

Intermittent Use of Emergency Sick Leave and Expanded Paid Family Leave & Notification and Documentation Requirements

Revised: May 22, 2020

Source: Code of Federal Regulations

<https://www.ecfr.gov/cgi-bin/text-idx?SID=95228a5a918abcba2b57e3401d6ac893&mc=true&node=pt29.3.826&rgn=div5>

§826.50 Intermittent leave.

(a) *General Rule.* Subject to the conditions and applicable limits, **an Employee may take Paid Sick Leave or Expanded Family and Medical Leave intermittently (i.e., in separate periods of time, rather than one continuous period) only if the Employer and Employee agree.** The Employer and Employee may memorialize in writing any agreement under this section, but a clear and mutual understanding between the parties is sufficient.

(b) *Reporting to Worksite.* The ability of an Employee to take Paid Sick Leave or Expanded Family and Medical Leave intermittently while reporting to an Employer's worksite depends upon the reason for the leave.

(1) If the Employer and Employee agree, an Employee may take up to the entire portion of Paid Sick Leave or Expanded Family and Medical Leave intermittently to care for the Employee's Son or Daughter whose School or Place of Care is closed, or Child Care Provider is unavailable, because of reasons related to COVID-19. Under such circumstances, intermittent Paid Sick Leave or paid Expanded Family and Medical Leave may be taken in any increment of time agreed to by the Employer and Employee.

(2) An Employee may not take Paid Sick Leave intermittently if the leave is taken for any of the reasons specified in §826.20(a)(1)(i) through (iv) and (vi). Once the Employee begins taking Paid Sick Leave for one or more of such reasons, the Employee must use the permitted days of leave consecutively until the Employee no longer has a qualifying reason to take Paid Sick Leave.

§826.20 Paid leave entitlements.

(a) *Qualifying reasons for Paid Sick Leave.* (1) An Employer shall provide to each of its Employees Paid Sick Leave to the extent that Employee is unable to work due to any of the following reasons:

(i) The Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

(ii) The Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(iii) The Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis from a health care provider;

(iv) The Employee is caring for an individual who is subject to an order as described in this paragraph (a)(1)(i) or directed as described in this paragraph (a)(1)(ii);

(v) The Employee is caring for his or her Son or Daughter whose School or Place of Care has been closed for a period of time, whether by order of a State or local official or authority or at the decision of the individual School or Place of Care, or the Child Care Provider of such Son or Daughter is unavailable, for reasons related to COVID-19; or

(vi) The Employee has a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor. The substantially similar condition may be defined at any point during the Effective Period. This rule became operational on April 1, 2020, and will be effective April 2, 2020, to December 31, 2020.

Source: U.S. Department of Labor

<https://www.dol.gov/agencies/whd/pandemic/ffera-questions>

22. May I take my expanded family and medical leave intermittently while my child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?

Yes, but only with your employer's permission. Intermittent expanded family and medical leave should be permitted only when you and your employer agree upon such a schedule. For example, if your employer and you agree, you may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while your child is at home because your 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 your leave.

The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements.

Source: USPS March 31, FFCRA FAQ's

<http://www.nalc3825.com/FFCRA.FAQ.pdf>

Can I use Emergency Paid Sick Leave intermittently?

No, unless you are only required to report to a worksite on an intermittent basis. Once you begin taking paid sick leave for one or more of the 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 the FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

Can I use FMLA leave for this new qualifying reason intermittently?

Whether you are permitted to take FMLA leave for this new qualifying reason intermittently is up to your manager. If you and your manager can agree on a schedule in which you are able to perform the functions of your position while taking this type of leave intermittently, you may do so. If you and your manager cannot agree on such a schedule, you are still permitted to take FMLA leave for this new qualifying reason; you just will not be permitted to take it intermittently.

Documentation and Notification Requirements

Source: Code of Federal Regulations

<https://www.ecfr.gov/cgi-bin/text-idx?SID=95228a5a918abcba2b57e3401d6ac893&mc=true&node=pt29.3.826&rgn=div5>

§826.90 Employee notice of need for leave.

(a) *Requirement to provide notice.* (1) An Employer may require an Employee to follow reasonable notice procedures after the first workday (or portion thereof) for which an Employee takes Paid Sick Leave for any reason other than that described in §826.20(a)(1)(v). Whether a procedure is reasonable will be determined under the facts and circumstances of each particular case. Nothing in this section precludes an Employee from offering notice to an Employer sooner; the Department encourages, but does not require, Employees to notify Employers about their

request for Paid Sick Leave or Expanded Family and Medical Leave as soon as practicable. If an Employee fails to give proper notice, the Employer should give him or her notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave.

(2) In any case where an Employee requests leave in order to care for the Employee's Son or Daughter whose School or Place of Care is closed, or Child Care Provider is unavailable, due to COVID-19 related reasons, if that leave was foreseeable, an Employee shall provide the Employer with notice of such Paid Sick Leave or Expanded Family and Medical Leave as soon as practicable. If an Employee fails to give proper notice, the Employer should give him or her notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave.

(b) *Timing and delivery of notice.* Notice may not be required in advance, and may only be required after the first workday (or portion thereof) for which an Employee takes Paid Sick Leave or Expanded Family and Medical Leave. After the first workday, it will be reasonable for an Employer to require notice as soon as practicable under the facts and circumstances of the particular case. Generally, it will be reasonable for notice to be given by the Employee's spokesperson (*e.g.*, spouse, adult family member, or other responsible party) if the Employee is unable to do so personally.

(c) *Content of notice.* Generally, it will be reasonable for an Employer to require oral notice and sufficient information for an Employer to determine whether the requested leave is covered by the EPSLA or the EFMLEA. An Employer may not require the notice to include documentation beyond what is allowed by §826.100.

(d) *Complying with Employer policy.* Generally, it will be reasonable for the Employer to require the Employee to comply with the Employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

§826.100 Documentation of need for leave.

(a) An Employee is required to provide the Employer documentation containing the following information prior to taking Paid Sick Leave under the EPSLA or Expanded Family and Medical Leave under the EFMLEA:

(1) Employee's name;

(2) Date(s) for which leave is requested;

(3) Qualifying reason for the leave; and

(4) Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

(b) To take Paid Sick Leave for a qualifying COVID-19 related reason under §826.20(a)(1)(i), an Employee must additionally provide the Employer with the name of the government entity that issued the Quarantine or Isolation Order.

(c) To take Paid Sick Leave for a qualifying COVID-19 related reason under §826.20(a)(1)(ii) an Employee must additionally provide the Employer with the name of the health care provider who advised the Employee to self-quarantine due to concerns related to COVID-19.

(d) To take Paid Sick Leave for a qualifying COVID-19 related reason under §826.20(a)(1)(iv) an Employee must additionally provide the Employer with either:

(1) The name of the government entity that issued the Quarantine or Isolation Order to which the individual being care for is subject; or

(2) The name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.

(e) To take Paid Sick Leave for a qualifying COVID-19 related reason under §826.20(a)(1)(v) or Expanded Family and Medical Leave, an Employee must additionally provide:

(1) The name of the Son or Daughter being cared for;

(2) The name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and

(3) A representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave.

Source: U.S. Department of Labor

<https://www.dol.gov/agencies/whd/pandemic/ffera-questions>

16. 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.

If you request leave to care for your child whose school or place of care is closed, or child care provider is unavailable, you must also provide:

- The name of your child;
- The name of the school, place of care, or child care provider that has closed or become unavailable; and
- A statement that no other suitable person is available to care for your child.

In addition to the above information, you must also provide to your employer written documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information.

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to [provide medical certifications](#) under the FMLA if required by your employer.

OPM <https://www.opm.gov/policy-data-oversight/covid-19/opm-summary-of-statutory-and-regulatory-requirements-in-connection-with-the-emergency-paid-sick-leave-act-epsla.pdf>

Documentation. An employee is required to provide the employing agency with documentation containing certain information to support the taking of EPSLA paid sick leave.

a. General information:

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying COVID-19-related reason for the leave; and
- (4) Oral or written statement that the employee is unable to work because of the qualifying COVID-19-related reason for leave.

b. To take EPSLA paid sick leave for qualifying circumstance (1), an employee must additionally provide the employing agency with the name of the government entity that issued the quarantine or isolation order.

c. To take EPSLA paid sick leave for qualifying circumstance (2), an employee must additionally provide the employing agency with the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.

d. To take EPSLA paid sick leave for qualifying circumstance (4), an employee must additionally provide the employing agency with either: (1) The name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject; or (2) The name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.

e. To take EPSLA paid sick leave for qualifying circumstance (5), an employee must additionally provide: (1) The name of the son or daughter being cared for; (2) The name of the school, place of care, or child care provider that has closed or become unavailable due to COVID-19; and (3) A representation that no other suitable person will be caring for the employee's son or daughter during the period for which the employee takes EPSLA paid sick leave.

Source: USPS March 31, FFCRA FAQ's

<http://www.nalc3825.com/FFCRA.FAQ.pdf>

What documentation do I need to provide to receive the FMLA benefit if I am caring for a child whose school or child care provider is closed?

Documentation is required and should include one of the following: 1. Notice of closure from state/county/city schools. Notice of closure from a daycare center. 2. Written statement from the employee stating the need due to closure of school or daycare or unavailability of usual caregiver due to COVID-19.

Source: Criteria for Return to Work for Employees with Confirmed Case of COVID-19

<http://www.nalc3825.com/USPS.Return.to.work.Apr.16.pdf>

Updated Guidance as of 04/16/2020

The following information is provided to assist you as managers and supervisors when an employee has indicated their intent to return to work following a confirmed case of Coronavirus Disease 2019 (COVID-19).

General Guidelines:

If an employee notifies you of their intent to return to work following a laboratory-confirmed COVID-19 result, do not request documentation for the employee to return to work. Per the Centers for Disease Control and Prevention (CDC), healthcare provider offices and medical facilities may be extremely busy and unable to provide such documentation in a timely manner due to the COVID-19 pandemic. Rather, you must follow the process outlined below *prior* to allowing an employee to return to work. Immediately upon employee notification of intent to return to work, the responsible supervisor or manager must:

1. Inform the employee they may not return to work until they have been cleared by a Postal Service physician or nurse;

2. Ask the employee for a phone number at which they can be reached;
3. Inform the employee they will be contacted by a Postal Service physician or nurse for a telephonic interview; **and** then
4. Immediately notify the District Occupational Health Nurse Administrator (OHNA) that you have an employee who has requested to return to work, and provide the OHNA with the employee's contact information (if your District OHNA is not available, please contact your District HR Manager for guidance).

The **Postal Service physician or nurse** will review the information and make a final determination on the return-to-work request. Employees are not permitted to return to work without written clearance from a Postal Service physician or nurse if they have received a laboratory-confirmed COVID-19 result.

For your information, per the CDC, options for decisions about return-to-work for individuals with laboratory-confirmed COVID-19 include a test-based strategy or a non-test-based strategy. The USPS is currently applying the non-test based strategy in the majority of cases.

Employees **with laboratory-confirmed COVID-19 who have stayed home** can stop home isolation and return to work following an interview with a Postal Service physician or nurse to confirm:

- ***In a non-test based strategy***, the employee can return to work after these three things have happened:
 - Employee has had no fever for at least 72 hours (that is three full days of no fever without the use of any fever-reducing medication); **AND**
 - Other symptoms have improved (for example, when cough or shortness of breath has improved); **AND**
 - At least 7 days have passed since COVID-19 symptoms first appeared.
- ***If a Postal Service Physician or nurse believes that the employee should be tested again*** to determine if they are still contagious, they can return to work after these three things have happened:
 - Employee no longer has a fever (without the use of any fever-reducing medication); **AND**
 - Other symptoms have improved (for example, when cough or shortness of breath has improved); **AND**
 - *Employee receives two negative test result* (test result should be more than 24 hours apart before isolation is ended).

Source: [CDC Guidance Discontinuation of Home Isolation](#)

Contact your District HR Manager or District OHNA if you have any questions.