

TASB buildings are temporarily closed. Staff members are working remotely and are available by email or phone. ×



COVID-19 Frequently Asked Questions—Part 2

APRIL 07, 2020 • Karen Dooley and April Mabry



We've received a variety of new HR-related inquiries since we posted the [first round of COVID-19 frequently asked questions](#). Below are answers to help you manage HR issues during closures. Please be sure to check [TASB's COVID-19 Resources](#) for additional information related to governance, personnel issues, risk management, and other topics.

Leave questions

Q: How do we respond when an employee requests EPSL for a COVID-19 related reason?

A: The following factors should be considered when responding to a request for EPSL due to COVID-19:

- Has the board approved a resolution providing for pay during the school closure?
- What employees are included?
- If an employee was on an extended leave prior to the closure, how has that employee's leave been handled since the closure occurred?
- Is the employee continuing to use accrued paid leave or unpaid leave (e.g., family and medical leave (FML), temporary disability leave (TDL), dock due to exhaustion of leave)?
- Has leave been suspended during this time and the employee is being paid like all employees not on an extended leave?

The answer to the above questions will likely help in determining your response. For instance, if the district is paying all employees except those on an extended leave of absence, the district would use the same procedures and offer the employee leave under EPSL.

If the district has suspended leave for employees and is paying all employees, there would be no reason for the district to apply EPSL, because the employee is already being compensated regardless of their leave status.

If an employee has an underlying health condition and was able to work prior to the closure but is now being required to quarantine due to COVID-19, the employee may qualify for the 80 hours provided by EPSL. If the employee exhausts EPSL, they may need to access FML if the health care provider does not release the employee to return to work. At that point, the employer would implement standard procedures for FML.

Consistency in practice is important in managing leave in these difficult times as it is at any other time of the year.

Q: Can we require an employee to take Families First Coronavirus Response Act (FFCRA) leave before accessing accrued paid leave?

A: The employer can't require an employee to use accrued leave instead of emergency paid sick leave (EPSL). During EPSL the employee may choose to use their accrued leave only, EPSL, or if allowed by the employer, use a portion of accrued leave to receive 100 percent of pay (e.g., top off or offset).

During expanded family and medical leave (EFML), an employer can require the use of paid leave concurrently with expanded family and medical leave (EFML). However, it is the employee's choice to use EPSL or accrued leave for the first two weeks. After the first two workweeks (usually 10 workdays) of expanded family and medical leave, the employee may elect—or be required by the employer—to use paid leave concurrently. Once accrued leave is exhausted, the remaining EFML would be paid at 2/3 the regular rate of pay up to a maximum of \$200 per day.

Q: Can an employee take emergency paid sick leave for more than one reason?

A: Yes. The employee can take EPSL for any of the designated reasons for leave. However, the amount of leave taken April 1–December 31, 2020 is limited to a total of 80 hours.

Q: Can EFML be taken for more than one qualifying reason?

A: No. There is only one qualifying reason for EFML—to care for your son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.

Q: Can we ask for documentation to verify the need for EPSL and EFML? If so, what type of documentation can we require?

A: Yes. A [Department of Labor FAQ](#) outlines the type of documentation an employer can require (see Q15 and Q16). An employee must provide an employer either orally or in writing the following information:

- Name
- Date(s) requested for leave
- The reason for leave
- A statement that the employee is unable to work because of a qualifying reason

If the request for leave is because the employee is subject to a quarantine or isolation order or to care for an individual subject to such an order, the employee should additionally provide the name of the governmental entity that issued the order. If the employee requests 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, the name of the health care provider who gave advice should be included.

If an employee requests leave to care for his or her child whose school or place of care is closed, or childcare provider is unavailable, the employee can be required to provide the following information:

- Name and age of the child
- Name of the school, place of care, or childcare provider that has closed or become unavailable
- A statement that no other suitable person is available to care for the employee's child

A [FFRCA leave request form](#) with all required information is available in the HR Library.

Q: Are substitutes eligible for emergency paid sick leave and expanded FML?

A: It depends. Districts' needs, desires, or size may determine the approach they take regarding payment of substitutes under Families First Coronavirus Response Act (FFCRA).

Substitutes meet the definition of employee under the FFCRA. However, a substitute only qualifies for paid leave under FFCRA if work is available. A substitute who has work available would be eligible for emergency paid sick leave (EPSL) regardless of how long he or she has worked for the district. To be eligible for expanded family medical leave (EFML), the substitute would need to be on the district's payroll for 30 days.

If a substitute requests EPSL or EFML, calculating time worked is not as simple as an employee who works a standard schedule. The DOL recommends the employer use hours worked over the past six months, or the entire period of employment, if shorter. The amount of leave available is based on the substitute's average hours worked.

If a district chooses to terminate substitutes not engaged in work, consider the following:

- The substitute is no longer employed, so not eligible for EPSL or EFML.
- The substitute may be eligible for unemployment now and during the summer because a letter of reasonable assurance wouldn't be issued to a terminated substitute.
- This action is neat, tidy, and easy to manage.
- The substitute may seek other employment opportunities.

If a district continues to employ substitutes not engaged in work, consider the following:

- The substitute may not be eligible for unemployment during the summer if a letter of reasonable assurance is given.
- The substitute is eligible for unemployment during this unscheduled break when no work is available.
- The substitute would be eligible for EPSL or EFML when employment opportunities return.

- Substitutes may be more likely to return to substituting when school resumes.

A substitute may deny signing a letter of reasonable assurance when issued. As a district, it is important to document the process and term all substitutes who do not return the signed letter.

We realize FFCRA is difficult to apply to some areas of school district business. As clarifications continue to be made, updates will be provided.

Q: Can we ask for a release to return to work if the employee is absent for medical reasons related to COVID-19?

A: An employer may follow established procedures and require a doctor's release or fitness for duty certification if the employee was absent for an illness, including COVID-19. Medical documentation should be required if a person is known to have been exposed to or treated for a communicable disease. However, you may need to be flexible in the type of documentation you will accept. Under current circumstances, an employee may not be able to visit a health care provider in person, may be advised to recover at home, or need care following exposure. While it is always important to treat similarly situated individuals the same, you may also need to consider individual circumstances. Requests for medical documentation should be done consistently and fairly for all similarly situated employees.

General HR guidance

Q: What kind of work expectations are being provided to employees during the COVID-19 closure?

A: Work performed by employees varies from employer to employer and from job to job within the same employer. It is important for an employer to communicate their expectations based on their needs. Clearer expectations may help employers manage leave issues that arise during this challenging time.

Many employers are continuing to compensate employees regardless of work being performed or not. While essential positions are working at home or onsite, other positions do not have work to perform and may be paid while idle. Furthermore, some employees are being compensated with premium pay, while others are not.

If employees are being paid to be idle, it's important to communicate the expectation of availability if the need for work arises. Some employees will be unavailable to report to a worksite due to underlying medical conditions or childcare responsibilities but capable of performing work remotely. Consider that when making requests of employees to come onsite.

Q: What should we do if we know an employee has been exposed to or tested positive for COVID-19?

A: All employees should be instructed to notify HR if they have been exposed to or have been diagnosed with COVID-19. Supervisors also should be instructed to notify HR and forward any documentation received to HR. Coordinating the effort through the HR office can ensure messaging is consistent and handled in a professional manner.

When an employee contacts HR, he or she should be given information regarding applicable leave, instructions for staying away from the workplace, and return to work provisions. If the employee was in the workplace within the past 72 hours, take steps to sanitize any areas the employee visited. HR should determine if any employees or others (students, parents, community members) were exposed to the individual in the course of work and compile a list of those who might have been exposed within the past 14 days.

When informing others of the potential for exposure take care to do this in a way that does not identify the employee who was exposed or tested positive. All information gathered, including information related to an employee's medical information, must always remain confidential.

Information is available in the HR Library topic, [Managing Employee Exposure to COVID-19](#). This information is being updated as new information and forms are developed.

Q: Is an employee allowed to make changes to their dependent care due to closures of daycare facilities?

A: Employers can expect to see an uptick of employee requests to make midyear election changes to their dependent care Flexible Spending Accounts (FSA). Typically, these requests will be to decrease or stop dependent care contributions because a childcare facility has closed.

FSA dependent care programs are made on a pre-tax basis through the employer's cafeteria plan under IRS Code Section 125. In general, a change in the number of hours for a current dependent care provider may qualify for a midyear election change to the FSA. Employers should check their cafeteria plan documents or consult with their third-party administrator regarding midyear changes to determine if these types of requests qualify.

Karen Dooley is a senior HR consultant at TASB HR Services. Send Karen an email at karen.dooley@tasb.org.

April Mabry is an assistant director at TASB HR Services. Send April an email at april.mabry@tasb.org.

Stay up to date with all the latest HR news and trends by joining the HRX mailing list!

SUBSCRIBE

TAGGED: **BENEFITS** **COVID-19** **EPIDEMIC RESPONSE** **HR** **LEAVE**



HRServices

Copyright 1995–2020 Texas Association of School Boards, Inc. All Rights Reserved.

P.O. Box 400, Austin, Texas 78767-0400
800.580.7782 • hrrservices@tasb.org