOP-L4A to request emergency paid sick leave or emergency FMLA.

Please note: As provided in the “Notice of Rule Suspension” March 26, 2020 notice provided by the Director of the DOP, certain sections of the Administrative Rule have been suspended allowing an agency, if they so choose, to not require employees to provide a physician/practitioner statement for absences of more than three (3) consecutive scheduled work days or scheduled shifts immediately upon his or her return to work.

Suspension of the Rule provision requiring a physician’s statement does NOT apply to certification requirements of FMLA. All existing certification requirements under FMLA remain in effect if an employee is taking leave for one of the existing qualifying reasons under the FMLA.

14. If an employee becomes unable to telework, are they entitled to emergency paid sick leave or emergency FMLA?

If an agency permits teleworking—for example, allows employees to perform certain tasks or work a certain number of hours from home or at a location other than their normal workplace—and the employee is unable to perform those tasks or work the required hours because of one of the qualifying reasons for emergency paid sick leave, then employees are entitled to take emergency paid sick leave. Similarly, if an employee is unable to perform those teleworking tasks or work the required teleworking hours because they need to care for their child whose school or place of care is closed or child care provider is unavailable because of COVID-19 related reasons, then the employee is entitled to take emergency FMLA.

15. May employees take emergency paid sick leave or emergency FMLA intermittently while teleworking?

Yes, if the agency agrees to it and if an employee is unable to telework their normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, an employee and their agency may agree that they may take emergency paid sick leave intermittently while teleworking. Similarly, if the employee is prevented from teleworking their normal schedule of hours because they need to care for their child whose school or place of care is closed, or child care provider is unavailable because of COVID-19 related reasons, the employee and agency may agree that the employee can take emergency FMLA intermittently while teleworking.

Employees may only take intermittent leave in 15-minute increments in accordance with the *Administrative Rule*, provided that the employee and agency agree. For example, if the employee and agency agree, an employee 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 U.S. DOL and the DOP encourage agencies and employees to collaborate to achieve flexibility and meet mutual needs, and both are supportive of such voluntary arrangements that combine telework and intermittent leave.

16. May employees take emergency paid sick leave intermittently while working at their usual worksite (as opposed to teleworking)?

It depends on why the employee is taking emergency paid sick leave and whether their agency agrees. Unless the employee is teleworking, emergency 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 the employee is:

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

Unless an employee is teleworking, once they begin taking emergency paid sick leave for one or more of these qualifying reasons, the employee must continue to take emergency paid sick leave each day until they either (1) use the full amount of emergency paid sick leave or (2) no longer have a qualifying reason for taking emergency paid sick leave. This limit is imposed because if the 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 emergency paid sick leave as necessary to keep the employee from spreading the virus to others.

If the employee no longer has a qualifying reason for taking emergency paid sick leave before they exhaust their emergency paid sick leave, employees may take any remaining emergency paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

In contrast, if the employee and agency agree, employees may take emergency paid sick leave intermittently if they are taking emergency paid sick leave to care for their 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 at home because his or her school or place of care is closed, or child care provider is unavailable because of COVID-19 related reasons, they may take emergency paid sick leave on Mondays, Wednesdays, and Fridays to care for their child, but work at their normal worksite on Tuesdays and Thursdays.

The U.S. DOL and the DOP encourage agencies and employees to collaborate to achieve maximum flexibility. Therefore, if agencies and employees agree to intermittent leave on less than a full work day for employees taking emergency paid sick leave to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19-related reasons, the U.S. DOL and the DOP are supportive of such voluntary arrangements.

17. May employees take emergency FMLA intermittently while their child’s school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if they are not teleworking?

Yes, but only with the agency’s permission. Intermittent emergency FMLA should be permitted only when the employee and agency agree upon such a schedule. For example, if the agency and employee agree, employees may take emergency FMLA on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while their child is at home because the child’s school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of the employee’s leave.

The U.S. DOL and the DOP encourage agencies and employees to collaborate to achieve flexibility. Therefore, if agencies and employees agree to intermittent leave on a day-by-day basis, the U.S. DOL and the DOP support such voluntary arrangements.

18. If employees elect to take emergency paid sick leave or emergency FMLA, must the agency continue the employee’s health coverage? If an employee remains on leave beyond the maximum period of emergency FMLA, does an employee have a right to keep their health coverage?

If an agency provides group health coverage that an employee elected, employees are entitled to continued group health coverage during their emergency FMLA on the same terms as if the employee continued to work. If employees are enrolled in family coverage, the agency must maintain coverage during the employee’s emergency FMLA. Employees generally must continue to make any normal contributions to the cost of their health coverage.

19. Can an agency require an employee to submit a physician/practitioner statement for any COVID-19 related illness?

Not necessarily. As provided in the “Notice of Rule Suspension” March 26, 2020 notice provided by the Director of the DOP, certain sections of the *Administrative Rule* have been suspended allowing an agency, if they so choose, to not require employees to provide a physician/practitioner statement for absences of more than three (3) consecutive scheduled work days or scheduled shifts immediately upon his or her return to work. This includes absences not related to COVID-19 related illness in order to avoid spreading of the virus. However, the sections suspended under the *Administrative Rule* provide that the appointing authority may require a physician’s release to return to work, as appropriate.

20. 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 emergency paid sick leave?

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 upon as a qualifying reason for emergency paid sick leave, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA. Please see the [U.S. DOL website](#) for additional occupations considered as health care providers under the FMLA.

21. Are all health care providers exempted from the FFCRA?

Each appointing authority must determine which employees are exempted from the FFCRA. For the purposes of employees who may be exempted from paid emergency paid sick leave or emergency FMLA by their agency under the FFCRA, a health care provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care 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 highest official of a state or territory, including the District of Columbia, determines is a health care provider 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 U.S. DOL and the DOP encourage employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

22. Are all emergency responders, including Correctional Officers, exempted from the FFCRA?

Each appointing authority must determine which employees are exempted from the FFCRA. For the purposes of employees who may be excluded from paid sick leave or emergency FMLA by their employer under the FFCRA, an emergency responder is 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. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is 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 U.S. DOL and the DOP encourage employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

23. What if an employee appears to have acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or becomes sick during the day?

Agencies should develop a plan to respond to suspected COVID-19 exposure and illness in the workplace. Agencies are encouraged to make it clear through internal communications that employees who have symptoms of a potentially contagious illness must not report to work while they are sick or when they have been exposed to COVID-19. Employees may be required to provide a release from a medical provider to return to work even if the absence is charged to annual leave or if sick leave is taken for three (3) days or less.

The Centers for Disease Control (CDC) recommends that employees who appear to have acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and sent home immediately.

The U.S. Equal Employment Opportunity Commission (EEOC) technical assistance document, [‘Pandemic Preparedness in the Workplace and the Americans with Disabilities Act,’](#) provides guidance regarding established Americans with Disabilities Act (ADA) principles and pandemic planning in the workplace. EEOC guidance advises employers may, and should, send employees home if they exhibit potential symptoms at work. Such actions, even if against the employee’s wishes, would be warranted under the EEOC’s direct threat analysis. More information on the EEOC Pandemic Planning may be found at [EEOC.gov/Coronavirus](https://www.eeoc.gov/Coronavirus).

If working from home is not an option, employees directed to go home may choose to use paid or unpaid leave as appropriate. If an employee displaying acute respiratory illness symptoms refuses to leave the workplace, supervisors are encouraged to contact their Agency HR or the DOP Employee Relations section at 304-414-1853 for guidance.

24. What steps does an agency need to take if an employee has been confirmed to have the COVID-19 infection?

If an employee is confirmed to have COVID-19 infection, employers should inform the employee’s co-workers of their possible exposure in the workplace. Employees exposed to a co-worker with confirmed COVID-19 should refer to CDC guidance for how to conduct a risk assessment of their potential exposure. As required by the ADA and relevant privacy laws, employers must maintain confidentiality regarding individuals with confirmed coronavirus infection.

If a co-worker has been identified as having COVID-19, supervisors may provide general information to make employees aware someone in the office is infected with the virus to allow for self-monitoring for signs or symptoms and quarantine, if appropriate. To comply with federal and state laws, supervisors may not specifically disclose the identity of the infected employee or provide information that will allow other employees to identify the infected individual.

For managers and human resources personnel, helpful information regarding employer responsibilities can be found in the CDC’s [Businesses and Workplaces](#) section.

As a condition of employment, employees are bound to the terms of the confidentiality agreement all Executive Branch employees sign. For additional information visit the West Virginia Privacy Office at www.privacy.wv.gov.

25. What do I do if my agency refuses to provide me paid emergency paid sick leave or emergency FMLA?

While not required, DOP encourages employees to discuss eligibility concerns with their employer. However, if you believe your employer is improperly refusing you emergency paid sick leave or emergency FMLA you may call the [Department of Labor, Wage and Hour Division](#) (WHD) at 1-866-4US-WAGE (1-866-487-9243) or visit the U.S. DOL [WHD COVID-19 in the Workplace](#) website, or contact DOP's Employee Relations section at 304-414-1853 or DOPEmpRelations@wv.gov.

26. How long do employers have to keep records that pertain to COVID-19 employee leave requests?

An agency is required to retain all documentation provided pursuant to 29 CFR § 826.100 for four years, regardless whether leave was granted or denied. If an employee provided oral statements to support his or her request for emergency paid sick leave or emergency FMLA the agency is required to document and maintain such information in its records for four years.

27. What records are needed by my agency to claim tax credits from the Internal Revenue Service (IRS) and for how long?

In order to claim tax credits from the IRS, employers are advised to maintain the following records for four years:

- (1) Documentation to show how employers determine the amount of emergency paid sick leave and emergency FMLA paid to employees that are eligible for the credit, including records of work, telework and employee paid sick leave and emergency FMLA
- (2) Documentation to show how employers determine the amount of qualified health plan expenses that employers allocate to wages;
- (3) Copies of any completed IRS Forms 7200 that employers submit to the IRS;
- (4) Copies of the completed IRS Forms 941 that employers submitted to the IRS or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third-party payer regarding employer's entitlement to the credit claimed on IRS Form 941, and,
Other documents needed to support requests for tax credits pursuant to IRS applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit.

28. Can an employee use their accrued sick and/or annual leave to cover the 1/3 portion of wages not paid while receiving emergency paid sick leave or emergency FMLA under the FFCRA?

An employee taking emergency paid sick leave or emergency FMLA to care for an individual subject to quarantine or isolation or for a son/daughter whose school or place of care is closed or child-care provider is unavailable, will be paid at an amount no less than 2/3 of their regular

rate of pay for all hours they would be normally scheduled to work. Employees may supplement their pay under emergency paid sick leave and emergency FMLA with the appropriate accrued annual leave, sick leave, or family sick leave in accordance with the *Administrative Rule*.

29. Can employees receive emergency paid sick leave if they decide to self-quarantine for an illness without medical advice, even if they have COVID-19 symptoms?

Not necessarily. Employees may not take emergency paid sick leave under the FFCRA if they unilaterally decide to self-quarantine for an illness without medical advice, even if the employee has COVID-19 symptoms. If an employee becomes ill with COVID-19 symptoms, they may take emergency paid sick leave under the FFCRA only to seek a medical diagnosis or if a health care provider otherwise advises them to self-quarantine. If an employee tests positive for the virus associated with COVID-19 or are advised by a health care provider to self-quarantine, the employee may continue to take emergency paid sick leave. Also, an employee may not take emergency paid sick leave under the FFCRA if they become ill with an illness not related to COVID-19 but may be eligible to use accrued sick and/or annual leave.

30. Do employees accrue annual and sick leave while on paid leave under the FFCRA?

Yes, the applicable leave accrual sections from the *Administrative Rule* apply when employees are in a paid status, including during a paid leave status under FFCRA. Annual and sick leave hours cannot be accrued for hours not paid nor for hours worked beyond the normal workweek which shall not exceed 40 hours.

31. Do employees accrue tenure while on emergency paid sick leave and emergency FMLA leave under FFCRA?

Yes, tenure will be computed for employees who are in a paid leave status during FFCRA leave. Though an employee may only be receiving 2/3 of his or her wages, the employee is still considered a full-time (100% FTE) employee, unless already on a reduced schedule.

32. If an agency reduces an employee's scheduled work hours, can the employee use emergency paid sick leave or emergency FMLA for the hours they are no longer scheduled to work?

No. If an agency reduces an employee's work hours because it does not have work for the employee to perform, the employee may not use emergency paid sick leave or emergency FMLA for the hours that the employee is no longer scheduled to work. Any involuntary reduction in work hours is considered a layoff. An appointing authority may initiate a layoff, sometimes referred to as a reduction-in-force, in accordance with the provisions of the *Administrative Rule* and W. Va. Code § 29-6-10(5) and (6) (as amended) and W. Va. Code § 5F-2-2. DOP covered agencies are required to obtain approval of the State Personnel Board prior to initiating a layoff.

33. Can an employee take emergency paid sick leave to care for any individual who is subject to a quarantine or isolation order or who has been advised to self-quarantine?

No. An employee may take emergency paid sick leave under the FFCRA to care for an immediate family member or someone who regularly resides in their home. An employee may also take emergency paid sick leave under the FFCRA to care for someone where the relationship with that individual creates an expectation that they care for the person in a quarantine or self-quarantine situation, and that individual depends on the employee for care during the quarantine or self-quarantine.

However, an employee may not take emergency paid sick leave under the FFCRA to care for someone with whom they have no relationship. Nor can an employee take emergency paid sick leave under the FFCRA to care for someone who does not expect or depend on the employee's care during his or her quarantine or self-quarantine due to COVID-19.

34. Can an employer disclose the identity of an employee who has elected to self-quarantine due to symptoms or exposure to COVID-19 or who has been diagnosed with COVID-19 to co-workers or vendors who were in close contact with the infected employee during the relevant 14-day period?

No. The ADA does not permit employers to disclose an employee's medical information to an employer's co-workers, customers, or vendors. Further, sharing the information may violate other laws pertaining to privacy. Employers can generally inform customers or vendors that an "employee has tested positive for COVID-19" or that an employee "has been exposed to COVID-19," but the employee(s) should not be identified.

35. Can an employer ask employees to consent to the disclosure to others of their identity and positive test for COVID-19 infection?

There may be risk in relying on an employee's consent to disclose medical information. That risk could be mitigated by taking steps, such as obtaining the employee's written consent, and limiting the disclosure consent to specifically identified employees who were in close contact with the infected employee. Employers are encouraged to consult with legal counsel and the human resources office within his or her respective agency for specific guidance.

36. Are employees utilizing emergency FMLA or emergency paid sick leave eligible for paid time off in observance of a holiday?

Yes. Employees utilizing emergency FMLA or emergency paid sick leave to care for an individual subject to quarantine or isolation or for a son/daughter whose school or place of care is closed or child-care provider is unavailable, are eligible to receive pay for the full holiday but at the reduced rate of 2/3. Employees taking emergency FMLA for a full week, like non-emergency FMLA, will have the entire week counted toward their allotment of available leave.

37. Are employees on approved emergency FMLA or emergency paid sick leave the day before and after a holiday required to utilize such leave on the holiday?

No. An employee using emergency FMLA or emergency paid sick leave intermittently, who is scheduled to be off in observance of the holiday, would not count the holiday against their leave benefit and they would receive regular pay for the holiday observance.

Also, employees who work on the holiday are eligible to receive pay for the holiday irrespective of working or being on approved paid leave the day before and after.