

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



COVID-19 Frequently Asked Questions: Part 3

JUNE 01, 2020 • Karen Dooley and April Mabry



As workplaces begin to reopen, we've received more questions from members about administering leave, continuation of remote work, workplace safety, and what to do when an employee is diagnosed or exposed to COVID-19. Below are answers to some of the common concerns.

HR Services members can access the [Epidemic Response](#) section of the HR Library for additional information and sample forms. The following flowcharts outlining COVID-19-related processes were recently added:

- [FFCRA Leave Administration](#)
- [Response to Employee Exposure to COVID-19](#)
- [Response to Employee Exhibiting Symptoms or Diagnosis COVID-19](#)
- [Determining Work Arrangements](#)

Leave administration

Q: Do we need to add Family First Coronavirus Response Act (FFRCA) leave administration decisions to our sick leave policy (e.g., Policy DEC (LOCAL))?

A: For most school districts, board-adopted local policy addresses key decisions related to leave administration, including issues like concurrent use of leave. We are not recommending that local board policy be adjusted to address decisions related to the administration of emergency paid sick leave (EPSL) and expanded family and medical leave (EFML). The leave and pay associated with this new law are temporary to address the current emergency situation. Changing board policy to address the short-term administration of this emergency leave is not warranted. We do recommend that the administration inform the board about the changes brought about by the new federal leave law and how the district plans to administer the leave.

Administrative decisions include whether to allow intermittent leave for childcare purposes or remote work and whether employees can use accrued leave to supplement EPSL and/or EFML. Note that your Policy DEC (LOCAL) reflects your local decision about concurrent use of leave for family and medical leave (FML), which also applies to use for EFML purposes. The [Leave Request Form—Emergency Paid Sick Leave and Expanded Family and Medical Leave](#) should be used to reflect administrative decisions.

Q: If an employee has already exhausted their FML for the year, are they eligible for EFML during that same year?

A: An employee is entitled to a total of 12 weeks of family and medical leave (FML) in the 12 months designated by the employer (e.g., FML year). This includes standard FML and EFML. If an employee uses 12 weeks of FML for their own serious health condition, to care for a family member with a serious health condition, or to care for a child following birth, adoption, or foster care placement, they do not have any leave remaining for EFML during the designated FML year.

When a new FML year begins (e.g., July 1 or the start of the school year), the employee would be eligible to take 12 weeks of leave for a qualifying reason, including EFML. Remember, even if your FML year restarts with the new school year, an employee is limited to a total of 12 weeks of EMFL from April 1, 2020 to December 31, 2020.

For example, if an employee took six weeks of FML to recover from surgery in the 2019–2020 FML year, he or she could take an additional six weeks of EFML to care for a child. At the start of the 2020–2021 FML year, the employee would only be eligible to take six weeks of EFML up to December 31, 2020.

Q: Does FFCRA allow for intermittent use of leave?

A: An employer may allow the use of intermittent leave for a qualifying EPSL reason while an employee is teleworking. Additionally, an employer may agree to intermittent use of EFML to care for a child. The [FFCRA leave request form](#) found in the HR Library has been updated to reflect these administrative employer options.

Q: Can an employee take FFCRA leave during the summer when school is out of session for childcare purposes?

A: Yes, if summer childcare arrangements, including a camp, recreational program, day care center, or individual provider, are closed or unavailable because of COVID-19, the employee may take FFCRA leave. Documentation of the closure is required and may

include a closure notice or statement from the facility or individual who provides the care.

Q: Is an employee who chooses to homeschool their child on a full-time basis eligible for FFCRA leave when school reopens in the fall?

A: Choosing to withdraw a child when schools physically reopen and begin full-time homeschooling is not a qualifying reason for EFML. FFCRA leave only applies if the parent must care for his or her child whose school or place of care is closed (or childcare provider is unavailable) due to a COVID-19 related reason.

A school facility closed but providing online instruction or other models of instruction requiring students to complete assignments at home may serve as a qualifying reason for an employee to request FFCRA leave. An employer may also consider remote work arrangements in these situations.

Q: Is an employee eligible for leave if they are fearful to return to work due to COVID-19?

A: To be eligible for FFCRA leave, an employee must be subject to a quarantine or isolation order, advised by a health care provider to self-quarantine, or experiencing COVID-19 symptoms and seeking a medical diagnosis. If an employee, absent a medical condition, is fearful or reluctant to return to the workplace, inform them of steps taken to ensure their safety.

For positions where responsibilities can effectively be performed remotely, the employer should consider allowing the employee to do so. Decisions on whether remote work is permitted should be based on a legitimate business reason. If remote work is not feasible (e.g., custodial, maintenance, food service) and the employee continues to refuse to return, follow leave policies and provide access to accrued paid and unpaid leave (e.g., discretionary personal leave or vacation). An employee's refusal to return may be considered a resignation. If so, clearly documenting the requirement

to return and an employee's refusal to return will help manage unemployment claims that may follow. Refer to the [HR Library](#) topics on termination and resignations and follow required procedures for termination of contract and at-will employees.

Workplace guidelines

Q: May an employee be exempt from wearing a face mask due to a health condition?

A: Wearing a face mask for safety precautions may be required, but an exemption may be necessary as an accommodation for an employee unable to comply. The employer should begin the Americans with Disabilities Act (ADA) interactive process to identify what prevents the employee from using a face mask and what accommodations are available. Safety reasons may prevent the employer from waiving the requirements, but this should be determined through the interactive process.

Q: Is remaining at home the only option for an employee who has a high-risk health factor?

A: While continuing to work remotely is an accommodation available to an employee with a high-risk health factor, it is not the only option. When engaging in the interactive process an employer may consider the role served by the employee, location of work performed, and amount of interaction with the public to determine an appropriate accommodation. The employer may be able to limit the individual's contact with others by establishing one-way hallways or aisles, using plexiglass or other barriers, adjusting the work schedule, or assigning the employee to a temporary position. If the employer is unable to accommodate at the worksite, continuing to work remotely may be an option.

The [Determining Work Arrangements Flowchart](#) in the HR Library can serve as a guide for returning employees with high-risk health factors safely to the workplace.

Q: What expectations should an employer have for receiving medical certification from an employee?

A: Most employer policies, specifically Policies DEC (LOCAL) and DBB (LOCAL), address medical documentation as it relates to use of leave or the need for an ADA accommodation. Employees may have difficulty accessing their health care provider during these unprecedented times. If the reason for a leave of absence or accommodation is obvious, the level of required documentation may be adjusted. Being practical and flexible will help the employer navigate these requirements.

Alternatives may be available such as having a conversation with the employee to gather medical information, using documents from past medical visits, or making temporary approvals for leave or accommodation with an intention to obtain documents when they may be available.

Q: Can we use an employee's accrued comp time when an employee is paid to be idle?

A: Accrued compensatory (comp) time cannot be used to offset the cost incurred because an employer chose to pay people their full salary during the crisis. An employee with accrued comp time must be able to use the accrued time as time off or receive compensation. If employees are working a reduced schedule and only paid for actual time worked, comp time could be used to cover additional time up to the full weekly pay. However, if all employees receive full pay while idle or working a reduced schedule, employees with a comp time balance should receive the same benefit.

Q: Should you monitor workers' off-duty social distancing and travel and exclude from the workplace for high-risk behavior?

A: Monitoring off duty social distancing and travel may be an impossible task for an employer. Making speculations about an employee's social activities may lead to poor morale and bad publicity for the organization. Using social media as a tool to identify an employee's poor judgment may be unfair, especially when other employees may not post their personal activities. Sending employees home for irresponsible behavior outside of the workplace may cause an undue hardship on the organization.

An employer may consider following Centers for Disease Control (CDC) guidelines for cleaning, wearing personal protective equipment, social distancing at work, restricting public access to the workplace, and limiting business travel as measures to protect employees. Establishing screening protocol is another tool for managing exposure. This may include daily temperature readings, symptom monitoring, and questions regarding possible exposure to COVID-19. An employer has a responsibility to protect employees, so communicating the impact of reckless behavior outside of the workplace to the safety of the workforce is important.

Some state and local governments may require people who have recently traveled to quarantine or isolate for 14 days. Travel considerations for [international](#) and [US](#) travel are available on the CDC website and may be used to make informed decisions. The [Recent Travel Form—Employee](#) from the HR Library can be used, and the employer can determine if isolation is required or if remote work is available.

The [FFCRA Leave Administration Flowchart](#) in the HR Library is available for determining appropriate leave. Subject to quarantine may be a qualifying reason under EPSL, even if it was due to leisure travel. Being punitive or not allowing access to appropriate leave may discourage employees from reporting risk of exposure and impede required preventative precautions taken by the employer.

Q: Are there limitations on staff returning to the workplace?

A: The May 18, 2020, Executive Order No. GA-23 establishes the limits for students, teachers, and staff presence on school campuses:

"Public education teachers and staff are encouraged to continue to work remotely from home if possible, but may return to schools to conduct remote video instruction, to perform administrative duties, and, beginning June 1, 2020, to provide in-person classroom instructional activities and learning options as permitted and offered by school districts, under the minimum standard health protocols found in [guidance issued by the TEA](#)."

The TEA guidance below is intended for in-school instruction and visits by students, teachers, and staff, starting June 1 as part of:

- Summer learning options if offered by school systems, including
 - In-person summer school programs including staff and student participants
 - Virtual summer school programs, which may require some teachers to use school facilities to deliver instruction
- Instructional activities that school systems would like to prioritize during the summer (e.g., special education evaluations, specialized assessments, individualized tutoring, etc.)
- Administrative activities by teachers, staff, or students (e.g., locker clean out, return/retrieving band instruments, etc.)
- Any other activities that teachers, staff, or students must complete and cannot accomplish virtually

For central office staff, employers may want to consider the [guidance for office-based employers](#) from the Governor's Strike Force to Open Texas, which limits the number of staff allowed in the workplace at one time.

Other resources

Additional resources are available in the [Epidemic Response](#) section of the HR Library and [TASB's COVID-19 Resources](#).

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.

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