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# The Families First Coronavirus Response Act: Impacts on Local Education Agencies



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- On your dropdown menu, there is a Questions tab. Feel free to ask questions there or email [emcpeters@dwkesq.com](mailto:emcpeters@dwkesq.com).
- We will be monitoring the questions as they come in and may answer some questions during the webinar. We will also save time at the end of the webinar to continue to answer questions.

# Compliance with Leaves

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- LEAs must continue to follow federal and state law, the terms in their bargained-for agreements, and policies, all of which impact the use of employee leaves during this time
- The Framework for Labor-Management Collaboration is not binding and not necessarily best practice

# The Families First Coronavirus Response Act (H.R. 6201)

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- Effective from April 1, 2020 through December 31, 2020
- Applies to *all* public entities regardless of number of employees
- 2 key provisions:
  - Emergency Paid Sick Leave Act (“EPSLA”)
  - Emergency Family and Medical Leave Expansion Act (“EFMLEA”)

# The Families First Coronavirus Response Act (H.R. 6201)

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## Emergency Paid Sick Leave

- Up to 2 workweeks (80 hours) of paid sick leave for full-time employees (e.g., assigned 40 hours/week)
- Pro-rata share of paid sick leave for part-time employees

## Emergency Family & Medical Leave

- Up to 12 workweeks of partially-paid leave to care for child if school or childcare provider is closed or unavailable due to COVID-19 related reasons

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# Emergency Paid Sick Leave

# Emergency Paid Sick Leave: Eligibility

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## Covers All Employees

- All employees eligible **regardless of length of service**
- Is **in addition to** any leave currently provided by Employer
- Calculated at Employee's regular rate of pay, but subject to limits based on reason for the leave

# Emergency Paid Sick Leave: Qualifying Reasons

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- Employee is **unable to work or telework** because they:
  - Need to Care for Self
  - Need to Care for Others
- Due to COVID-19 related reasons



# Emergency Paid Sick Leave: Qualifying Reasons

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## Care for Self:

- Employee is subject to government **quarantine or isolation order** related to COVID-19
- Employee has been advised by healthcare provider to **self-quarantine** due to COVID-19 concerns
- Employee **has COVID-19 symptoms** and is **seeking a medical diagnosis**
- Employee has condition **“substantially similar”** to COVID-19

# Emergency Paid Sick Leave: Qualifying Reasons

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## Care for Self:

- The advice to **self-quarantine** must be based on healthcare provider's belief that Employee:
  - Has COVID-19,
  - May have COVID-19, or
  - Is particularly vulnerable to COVID-19
- And, following healthcare provider's advice to self-quarantine prevents Employee from working

# Emergency Paid Sick Leave: Qualifying Reasons

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## Care for Others:

- Employee is **caring for *an individual*** who is subject to government quarantine/isolation order
- Employee is **caring for *an individual*** who has been advised by healthcare provider to self-quarantine
- Employee is **caring for *their child whose school/childcare provider has closed or is unavailable*** due to COVID-19 concerns

# Emergency Paid Sick Leave: Qualifying Reasons

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## Care for Others: (cont.)

- **Who is “an individual?”**
  - Employee’s immediate family member;
  - Person who regularly resides in Employee’s home; or
  - Similar person with whom Employee has relationship that creates expectation that Employee would care for person if they were quarantined or self-quarantined
  - Does not include persons with whom Employee has no personal relationship

# Emergency Paid Sick Leave: How Much?

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## Full-Time Employees

- Full-Time: Employee normally scheduled to work at least 40 hours each workweek.
- Entitled to up to 80 hours (2 workweeks) of Paid Sick Leave

# Emergency Paid Sick Leave: How Much?

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## Part-Time Employees

- Part-Time: Employee normally scheduled to work less than 40 hours each workweek.
- Entitled to Paid Sick Leave for up to the number of hours Employee works on average over a two-week period.

# Emergency Paid Sick Leave: How Much?

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- Employee's regular rate of pay, but capped at \$511/day, or \$5,110 total, if **Employee**:
  - Is subject to government quarantine or isolation order related to COVID-19;
  - Has been advised by healthcare provider to self-quarantine due to COVID-19 concerns; or
  - Has COVID-19 symptoms and seeking medical diagnosis

# Emergency Paid Sick Leave: How Much?

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- 2/3 of Employee's regular rate of pay (no less than minimum wage), but capped at \$200/day, or \$2,000 total, if **Employee**:
  - Is **caring for an individual**
    - Who is subject to government quarantine/isolation order
    - Who has been advised to self-quarantine
  - Is **caring for their child** whose school/childcare provider has closed
  - Is experiencing **condition "substantially similar"** to COVID-19
- Employer and Employee **may agree** for Employee to use accrued paid leave to supplement otherwise unpaid 1/3 portion



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# Emergency Family and Medical Leave Expansion Act

# Emergency Family and Medical Leave: Eligibility

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- Employee is eligible for leave if **employed for at least 30 calendar days**
- Does **not** add additional leave time on top of existing FMLA leave
- Eligible employees may take **total** of 12 workweeks of leave during a 12-month period under the FMLA, **including** Emergency Family and Medical Leave

# Emergency Family and Medical Leave: Qualifying Reasons

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- Employee is **unable to work or telework** because they are **caring for *their child* whose school/place of care/childcare provider has closed or is unavailable** due to COVID-19 concerns
- What is a “place of care”?
- According to the DOL, “place of care” is a physical location in which care is provided for your child. The physical location does not have to be solely dedicated to such care.
- Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

# Emergency Family and Medical Leave: Qualifying Reasons

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- Child: Son or daughter under the age of 18 years
- Under the FFCRA, “son or daughter” is also an adult son or daughter (i.e., 18 years or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability

# Emergency Family and Medical Leave: How Much?

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- The first ten (10) workdays of Emergency Family and Medical Leave is **unpaid**, but **Employee may elect** to use:
  - Emergency Paid Sick Leave: 2/3 of Employee's regular rate of pay (no less than minimum wage), but capped at \$200/day, or \$2,000 total, or
  - Any accrued paid leave under CBA and/or Board policy
- Employer and Employee **may agree** for Employee to use accrued paid leave to supplement otherwise unpaid 1/3 portion

# Emergency Family and Medical Leave: How Much?

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- For remaining up to 10 workweeks of leave, Employee entitled to **2/3 of their regular rate of pay** (but no less than minimum wage) based on number of hours Employee would normally be scheduled to work
- However, pay is **capped** at \$200/day, or \$10,000 total
- Employer and Employee **may agree** for Employee to use accrued paid leave to supplement otherwise unpaid 1/3 portion

# Intermittent Leave – Emergency Paid Sick Leave and Emergency Family and Medical Leave

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- Intermittent Leave allowed *only if* Employee and Employer agree and under certain qualifying reasons
- To care for children due to school closure or unavailable childcare provider – intermittent leave allowed in any increment of time agreed by Employee and Employer
- To care for self or others due to possible exposure/infection of COVID-19 – intermittent leave not allowed, unless Employee is teleworking

# Other Leave Options For Employees Due to COVID-19 Reasons

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- Review Leaves provisions in collective bargaining agreements and/or Board Policies, which may include:
  - Accrued Sick Leave
  - Vacation
  - Personal Necessity
  - Personal Leave
  - Compensatory Time Off
  - Differential Pay
  - Family Illness Leave
  - Catastrophic Illness Leave



# Other Leave Options For Employees Due to COVID-19 Reasons

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- FMLA and CFRA may apply – run concurrently with FFCRA and other leaves where warranted
- Education Code section 45195 (classified) [unpaid leave for 6-month increments up to 18 months]
- Governing Board has discretion to grant additional paid leaves due to quarantine of employees (Ed. Code, § 44964 [certificated], § 45199 [classified])

# Employee Leaves: Differential Leave

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## Certificated Employees

- Up to five (5) months per injury or illness per school year (Ed. Code, § 44977); or
- 50% payment option (Ed. Code, § 44983)

## Classified Employees

- Up to five (5) months per injury or illness per school year; or
- 100-Day Rule  
(Ed. Code, § 45196)

# Employee Leaves: Differential Leave

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## Certificated Employees – The “Differential Rule”

(Ed. Code, § 44977)

- Up to five (5) months per injury or illness per school year  
(*Veguez v. Long Beach U.S.D.* (2005) 127 Cal.App.4th 406)
- The “Differential Rule” - Cost of substitute is deducted from salary whether or not one is hired
- Runs *consecutively* after exhaustion of sick leave

# Employee Leaves: Differential Leave

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## Certificated Employees (cont.)

(Ed. Code, § 44977)

- Does not accumulate
- If the school year ends before the five-month period is exhausted, the employee may use the balance of the leave in a subsequent school year

# Employee Leaves: Differential Leave

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## Certificated Employees – The “50% Rule”

(Ed. Code, § 44983)

- Five (5) months per school year for absences due to illness or accident
- Days are compensated at 50% (or more) of employee’s regular salary

# Employee Leaves: Differential Leave

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## Classified Employees

(“Five Months Rule” – Ed. Code, § 45196)

- Runs **concurrently** with sick leave and other paid time off
- Cost of substitute is deducted from salary **only if** a substitute is actually hired; if no substitute is hired, employee receives his/her full wage. (*CSEA v. Tustin Unified Sch. Dist.* (2007) 148 Cal.App.4th 510.)

# Employee Leaves: Differential Leave

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## Classified Employees

(“100 Day Rule” - Ed. Code, § 45196)

- Full-time employees: 100 days annually; does not accrue from year to year
- Such days are compensated at 50% of the employee’s regular salary
- 100 days run **concurrently** with sick leave; vacation and other paid time off run **consecutively after** the 100 days are exhausted  
(*CSEA v. Colton Joint Unified Sch. Dist.* (2009) 170 Cal.App.4th 857)

# FFCRA Documentation

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- Employee must provide documentation to Employer in support of emergency paid sick leave or emergency family and medical leave
- Such documentation must include Employee's signed statement containing the following:
  1. Employee's name;
  2. Date(s) for which leave is requested;
  3. COVID-19 qualifying reason for leave; and
  4. Statement representing that Employee is unable to work or telework because of COVID-19 qualifying reason.



# Additional Documentation

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- Additional documentation required depending on COVID-19 qualifying reason
- If leave to care for self, Employee must provide:
  - Name of government entity that issued quarantine or isolation order to which Employee is subject, or
  - Name of healthcare provider who advised Employee to self-quarantine for COVID-19 related reasons

# Additional Documentation

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- If leave to care for individual, Employee must provide:
  - Name of government entity that issued quarantine or isolation order to which individual is subject, or
  - Name of healthcare provider who advised individual to self-quarantine

# Additional Documentation

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- If leave to care for child(ren), Employee must provide:
  - Name of child(ren) being cared for
  - Name of school, place of care, or childcare provider that closed or unavailable due to COVID-19 reasons, and
  - Statement representing that no other suitable person is available to care for child(ren) during period of requested leave

# Additional Documentation

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- If leave taken under FMLA for Employee's own serious health condition related to COVID-19, or to care for Employee's spouse, son, daughter, or parent with serious health condition related to COVID-19, the normal FMLA certification requirements still apply

# FFCRA Resources

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- Department of Labor (DOL) Resources: <https://www.dol.gov/agencies/whd/pandemic>
- DOL FFCRA Poster/Notice: [https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)
- DOL Regulations – Federal Register 29 CFR 826 <https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>
- DOL FAQs: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

# Next Steps

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- Review Leaves provisions in CBA and Board Policies
- Prepare plan to consistently and uniformly process and implement leave requests related to COVID-19
- Prepare COVID-19 leave request forms which include requesting the necessary documentation

# FFCRA Scenarios

**Scenario #1: Employee is in “high-risk” category and submits doctor’s note that Employee is medically unable to work because of vulnerability to COVID-19 infection. What leave(s) is Employee entitled to and for how long?**

- Emergency Paid Sick Leave – 10 workdays (Regular Rate of Pay Capped at \$511/day, or \$5,110 total)
- Accrued Sick Leave?
- Other accrued paid leave?
- Differential Pay?
- FMLA/CFRA?
- Unpaid leave of absence?

# FFCRA Scenarios

**Scenario #2: Employee lives with “high-risk” individual at home. Employee is concerned that Employee may contract COVID-19 at work and infect “high-risk” individual. What leave(s) is Employee entitled to and for how long?**

- Emergency Paid Sick Leave – 10 workdays (2/3 of Employee’s Regular Rate of Pay Capped at \$200/day, or \$2,000 total)
- Accrued paid leave (where applicable)?
- Unpaid leave of absence?



# FFCRA Scenarios

**Scenario #3: Employee requests leave to care for individual at home who has COVID-19. What leave(s) is Employee entitled to and for how long?**

- Emergency Paid Sick Leave – 10 workdays (2/3 of Employee’s Regular Rate of Pay Capped at \$200/day, or \$2,000 total)
- Accrued family illness leave
- “Kin Care” under Labor Code section 233
- Other accrued paid leave
- FMLA/CFRA?
- Unpaid leave of absence

# FFCRA Scenarios

**Scenario #4: Employee requests leave to care for children whose school or childcare provider closed due to COVID-19. Employee did not take any FMLA leave in prior 12 months. What leave(s) is Employee entitled to and for how long?**

- Emergency Family and Medical Leave – 12 workweeks
  - First 2 weeks UNPAID, but Employee may use Emergency Paid Sick Leave during this period (2/3 of Employee's Regular Rate of Pay Capped at \$200/day, or \$2,000 total), OR may use accrued paid leave
  - Employee and Employer may agree for Employee to supplement accrued paid leave for 1/3 unpaid portion

# FFCRA Scenarios

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## Scenario #4 (Cont.)

- Emergency Family and Medical Leave
  - Remaining 10 workweeks: 2/3 of Employee's Regular Rate of Pay Capped at \$200/day, or \$10,000 total
  - Employee and Employer may agree for Employee to supplement accrued paid leave for 1/3 unpaid portion for remaining 10 workweeks to the extent available
- Intermittent Leave?

# FFCRA Scenarios

**Scenario #5: Employee uses 4 weeks of Emergency Family and Medical Leave in April 2020 to care for their child whose school has closed due to COVID-19. In August 2020, Employee has surgery and needs time off to recover. Is Employee entitled to full 12 weeks of FMLA leave in August 2020?**

- **Most likely no.** The 4 weeks of Emergency Family and Medical Leave counts towards Employee's total entitlement to FMLA leave in a 12-month period.
- But it depends on how Employer calculates the 12-month period.



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