

# Webinar FAQs

Webinar Question	Webinar Response
<p>This emergency PSL is being paid by companies, if possible, or people apply to it through government?</p>	<p>Leaves under FFCRA must be paid by the company. The company may then apply for a tax credit.</p>
<p>Let me re-phrase if we temperature check in the morning and an employee has a temperature and we send them home how many hours do we pay them for? :)</p>	<p>The employer must pay reporting time pay (at least half of the hour scheduled or usually worked, but never less than two hours pay and never more than four hours pay).</p>
<p>Regarding reason #1 for EPSL, there is some debate as to who is included in the "subject to a federal, state, or local quarantine or isolation order related to COVID-19." Do you know where it specifically references 65+ citizens?</p>	<p>If there is a local order that specifically states that those 65+ should stay in quarantine, this would be someone who might qualify if the employer has work for them to do.</p>
<p>Are we in violation if we have employees who are 65 working? Are they required to stay at home?</p>	<p>Under the California stay at home order, there is not currently a requirement that individuals 65+ quarantine; they are only recommended to do so. However, if an individual who is 65+ requests leave or other accommodation, the employer should analyze/engage in an interactive dialogue to determine whether W leave or other accommodation is available.</p>
<p>Do you have a template of what a 'transparency' letter should look like? I think it's a good idea to ask employees to sign an acknowledgement form that they will tell the employer if they have symptoms and they will notify employees if staff are positive. Do you have a template for that letter?</p>	<p>Employers may have employees sign an acknowledgement that they will report symptoms and post such a notice in the workplace. Our firm's website (<a href="http://www.fisherphillips.com">www.fisherphillips.com</a>) has documents in English and Spanish for employees to fill out regarding symptoms they may be experiencing. Note: If collecting this information in California, the employer should also provide a CCPA privacy waiver/notice, which our firm has also prepared in English and Spanish.</p>
<p>Is there support from the Gov't for paying for these leaves? Or is it up to the "hiring entity" to cover the cost?</p>	<p>FFCRA: The employer may claim a tax credit equal to the amount the employer provides to its employee. CA Food Service Worker Supplemental Paid Sick Leave: As of now, there is no tax credit or assistance to employers as there is under FFCRA. LA Supplemental Paid Sick Leave: As of now, there is no tax credit or assistance as there is under FFCRA.</p>
<p>Is there guidance or sample language for communicating with the rest of the staff when one EE is diagnosed? To reduce anxiety &amp; such.</p>	<p>Our firm has prepared sample communication letters for employers to advise employees when a co-workers has been diagnosed or tested positive (see <a href="http://www.fisherphillips.com">www.fisherphillips.com</a>). It is important to be mindful of privacy and confidentiality rights when communicating a positive COVID-19 result and other related information to others</p>
<p>We cannot ask for documntation if 14 or younger?</p>	<p>No, see questions #15 &amp; #16 of the DOL FFCRA FAQs for what documentation may be requested. DOL FAQs can be found at: <a href="https://www.dol.gov/agencies/whd/pandemic/ffcra-questions">https://www.dol.gov/agencies/whd/pandemic/ffcra-questions</a>.</p> <p>We recommend having employees complete an FFCRA Leave Request Form, which our firm has available in English and Spanish.</p>
<p>Does the EFMLA apply if you need to care for a senior who would normally go to a senior day care?</p>	<p>No, the EFMLA qualifying reason is for a "son or daughter". However, certain local paid sick leave ordinances may require employers to provide supplemental paid sick leave to employees for this reason (e.g., San Francisco).</p>
<p>If we are taking their temperature. If an employee starts work at 9am, but gets to work at 8:45am, does their shift start at 8:45am?</p>	<p>Employees should clock in or otherwise account and be paid for time spent getting their temperature taken and conducting other symptom checks.</p>
<p>Hi! Can the safe order then apply to those employees over a certain age group and/or serious medical conditions (very broad). We are an essential business and we have work for our Teachers and/or Teacher assistants. If yes, do i request anything from that employee?</p>	<p>Possibly, we recommend employees start by filling out an FFCRA Leave Request Form, which our firm has available in English and Spanish.</p>
<p>Under Age Group home situation: Need to have staff with guaranteed resident 24 hours, they would have sleep time. Will that be considered overtime if they are allowed a sleep break? Can they also be paid a different rate for the sleep break?</p>	<p>In California, sleep time is generally compensable as hours worked (subject to narrow exceptions). This can be a complicated area of the law and it is advisable to consult experienced employment counsel.</p>

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<p>Under furloughs, do we need to continue accruing Vacation/Sick/PTO benefits?</p>	<p>No, unless you have a written policy that states otherwise. However, keep in mind that any accrued, unused paid sick leave must be reinstated if the employee is rehired within one year (this does not apply if PTO policy and all PTO was paid out at time of furlough).</p>
<p>How is regular rate of pay calculated for EPSL? For instance, we have an employee who consistently works overtime every week. To calculate the regular rate of pay to use for his EPSL (which he qualifies for), do we divide total compensation for one week by the number of hours (so his regularly worked overtime will be higher than what his "normal rate of pay is")?</p>	<p>Please review questions #80-82 in the DOL FAQ, which can be found at: <a href="https://www.dol.gov/agencies/whd/pandemic/ffcra-questions">https://www.dol.gov/agencies/whd/pandemic/ffcra-questions</a>.</p>
<p>Can you please discuss a little on what is HR role in the implementation of Employer Retention Credit (CARES Act)? Thank you</p>	<p>The CARES Act has many provisions. The 401K provisions, the benefit-related provisions and the SBA loans. Depending on what role HR plays in those areas, the involvement would vary. Specific to the benefit-related provisions, you'd want to ensure your medical carrier is covering the COVID-19 testing per the CARES Act. Additionally, if you offer an FSA, you want to contact the TPA to confirm if changes need to be made to allow the OTC drugs and menstrual products.</p>
<p>If you furlough do you have to provide a timeframe?</p>	<p>Generally no, but under CA law, unless an employee is provided a return date within the same pay period, the employer must timely provide all final pay (including paying out any unused accrued vacation). Also consider WARN notice obligations under state and federal law.</p>
<p>What is the difference exactly between layoff and furlough if you do not provide an estimated timeframe to come back to work?</p>	<p>An employee who is furloughed is still considered a "current" employee and may have benefits continued (subject to the requirements of the employer's benefits plan). A layoff is a termination. In both cases, employees may be eligible for unemployment insurance and WARN notice considerations should be analyzed.</p>
<p>In CA do we have to notify local city if we furlough employees?</p>	<p>If the furlough triggers notice requirements under Cal-WARN or WARN statutes, notice to employees, union contacts, the EDD and local officials is required.</p>
<p>We have one employee who has been on a long-term medical leave since February not related to COVID-19. That employee has not returned to work yet. We are a nonprofit and we are now planning for a new fiscal year budget which starts July 1. Her position is one that we could easily eliminate since we are working remotely and she is a receptionist. Are we going to get in trouble if we lay her off because she is on medical leave? Thank you,</p>	<p>There are various issues that should be considered in making the decision to lay off an employee who is on leave as there is a possibility of liability under FEHA and other applicable laws. It is recommended this be reviewed with experienced employment counsel before moving forward. Feel welcome to reach out to discuss further</p>
<p>As far as benefits eligibility for new hires. . . We have an employee who would be eligible 5/1. He was with us FT for 3 weeks, and then has been part-time for the balance, due to limited, available remote work for him as an entry-level EE. Does the latitude you spoke of, by carriers, apply to new hires?</p>	<p>Regardless of carrier flexibility, if your company is an applicable large employer (50 or more full-time equivalents), the answer is that coverage must be offered at the end of the waiting period if the employee achieved 130 or more hours in any months since hire. If your company is NOT an applicable large employer or the employee didn't meet the 130 hours, please contact your specific carrier to understand more about their rules regarding flexibility in this instance. If you are a Bolton client, please contact your client manager.</p>
<p>I have an employee who has been on PFL for a baby. Is she qualified for EFMLA for two weeks pay and the additional 10 weeks of leave. She's a teacher and the school year will end by June 12.</p>	<p>Possibly. This is a fact-specific analysis that will depend on the reason(s) for additional leave, whether the employee would otherwise be working at the time, and other considerations. It is recommended this be reviewed with experienced employment counsel before moving forward. Feel welcome to reach out to discuss further.</p>
<p>For EFMLA, what documentation should be sent to the employee? The WH-381 or WH-382?</p>	<p>Employers must post/distribute the DOL poster and our firm has created an FFCRA Leave Request Form for employees to request and self-certify the reason for their leave. This can be used as supporting documentation, along with any additional related documents (note from health care provider, local order, etc.)</p>
<p>We are not a food sector employer, we are a school, but we do have an independently contracted coffee shop in our school. Does that apply to us?</p>	<p>This is a fact-specific analysis and would depend in part on the relationship between the entities. We would need more information to help determine whether the school has to provide leave under the executive order. Feel welcome to reach out to discuss further.</p>

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<p>An employee who does not qualify for traditional FMLA, since they were hired six months ago, has been out on extended unpaid leave, prior to COVID for a surgery unrelated to COVID. Do they now qualify for 2 weeks of FFCRA?</p>	<p>The employee may be eligible for FFCRA leave. An employee is eligible for EFMLA if they have been employed by the employer for 30 calendar days, and EPSL applies to all employees regardless of length of employment. However, the employee would still have to meet a qualifying reason under the FFCRA. Surgery unrelated to COVID-19 is not a qualifying reason.</p>
<p>Employers who are checking employee temperature prior to going into the building, would the employee needs to be paid for the wait time since this may be considered donning/doffing situation?</p>	<p>Employees should clock in or otherwise account and be paid for time spent getting their temperature taken and conducting other symptom checks.</p>
<p>if there any guidance on the type of information we can request for 14 and over?</p>	<p>Yes. Please review questions #15 &amp; #16 of the DOL FFCRA FAQs found here: <a href="https://www.dol.gov/agencies/whd/pandemic/ffcra-questions">https://www.dol.gov/agencies/whd/pandemic/ffcra-questions</a></p>
<p>An employee traveled from the US into Mexico without consulting HR first. We've learned the travel was non-essential to visit his wife/children. Assuming he is allowed to return into the US, according to the CDC he should quarantine for 14 days. Is this quarantine a qualifying FFCRA reason? The employee's decision to travel during the pandemic will cause more time away from the job. (The employee resides in the USA as a Perm Resident.)</p>	<p>CDC guidance is not a Federal, State, or local order; however, other applicable paid sick leave ordinances may apply and/or if the employee meets any other qualifying reason.</p>
<p>If we are not considered an essential business and don't have the funds, are we required to pay out vacation time to furloughed ees?</p>	<p>If we are not considered an essential business and don't have the funds, are we required to pay out vacation time to furloughed ees?</p>
<p>So if the enmployee is over 65 and we have work. the worker wants to stay home, do they qualify?</p>	<p>If they are staying home due to a desire to stay home, the employee likely does not qualify for FFCRA leave (may qualify for unemployment insurance or under local PSL ordinance). If there is a local order in place stating they must quarantine or if there is a doctor's order to quarantine, yes, those would be qualifying reasons.</p>
<p>If the employer has an existing HSA plan, can we add money to this that is tax free under section 139? how would it be used vs the regular HSA eligible expenses?</p>	<p>No. A separate plan must be set up under Section 139. Section 139 can be used to pay for unreimbursed medical expenses under Section 213(d), just like HSAs. However, Section 139s can be used for much more.</p>
<p>If the workplace (restaurants) have been closed for business since 03/16 till present, does any of these leave apply?</p>	<p>No, if the business is closed, FFCRA does not apply.</p>