



HARDI HR COUNCIL FAQ & BEST PRACTICES

FAQ's

Q. If I (the employee) must stay home because my children's school is closed, can I claim I am the sole caregiver and collect emergency sick leave?

A: Yes, we (the employer) have them send in the details and sign off that they are the sole caregiver.

Q. Can I (the employee) get intermittent emergency sick leave if I must take care of my children but will work for a portion of each day?

A. Yes, we (the employer) have them send in the details and sign off that they are the sole caregiver but try to work with them on working part time with a targeted end date. Intermittent leave is available under Emergency Paid Sick leave if the employer and the employee agree that intermittent work is okay.

Q. If my family is afraid of me bringing home COVID19, can I stay home and collect emergency sick leave?

A. Employees - even of essential businesses - are eligible for the 80 hours' Emergency Sick Leave IF they fall into one of the six categories of eligibility:

1. Employee is "subject to a Federal, State or local quarantine or isolation order due to COVID-19" (in this case, the employee is NOT subject to such an order because their employer is an essential business and, therefore, the quarantine order doesn't apply to them or their employer)
2. Employee has been advised by health-care provider to self-quarantine;
3. Employee is experiencing COVID-19 symptoms and seeking a medical diagnosis;
4. Employee is caring for individual covered under numbers 1 or 2 above;
5. Employee is caring for his/her son or daughter if their school or care facility has been closed, or the childcare provider is unavailable, due to COVID-19; AND/OR
6. Employee is experiencing any other substantially similar condition

**Note:* to date, the Secretaries of HHS., Labor and Treasury have not identified any such "other substantially similar condition" (thus, no one qualifies under this one)

After reviewing these six categories of eligibility, it does not sound as if this employee qualifies on any of the six eligibility factors.

Q. Do we (employees) really have to wear masks to work?

A. As of last week, in some states, Governors advised the public that they must wear a "face covering" at work and customers are also required to wear "face coverings." Employers must look at each State's order for its Governor and Department of Health order where this is concerned. In Ohio, for example, Governor DeWine originally ordered that everyone outside their homes wear a facemask. Although the Governor has the power to order this, he got some strong pushback and

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modified his order to say, “highly recommended.” As the employer, you have the right to require your employees to wear a facemask at work as a precaution against transmission of the disease. Many employers for example at work have had rules stating that employees must wear a facemask unless they are alone in their own office or cubicle with walls at least “X” feet high.

Additionally, employer must worry about “appropriate” face coverings. If a customer says they cannot wear a face covering because of health reasons, the business must take their word for it and determine the safest way to provide service to the customer. The employer may also have to worry about finding face coverings to provide our employees which is another challenge. We (the employer) recommended that employees provide “appropriate” face coverings that they can clean and be responsible for in addition to the ones we provided to avoid cross contamination. [Click here](#) for more information on the CDC’s recommendations on face coverings.

Q. The employee has been working from home and receiving full pay. We have announced a “return to work” date and the employee is now requesting the extended FMLA to “care for their child” due to school closure. The return to work date is 2 weeks before the end of school. The caveat is that the employee resides with their family who has historically cared for the child, after school and summers, and the employee only has 50% custody, so the other parent has the child half of the time. The employee claims that their parents can no longer help provide care for the child due to the fact they are both “high risk.” Aside from 50% of the first two weeks, is the employee entitled to extended FMLA leave? How can the employee say that the parents cannot care for the child due to being high risk if they live with the child full time?

A. If the employee signs a statement saying they are the sole caregiver and show proof the kids are theirs (along with some other requirements the employer can request they provide), the employer must take their word for it. Also, remember that if some or all of the employee’s work can be done from home, the employer can require the employee to telework during this time.

In this scenario, there is a form explaining the employee’s rights and here is what we (the employer) have asked from the employee:

- Part A of the form states that the employee is eligible for FFCRA.
- Part B provides information about what responsibilities the employee may have while on leave. Please read this notice carefully and return it with the below documentation.
 - The employer will need from the employee (within the next _ days): Sufficient documentation to support their request for FFCRA leave (such as a notice that has been posted on a government, school, or daycare website, or published in a newspaper, or an email from an employee or official of the school, place of care, or childcare). Please be sure to detail the date the school closed and the most recent update available (projected date the school will open, as the employee receives updates, please forward those to the employer).
 - Sufficient documentation to establish the required relationship between the employee and their child or children. The employer will need this within the next _ days as well.

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- Provided the employee returns all necessary documentation within the required period of time, 10 weeks of partially paid expanded family and medical leave is available. The payment amount in this instance is two-thirds of either the employee's regular rate or the applicable state or minimum wage, whichever is higher, up to \$200 daily and \$12,000 total.

Emergency sick pay and Emergency FMLA on an intermittent schedule to care for a child due to school/daycare closures must be agreed on by the employee and employer. As a company, we have a policy stating we will only approve intermittent leave for the care of a child due to school/daycare closures through June 15th. This is the end of our school year in WI and we will re-evaluate if needed. We have a form where the employee must certify that they are the only caregiver, ages of children, etc.

**Note:* No specific determinations have been made by the government yet on "summer arrangements". However, E-FMLA is available if the employee is unable to work or telework due to a need for leave to care for his/her child under 18 who was affected by school or child care closures or whose child care provider is unavailable due to public health emergency. Since E-FMLA is available via FFCRA through December 31, 2020, it may well encompass the need to care for children this summer when care providers are unavailable.

Employers should also be on alert for if an employee's daycare center is open and they are choosing not to send their child due to the fear of the virus, they are NOT eligible for the leave. There are so many questions to be asked when this leave is requested to ensure that that the employee has the correct reason/documentation to ensure the employer will be eligible for the tax credits available.

Q. FFCRA was implemented with a 04/01/2020 effective date. As a employer, we took the liberty of paying associates with Covid-19 symptoms or seeking medical attention for this virus prior to the 04/01/2020 effective date. It is understood that there is no tax credit for these days paid out prior to plan inception. Are the same employees entitled to additional paid sick leave under FFCRA if out for the same reasons 04/01/2020 or after (another 10 days)?

A. Any paid time off the company granted prior to 4/1/2020 does NOT count toward the required E-Paid Sick Leave or E-FMLA time. Thus, there is no tax credit for the time the company already granted. Additionally, the company must give full-time employees 80 hours' sick time for any combination of the six reasons set forth in the statute. The company must also grant Emergency FMLA time for employees whose children's schools or daycare facilities are closed (and the employee is needed at home to care for the children). So, yes, the same employees are entitled to additional paid sick leave under FFCRA (assuming they are out for any combination of the 6 reasons for which E-Paid Sick Leave must be given).



Best Practices: COVID-19 Recovery & Returning to Work Considerations

Many Human Resources departments are facing the same questions and thinking through how to handle similar scenarios. Here are some solutions that the HARDI HR Council members have already began working on implementing as they help to prepare their organization to resume some level of “normal” business operations. Please note that these responses and best practices are not state specific and are in no way meant to provide state, federal or legal compliance or guidance. They should be viewed as possible examples to adopt and adapt to your specific business needs:

Question or Scenario	Best Practice Solution Example
Have all my employees been trained on cleaning and sanitization standards, sales techniques or strategies, leadership or other organization best practices during this time before returning to work?	<p>Consider accessing available online resources such as HEAT.U, HARDI Sales Training for Representatives or Manager (coming in June) etc. and a method to cascade that training to employees to ensure that everyone is aware of any new procedures they should be following during the pandemic.</p> <p>HARDI will also be coming out with additional cleaning checklists and sanitization training soon to offer members.</p>
Does my organization have enough masks available?	Here is a possible resource for masks .
Does my organization have an operations plan or checklist to help ensure health and safety at work?	<p>Here is a possible resource from ERA, Employers Resources Association, to help your organization craft its own various operations plans.</p> <p>Organizations can also follow the guidelines from the CDC and FEMA for returning to full operations.</p>
How will my organization track our employee's temperature?	<p>Consider having a temperature tracking log or discover your HRIS platform has the capability to help employees self-identify their symptoms and temperatures.</p> <p>The CDC, also has resources and a Self-Checker application available for use.</p>
Does my organization have a plan to test temperatures of employees who might work early or odd evening hours?	Consider what thermometers, such as no contact options, can be used and who at the organization should be responsible for helping to track and react this group of employees' circumstances
Does everyone in your organization understand the benefits available during this pandemic?	<p>These are come common COVID-19 Scenarios and Benefits available.</p> <p>Also, refer to state specific examples like these to help your organization easily understand the scenarios and benefits:</p> <ul style="list-style-type: none">○ Washington○ New Jersey○ Pennsylvania