

Question Asked	
<p>How about employees who are not under a mandatory quarantine/isolation by Public Health, but were directed by their doctor to self quarantine? Can we charge their accruals?</p>	<p>This likely falls under the federal law (FFCRA) and employees in this situation would qualify for up to 80 paid hours, with traditional FMLA/ADA potentially applying thereafter. Accruals could be charged after an eligible employee exhausts his/her leave under the FFCRA, so long as you normally charge accruals. Is there an accommodation that could be made so that the person could safely work?</p>
<p>are all healthcare providers exempt from the federal provisions, or only certain types of providers?</p>	<p><u>Health Care Provider Exception</u> Under this exception, "health care provider" is broadly defined as anyone employed at: (i) Any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity; (ii) Any entity that contracts with any of the foregoing entities to provide services or to maintain the operation of the facility; (iii) Any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments; or (iv) Any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19</p>
<p>You mentioned a number of different policies that should be put in place. Can you send sample policies and language for counties to build on?</p>	<p>Policies really depend on the circumstance. We've written policies county and town specific - even department specific in some cases. Feel free to reach out to NYSAC, your attorney, or kbolanos@bolanoslowe.com or call 585-202-4177.</p>

<p>EO 202.4 indicates no accrual charge. If an employee has a prescheduled vacation or day off for dr. appointment, etc and are unavailable to telework, can accruals be charged?</p>	<p>Yes, the popular thinking is that the executive order is referenced in the "whereas" clause of needing to "cope with the disaster". The time off you mention is unrelated to the disaster. It would be an unfair advantage for employees who happened to have vacation during this time to obtain more vacation than other employees. With that said, given the travel issues, most employers are allowing employees to reschedule vacation time. Other information regarding interplay with Accrued PTO: During first 10 days of EFMLA, an employee may opt to use EPSL or accrued PTO, but an employee may not use PTO to supplement any EFMLA or EPSL, unless the employer agrees. Employers may not require employees to use PTO to supplement EPSL or EFMLA.</p>
<p>is disclosure to fellow e's only if a postive c19 test and not if other flu / reg flu sympts were experienced . limited degree of Disclosure ?</p>	<p>Countes are handling this differently. Some are only notifying of positive COVID-19 test; others are providing more information, such as when there have been exposures to symptomatic people. We will provide a sample communication.</p>
<p>Can you take the expanded FMLA in partial hours or days of the week? Or does it have to be continuous period...?</p>	<p>It appears that intermittent use of this leave is permissible. Regulations are expected in April 2020. Here is what we know now: Employees may take multiple leaves of absence under FFCRA, but it is limited to 12 weeks of FMLA total and 80 hours of EPSL total (or 2 weeks of average hours for part-time employees). Example: Employee needs 40 hours off to care for child in April 2020. Employees receives 14-day governmental order of quarantine in May 2020; Employee opts to take 40 hours of EPSL (and one week of unpaid EFMLA concurrently) in April 2020. Employee will have 40 hours of EPSL remaining for use in May 2020. Employees may use EPSL and EFMLA intermittent with employer's agreement in the following circumstances: o Where the employee is teleworking o Where the employee is reporting to work in person but also needs EPSL or EFMLA to care for a child due to school / child care closures / unavailability resulting from COVID-19</p>
<p>With respect to the Fed law which gives 12 weeks off if have children whose schools have closed, does this also apply to closed daycare. also anyone whose kid's school has closed can get</p>	<p>Yes, it applies to school or daycare closures. You should require proof. For example, you could prepare a certification attesting that no other person in the household is utilizing leave during the same period for the same purpose or otherwise available to care for the child. This could be investigated if necessary or if fraud is suspected (like you would for any other leave abuse).</p>

<p>this even if a spouse is at home? Looks prime for abuse.</p>	
<p>Is a child defined by age? What age?</p>	<p>Original EFMLA statute: "to care for the son or daughter under 18 years of age". The CARES Act amendment to FFCRA permits USDOL to issue regulations as necessary to ensure consistency between Divisions E-G of FFCRA. USDOL guidance states for consistency, "son or daughter" also means an adult child who (1) has a mental or physical disability and (2) is incapable of self-care because of that disability. NY law states "minor child" typically that is under age 18. Federal law -- Form for child leave states: " A child is defined as a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis. A parent is defined as a biological, foster, or adoptive parent, parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child."</p>
<p>For the expanded FMLA leave, is there a requirement for number of hours worked for the 30 days of employment?</p>	<p>Not specified.</p>
<p>If an employer is providing temporary childcare for its essential employees, does that obviate the need to provide paid leave for employees whose children's normal daycare is closed?</p>	<p>I do not believe that an employer may force an employee to use a specific child care provider. Maybe the April guidance will include some information about this question. From a practical standpoint it would, it is just not clear that an employer can require the employee use a particular provider.</p>

<p>Has the NYS Department of Labor issued guidance re: what agencies and what kind of documents qualify for workers to access NYS emergency paid sick leave?</p>	<p>The forms issued state that the applicant must attach the mandatory or precautionary order of quarantine or isolation. These are government issued orders per the NYS law. See forms at: http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/ccovid19.pdf and http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/scovid19.pdf On the federal, we recommend documentation from Employees. Private employers who may receive tax credits certainly will be requiring employees to provide appropriate documentation. Public employers arguably should as well because they will be ultimately utilizing taxpayer money to fund the cost for such leave (since no credit is available for counties). For EFMLA, we recommend a certification of the need. This would be: Notice posted on government, school, or day care website, Notice published in newspaper, or a letter or email from official of school, place of care or child care provider. For EPSL, we recommend you create a form: o Employee’s name o Qualifying reason for requesting leave o Statement employee is unable to work (including telework) for that reason o Date(s) for requested leave o Documentation of the reason for leave (Governmental quarantine order, Health care provider note, or School closure notice or e-mail (per EFMLA above))</p>
<p>Does the new ACT apply to all counties within the State of New York, regardless of employee size?</p>	<p>Yes</p>
<p>A review of the new FFCRA indicates that many of the staff may submit requests to take off for 2 weeks or 12 weeks for child care. If this happens all at once, beginning April 1st, how can the departments meet the obligation and needs to provide these essential services? Can a department request that</p>	<p>Some counties are providing child care when this happens. There is not a way for the county to space out the requests because if a person does not have childcare, they have a right to the EFMLA. The emergency responder and health care worker exceptions should help here.</p>

<p>employees work together with supervisors to “space out” requests for the two weeks off over the next 6 weeks, thus providing a solution to providing essential services?</p>	
<p>May an employee take FFCRA leave intermittently, similar to FMLA</p>	<p>See above answer</p>
<p>Is the Emergency FMLA in addition to regular FMLA?</p>	<p>No. It is a total of 12 weeks for all FMLA. Issue: Use of Traditional FMLA and EFMLA Rule: Employees only get 12 weeks of FMLA total per 12-month period (including EFMLA). Example: If employee has already used 12 weeks of traditional FMLA, he/she cannot receive EFMLA during this 12-month period. Example: If employee has used 8 weeks of traditional FMLA, he/she can only receive 4 weeks of EFMLA during this 12-month period.</p>
<p>Why don't counties receive the tax credit?</p>	<p>It is unfortunate, but counties do not receive the tax credit. At this point, it does not appear that counties will be eligible for credits for any leave provided to employees. The original Section 7001 subsection (e)(4) of the FCRR provides: "This credit shall not apply to the Government of the United States, the government of any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing."</p>