

Families First Coronavirus Response Act/Emergency Paid Sick Leave Act

Q-May Emergency Paid Sick Leave Act (EPSLA) leave be taken on a partial day/hourly basis?

A-Yes, if an employing agency directs or allows an employee to **telework**, or the employee normally works from home, the employee may take EPSLA paid sick leave **intermittently** for any qualifying circumstance, but only when the employee is unavailable to telework because of a COVID-19 related reason. Also, on workdays when EPSLA paid sick leave does not cover all scheduled hours, an employee (teleworking or onsite) may have a mix of work hours, EPSLA paid sick leave, or personal leave.

Q-Must Emergency Paid Sick Leave Act (EPSLA) leave be taken on a consecutive day basis?

A-Yes in some cases. According to OPM guidance, an employee who is **reporting to their normal worksite** and begins taking EPSLA leave for qualifying circumstances (1), (2), (3), (4) and/or (6), the employee must use the permitted days/hours of leave **consecutively** until the employee no longer has a qualifying reason to take the leave or until the leave is exhausted. If an employing agency directs or allows an employee to **telework**, or the employee normally works from home, the employee may take EPSLA paid sick leave **intermittently** for any qualifying circumstance, but only when the employee is unavailable to telework because of a COVID-19 related reason.

<https://www.opm.gov/policy-data-oversight/covid-19/opm-summary-of-statutory-and-regulatory-requirements-in-connection-with-the-emergency-paid-sick-leave-act-epsla.pdf>

Q-Who is Covered under the FFCRA Expanded FMLA provisions?

A-Federal employees who are not covered by the Title 5 FMLA provisions administered by the Office of Personnel Management (see 5 CFR, Subpart L) are then covered by Title I of FMLA (administered by Department of Labor). Federal employees covered by Title I of FMLA include, but are not limited to:

- (1) part-time federal executive branch employees who do not have an established regular tour of duty during the administrative workweek;
- (2) federal executive branch employees serving under intermittent appointments or temporary appointments with a time limitation of one year or less;
- (3) federal executive branch employees who are not covered by title II of FMLA (i.e., Title 5 FMLA provisions/OPM) unless the agency has exercised a special personnel authority in statute to exempt its employees from coverage under title I of FMLA (i.e., title 29 FMLA provisions).

Because the federal employees in 1-3 above have limited benefits under Title I of the FMLA, they are eligible for the expanded Family Medical and Leave Act coverage Congress included in the Families First Coronavirus Response Act (Division C). Also see Table B of OPM's Fact Sheet: Federal Employee Coverage under the Leave Provisions of FFCRA.

Families First Coronavirus Response Act/Emergency Paid Sick Leave Act

Q-Under the Families First Coronavirus Response Act (FFCRA), what are the qualifying circumstances that an employee may request to use the Emergency Paid Sick Leave Act (EPSLA) paid sick leave if an employee is unable to work (or unable to telework) due to COVID-19 related reasons?

A-The employee meets one of six qualifying circumstances/reasons:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis (NOTE: an **employee must be experiencing any of the following symptoms of COVID-19**: fever, dry cough, shortness of breath, or other COVID-19 symptom identified by the U.S. Centers for Disease Control and Prevention. The condition of “seeking a medical diagnosis from a health care provider” is limited to time the employee is unable to work because the employee is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a test for COVID-19.);
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury. (No conditions specified at this time.)

Q-What are quarantinable communicable diseases such as COVID-19 and how has OPM defined isolation and quarantine?

A-

- A disease for which Federal isolation and quarantine are authorized.
- Isolation may be used to separate people with a contagious disease from people who are not sick in order to stop the spread of that illness
- Quarantine may be used to separate and restrict the movement of people who were exposed to a contagious disease to see if they become sick and to prevent the possible spread of that disease to others.
- Executive Order 13295 includes diseases with ‘severe acute respiratory syndromes’, such as COVID-19
- CDC, State, Local health departments may determine that exposure would jeopardize the health of others and quarantine is warranted to protect the public’s health.

Q-How much emergency paid sick leave under the Families First Coronavirus Response Act (FFCRA)/Emergency Paid Sick Leave Act (EPSLA) am I eligible to receive?

A-A full-time employee is eligible for 80 hours of EPSLA leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over two pay periods. Contact your servicing human resources office for further information on the number of leave hours for employees with intermittent or unusual work schedules.

Q-I heard there are pay limits and calculation of pay on how you can use the Emergency Paid Sick Leave Act (EPLSA) leave based on the qualifying circumstance?

A-For qualifying reasons (1), (2), or (3): employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period). For qualifying reasons (4), (5), or (6): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period). Employees earning more than the regulatory limit will incur a debt.

Q-Does the closure of schools and childcare fall under the guidelines of the Families First Coronavirus Response Act (FFCRA)/ Emergency Paid Sick Leave Act (EPLSA) sick leave of 80 hours?

A-Yes, under EPSLA qualifying circumstance #5 an employee caring for a child whose school/place of care is unavailable related to COVID-19 reasons and there is no other suitable person to care for the child is eligible for emergency sick leave. However, employees will be paid at 2/3 of their daily rate up to a maximum of \$200 per day and an aggregate of \$2,000 over a two week period. In some instances this may create a debt.

Example using DC locality pay table where the total daily rate is not covered and a debt is created:

2/3 Pay For Qualifying Reason		
GS 12 Step 1	Daily Rate	Bi-Weekly
Regular Sick/Annual Leave	\$ 330.94	\$ 3,309.40
2/3 of daily rate	\$ 218.42	\$ 2,184.20
COVID Leave daily maximum	\$ 200.00	\$ 2,000.00
Difference	\$ (130.94)	\$ (1,309.40)

Q-Employees on Administrative Leave/Excused Absence, will they continue to earn their regular annual and sick leave?

A-Yes, as long as the employee is on paid leave they will continue to earn annual and sick leave.

Q-What if I was ill in early April and had to use my sick leave to test for COVID-19 and the test was negative, can I change my sick leave hours to FFCRA hours?

A-No, FFCRA hours cannot replace your sick leave hours taken prior to Wednesday, April 22, 2020, when OPM issued the [Summary of Statutory and Regulatory Requirements in Connection with the Emergency Paid Sick Leave Act \(EPSLA\) – Application to Federal Employees](#)

Q- Is the 80 hours of paid sick leave under the Families First Coronavirus Response Act (FFCRA)/ Emergency Paid Sick Leave Act (EPSLA), a separate leave bank and only available for use after sick and annual balances have been depleted?

A-The EPSLA paid sick leave is separate leave balance available for COVID-19 qualifying circumstances. You do not need to deplete sick and annual leave balances in order to use this leave.

Q-Can retroactive EPSLA leave be entered in place of sick or annual leave already taken?

A- An employee may request EPSLA paid sick leave to cover a past period of **leave without pay** occurring during the period of April 1, 2020, through December 31, 2020.

Q- Are full time General Schedule (GS) employees eligible for EPSLA paid sick leave?

A-Yes, employees who are full-time, part-time, or intermittent are all eligible and whether they are in the GS or Federal Wage System.

Q- How can an employee request to use EPSLA leave?

A- An employee is required to provide their supervisor with the following documentation to support the taking of EPSLA paid sick leave.

- a. General information:
 - (1) Employee's name;
 - (2) Date(s) for which leave is requested;
 - (3) Qualifying COVID-19-related reason for the leave; and
 - (4) Oral or written statement that the employee is unable to work because of the qualifying COVID-19-related reason for leave.
- b. To take EPSLA paid sick leave for qualifying circumstance (1), an employee must additionally provide the employing agency with the name of the government entity that issued the quarantine or isolation order.
- c. To take EPSLA paid sick leave for qualifying circumstance (2), an employee must additionally provide the employing agency with the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
- d. To take EPSLA paid sick leave for qualifying circumstance (4), an employee must additionally provide the employing agency with either: (1) The name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject; or (2) The name of the health care provider who advised

the individual being cared for to self-quarantine due to concerns related to COVID-19.

- e. To take EPSLA paid sick leave for qualifying circumstance (5), an employee must additionally provide: (1) The name of the son or daughter being cared for; (2) The name of the school, place of care, or child care provider that has closed or become unavailable due to COVID-19; and (3) A representation that no other suitable person will be caring for the employee's son or daughter during the period for which the employee takes EPSLA paid sick leave.

Hazardous Pay Differential and Environmental Differential Pay

Q-What is the amount or percentage rate for both Hazardous Pay Differential (HPD) and Environmental Differential Pay (EDP)?

A- IHS authorized Hazardous Pay Differential at 25% for General Schedule (GS) employees and Environmental Differential Pay at 8% for Federal Wage Schedule (FWS) employees. The 25% differential is applied to the employee's regular (not overtime) rate of pay. The amount of the environmental differential is determined by multiplying the percentage rate (8%) by the second step for grade WG-10 on the current regular nonsupervisory wage schedule for the area, rounding one-half cent and over as a full cent. The resulting amount is paid uniformly to each wage employee in the area, regardless of the grade level of the wage employee or the Federal Wage System wage schedule on which the employee is paid.

Q-Why is there such a difference in hazard pay between GS employees and WG employees?

A-Hazardous pay differential and environmental differential pay are governed separately and have different legal authorities. The authority for hazardous pay differential is found in 5 U.S.C. 5545(d). The legal authority for environmental differential pay is found in 5 U.S.C. 5343(c)(4). For a list of pay differentials for hazardous duty pay – refer to [Appendix A for General Schedule](#) and locate *Exposure to Hazardous Agents, work with or in close proximity to: (5) Virulent biologicals*. For environmental differential pay – refer to [Appendix J for Federal Wage Schedule](#) and locate *Micro-organisms—high degree hazard*.

Q-If I take leave for part of the day, do I only receive Hazardous Pay Differential (HDP) for the time working on site?

A-No, if a hazardous duty is performed on a day in which paid leave is taken all hours in a pay status (work hours or paid leave hours) receive the hazardous pay differential. For example, if an employee performs a hazardous duty for 1 hour and then takes annual leave for the 7 hours remaining in his or her workday, the employee is paid hazardous duty pay for the entire 8-hour workday.

Q-When can we stop Hazardous Pay Differential/Environmental Differential Pay (HPD/EDP)?

A-Under 5 CFR 550.906, an agency can no longer pay the hazardous pay differential once any of these three circumstances occur:

- One or more of the conditions requisite for the payment ceases to exist.
- Safety precautions have reduced the element of hazard to a less than significant level of risk, consistent with generally accepted standards that may be applicable (e.g., Occupational Safety and Health Administration or Department of Labor standards).
- Protective or mechanical devices have adequately alleviated physical discomfort or distress.

Q-If I am a Service Unit (SU) employee, but I'm currently teleworking full-time, will I receive Hazardous Pay Differential (HPD) or Environmental Differential Pay (EDP)?

A-No, you will not receive HPD/EDP as a full-time teleworker. IHS General Schedule and Federal Wage Schedule employees performing work onsite at an IHS healthcare facility for at least part of a day are authorized HPD/EDP.

Q-Does Hazardous Pay Differential (HPD) cover direct health care providers at non-hospital health centers?

A-Yes, per the IHS Director's memorandum, IHS General Schedule employees performing work onsite at any IHS Service Unit/health facility are authorized HPD.

Q-What if I do not go into the Service Unit, but I have to go out in the field to perform work such as Office of Environmental Health and Engineering (OEHE) activities, conduct an investigation, courier lab work, transport patients, etc., will I be paid hazardous pay differential (HPD) or environmental differential pay (EDP)?

A-It depends. Per the IHS Director's memorandum, IHS General Schedule and Federal Wage System employees performing work onsite at an IHS healthcare facility are authorized HPD/EDP. However, other employees may also be eligible, subject to approval. Please consult with your servicing human resources office for further guidance.

Q-Would going on the reservation to do a dog bite investigation still count as hazard duty if you did not go to the service unit?

A-It depends. Per the IHS Director's memorandum, IHS General Schedule and Federal Wage Schedule employees performing work onsite at an IHS healthcare facility are authorized HPD/EDP. However, other employees may also be eligible, subject to approval. Please consult with your servicing IHS human resources office for further guidance.