

PAID LEAVE for ALL

FAQ for Workers: Coronavirus Emergency Paid Leave

All workers need access to paid sick leave and extended paid family and medical leave to recover from COVID-19, self-quarantine, provide care to a sick loved one, or care for their children whose school or child care provider is closed without risking their job or their paycheck. Paid leave allows workers to maintain employment and a steady income while taking the time away from work they need to protect their health and the health of their families and communities.

In response to the unprecedented crisis of this pandemic, Congress passed, and the president signed in March 2020, the first national laws to guarantee up to [60.6 million](#) private-sector workers and [22 million](#) public sector workers access to critical paid leave protections in the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The emergency paid leave protections provide covered workers up to two workweeks of paid sick leave and up to 10 weeks of additional paid child care leave. The laws went into effect on April 1, 2020 and expire on December 31, 2020.

Below are responses to some Frequently Asked Questions by workers about the new laws as they pertain to emergency paid sick leave and emergency paid child care leave. Additional resources from our partners are available on the [Paid Leave for All website](#).

Common Questions

1. How do workers apply for and receive emergency paid sick leave and emergency paid child care leave?

Employees must request emergency paid sick leave and emergency paid child care leave directly from their employer. Employees do not need to complete an application for leave but may be required by their employer to submit documentation demonstrating their need for leave. Their employer will pay their full or partial wages while they are on emergency paid sick leave and emergency paid child care leave.

(For documentation employees may need to provide their employer when requesting leave, see question 12.)

2. Who is eligible for emergency paid sick leave and emergency paid child care leave?

A worker is eligible for both emergency paid sick leave and emergency paid child care leave if they are an employee of a public sector employer or a private employer with fewer than 500 part-time, full-time, and temporary employees. For emergency paid child care leave, an employee must meet the tenure requirement of having been employed by their employer for 30 calendar days before taking leave. Employees who were laid off on or after March 1, 2020 and then rehired are eligible for emergency paid child care leave if they worked for the employer 30 of the last 60 calendar days before being laid off.

Certain Employees May Be Exempt:

- Employees for large employers with 500 or more employees are not eligible for either emergency paid sick leave or emergency paid child care leave.

- Employees for small employers with fewer than 50 employees may be excluded from emergency paid sick leave only for child care purposes and extended emergency paid child care leave if their employer determines that providing such leave to them would jeopardize the viability of their business as a going concern. (See question 21.)
- Health care providers and emergency responders may not be eligible for either emergency paid sick leave or emergency paid child care leave if their employer decides to exclude them. (See question 22.)
- Federal employees are not eligible for emergency paid child care leave. They may also be excluded from emergency paid sick leave if determined by the Office of Management and Budget.

3. How much paid leave do workers get?

Full-time employees are eligible for 80 hours (two weeks) of emergency paid sick leave (including child care leave) and 12 weeks (10 weeks paid) of emergency child care leave.

Part-time employees are entitled to emergency paid sick leave equal to their average number of work hours (including overtime) in two weeks up to 80 hours, and emergency child care leave equal to their average daily hours up to 12 weeks (10 weeks paid). If a part-time employee's regular hours vary, their average daily hours are calculated from a six-month average which includes overtime.

4. For what reasons can a worker take paid leave?

For emergency paid sick leave, a covered employee can take up to 80 hours for any one of the six qualifying reasons below:

- 1) They are subject to a federal, state, or local quarantine or isolation order related to COVID-19, which includes a general shelter-in-place or similar stay-at-home order;
- 2) They have been advised by a healthcare provider to self-quarantine related to COVID-19;
- 3) They are experiencing COVID-19 symptoms and are seeking a medical diagnosis;
- 4) They are caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or who has been advised by their healthcare provider to self-quarantine due to COVID-19;
- 5) They are caring for a son or daughter whose school or place of care has been closed due to COVID-19, or whose child care provider is no longer available due to COVID-19; or
- 6) They are experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. None have been specified at this time.

For emergency paid child care leave, a covered employee can take up to 12 weeks (10 weeks paid) only to care for a son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19. A son or daughter can include a biological, adopted, or foster child, a step-child, a legal ward, a child for whom you are standing in loco parentis, and/or an adult son or daughter who (1) has a mental or physical disability and (2) is incapable of self-care due to that disability.

5. How much are workers paid while on leave?

Employees taking emergency paid sick leave for their health (reasons 1, 2, and 3 above) receive their regular rate of pay up to \$511 per day, or a total of \$5,110 in two weeks.

Employees taking emergency paid sick leave to provide care to another individual (reasons 4 and 5 above) receive two-thirds of their regular rate of pay up to \$200 per day or a total of \$2,000 in two weeks.

Employees taking emergency paid child care leave to care for a child whose school or place of care has closed receive two-thirds of their regular rate of pay up to \$200 per day or a total of \$10,000 in 10 weeks.

If these amounts are less than an employee's regular wages, employers can choose to supplement their pay so they receive their full wages.

6. Are workers' jobs protected while on emergency paid sick leave and emergency paid child care leave?

Generally, yes. Employees taking emergency paid sick leave and emergency paid child care leave have a right to return to work, though some exceptions exist for employees of small employers with fewer than 25 employees. The law requires employers to provide the same (or a nearly equivalent) job to an employee who returns to work following leave. Employers are prohibited from firing, disciplining, or otherwise discriminating against an employee because they took paid leave. Nor can an employer fire, discipline, or otherwise discriminate against an employee because they filed a complaint or proceeding related to paid leave. However, employees working for small employers with fewer than 25 employees who take emergency paid child care leave may not be restored to their original or equivalent position if that position no longer exists due to circumstances caused by the public health emergency, although in that case, the employer must try to find another similar position for the worker.

This protection does not mean that employees are protected from employment actions, including layoffs, that the employer would have taken regardless of whether the employee took leave. For example, an employer can lay off an employee who takes paid leave for legitimate business reasons, such as a worksite closure, if the employer can demonstrate that the employee would have been laid off even if they had not taken leave.

7. What happens to workers' health insurance while on paid leave?

An employee who takes emergency paid sick leave and emergency paid child care leave is entitled to continued health insurance coverage under the employer's group health plan on the same terms as if the employee did not take leave. This requirement also applies to supplements to a group health plan, such as a flexible spending account. Private health insurance policies purchased by employees from an insurance provider, however, are the employee's responsibility to maintain. If an employer provides new or otherwise changes health benefits or plans while an employee is taking leave, the employee is entitled to the new or changed plan/benefits to the extent as if the employee was not on leave.

8. How does emergency paid sick leave and emergency paid child care leave affect workers' existing employer-provided paid leave benefits?

Emergency paid sick leave and emergency paid child care leave are provided to employees in addition to any existing paid leave or paid time off they receive from their employer. An employer is prohibited from requiring an employee to use other employer-provided paid leave before using the 80 hours of emergency paid sick leave. However, for the 10 weeks of emergency paid child care leave, an employer can require an employee to take it concurrently with any existing paid leave benefits, but only to pay an employee the full amount which they are entitled to under their existing paid leave policy.

9. How does emergency paid child care leave affect workers' FMLA leave?

Emergency paid child care leave is considered part of the 12-week total leave that employees are entitled to in a 12 month period under the Family and Medical Leave Act (FMLA). Therefore, any emergency child care leave an employee takes may count against their 12-week FMLA entitlement in a 12 month period. It also means that the emergency child care leave available to an employee may be reduced by any other FMLA leave they took within the previous 12 month period.

Detailed Questions

10. What emergency paid sick leave and emergency paid child care leave benefits do self-employed workers receive?

Self-employed workers who need to take emergency paid sick leave or emergency paid child care leave for qualifying reasons can apply to receive a refundable income tax credit to offset their federal self-employment tax equal to the qualifying amount.

11. What documentation may workers need to provide their employer to take paid leave?

When requesting emergency paid sick leave or emergency paid child care leave, employers can request that an employee provide either orally or in writing the following information:

- Their name;
- The date(s) for which they are requesting leave;
- The reason for leave; and
- A statement that they are unable to work because of the above reason.

If an employee requests leave because they are subject to a quarantine or isolation order or to care for an individual subject to such an order, their employer might additionally request the name of the government entity that issued the order. If an 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, their employer can request the name of the health care provider who gave advice.

If an employee requests leave to care for their child whose school or place of care is closed, or child care provider is unavailable, they may also be asked to provide:

- The name of their child;

- The name of the school, place of care, or child care provider that has closed or become unavailable;
- A statement that no other suitable person is available to care for their child; and
- For a child older than 14, special circumstances for which they need child care leave during daylight hours.

12. Are part-time and hourly workers covered?

Yes, part-time and hourly employees are covered and eligible for both emergency paid sick leave and emergency paid child care leave.

13. Are temporary workers covered?

Yes, temporary employees are covered. If a temporary employee's host employer is covered by the law, they are considered an employee even if working temporarily or through a temp agency. If a temporary employee is later hired by their host employer as a regular employee, their time working as a temporary employee counts towards their 30 calendar day tenure requirement for emergency child care leave.

14. Are undocumented workers covered?

Eligibility for emergency paid sick leave and emergency paid child care leave laws are based on a worker's employment relationship regardless of immigration status. Therefore, if an undocumented worker is an employee, and their employer is covered by the laws, they can receive emergency paid sick leave and emergency paid child care leave. However, employers may not receive refundable tax credit reimbursements for these undocumented employees' leave.

15. Are workers covered if their hours have been reduced?

Maybe. If an employee is still working some hours and they are unable to work those existing hours due to a COVID-19 qualifying reason, they are eligible for emergency paid sick leave and emergency paid child care leave. However, if an employee's hours have been reduced to zero and they are no longer scheduled to work, they are not eligible for either emergency paid sick leave or emergency paid child care leave. This is because an employee without scheduled work hours is not prevented from working due to a COVID-19 qualifying reason, even if the reduction in hours was somehow related to COVID-19. Employees with lost income due to reduced hours may qualify for unemployment insurance, depending on their state's rules.

16. If a worker is laid off or furloughed, can they receive emergency paid sick leave and emergency paid child care leave?

If an employee is furloughed or laid off, they are no longer eligible for emergency paid sick leave or emergency paid child care leave under the law, though their employer must still pay them for any covered leave they had already taken before they were laid off or furloughed. If an employee's worksite is closed, they cannot receive paid leave as of the date the worksite closed. Even if the worksite is only closed temporarily and has reopened, or intends to reopen in the future, an employee is not eligible for any paid leave benefits from the time their worksite was closed.

17. If a worker is receiving unemployment insurance benefits, can they also receive emergency paid sick leave and emergency paid child care leave?

No, a worker cannot collect unemployment insurance benefits if they are also receiving emergency paid sick leave or emergency paid child care leave. However, each state has its own unique set of rules for unemployment insurance, so workers should check with their state agency.

18. Can a worker take emergency paid sick leave if they are currently healthy but they have a health condition which makes them especially medically vulnerable?

For a medically vulnerable employee to qualify for emergency paid sick leave, they must get a recommendation from their health care provider to self-quarantine because they are particularly vulnerable to COVID-19 and are therefore unable to work. They may also qualify for emergency paid sick leave if they are under a quarantine or isolation order which makes them unable to work or telework.

19. Can workers use emergency paid sick leave and emergency paid child care leave intermittently (in smaller chunks, rather than all at once)?

It depends. If an employee is teleworking, then yes, they can take emergency paid sick leave or emergency paid child care leave intermittently if their employer agrees.

If an employee is still going to their worksite (and not teleworking), they may only take emergency paid sick leave for reasons related to child care and emergency paid child care leave intermittently if their employer agrees. These employees cannot take emergency paid sick leave intermittently for any other reason.

20. How does the potential exemption for small businesses (with fewer than 50 employees) work?

Small businesses with fewer than 50 employees may determine that they are exempt from providing certain employees with emergency paid sick leave only for child care purposes and extended emergency paid child care leave if providing such leave would jeopardize the viability of their business as a going concern.

To claim the exemption, an authorized officer of the small business must determine that the following conditions are present:

- 1) The provision of emergency paid sick leave or emergency paid child care leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- 2) The absence of the employee or employees requesting emergency paid sick leave or emergency paid child care leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or

- 3) There are not sufficient employees who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting emergency paid sick leave or emergency paid child care leave, and these labor or services are needed for the small business to operate at a minimal capacity.

At this time, the DOL is not requiring small businesses that are electing to use this exemption to send any proof or documentation. However, the employer is required to document how and why their business satisfies the DOL criteria and is still required to post a Notice of employee rights.

21. Are health care providers and emergency responders eligible for emergency paid sick leave and emergency paid child care leave, and who is considered a worker in these categories?

Maybe. The employer of health care providers and emergency responders may choose to exclude these employees from receiving either emergency paid sick leave or emergency paid child care leave. These employees should check with their employer to determine if they are eligible or have been excluded.

A health care provider is anyone employed at 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. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions. It also includes any individual employed by an entity that contracts with these institutions to provide services or to maintain the operation of the facility. It also includes anyone employed by an entity that provides medical services, produces medical products, or is otherwise involved in making COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes 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.

An emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, firefighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual whom the highest official of a State or territory, including the District of Columbia, determines is an emergency responder necessary for that State's or territory's or the District of Columbia's response to COVID-19.

22. What options exist for workers who are not covered by emergency paid sick leave and emergency child care leave, such as workers at large businesses (with 500 or more employees)?

Workers who are not eligible for emergency paid sick leave and emergency paid child care leave may be able to receive employer-provided paid leave or may be covered by paid or unpaid sick leave or family leave laws in their state or city. Workers can find out if they are covered by state or local laws [here](#). Employees may also be eligible for unpaid Family and Medical Leave (FMLA) if they meet the [eligibility criteria](#).

23. What can workers do if they are denied paid leave or their rights have been violated?

Employees are protected against retaliation, including job loss, discipline, and/or discrimination for using their emergency paid sick leave or their emergency paid child care leave. This includes a right to continued health care coverage provided by an employer, and restoration to the employee's same or equivalent position upon returning from leave.

If an employee believes their employer is improperly refusing them emergency paid sick leave or emergency paid child care leave, they can call the Wage and Hour Division of the Department of Labor, the government agency responsible for enforcing these provisions, at 1-866-4US-WAGE (1-866-487-9243) or visit their [website](#). The call will be directed to the [nearest WHD office](#) for assistance to have their questions answered or to file a complaint. In many cases, employees can also file a lawsuit against their employer directly without contacting WHD. Workers with questions about their rights can also call A Better Balance's free and confidential hotline at 1-833-633-3222 or contact [legal resources in their state](#).