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## **FREQUENTLY ASKED QUESTIONS FOR STATE EMPLOYEES CONCERNING THE REOPENING OF SCHOOLS AND REMOTE LEARNING AND THE APPLICABILITY OF THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

On August 13, 2020, the Governor issued Executive Order 175, which superseded Executive Orders Nos. 104 (2020) and 107 (2020) to the extent that they required all public, private, and parochial preschool program premises, and elementary schools, including charter and renaissance schools (collectively "school districts"), to remain closed. However, Executive Order 175 prescribed a number of health and safety standards that all school districts must meet to reopen for full or part-time in person instruction. Even if a school district resumes partial or full time in-person instruction, Executive Order 175 also permits students to engage in full-time remote learning upon request of a parent or guardian. Further, if a school district is unable or becomes unable to satisfy the health and safety requirements for in-person instruction, Executive Order 175 permits the school district to provide full-time remote instruction to all students.

In conjunction with this reopening process, the CSC is providing the following Frequently Asked Questions (FAQ) concerning State employee eligibility for federal Families First Coronavirus Response Act (FFCRA) benefits during periods of remote learning.

**FOR GUIDANCE CONCERNING PAYMENT, PERIOD OF LEAVE, INTERMITTENT USE OF LEAVE, NOTIFICATION, POSTING, PROHIBITED ACTS AND ADDITIONAL FAQs or any other issue not covered by this document, please refer to**

**FAMILIES FIRST CORONAVIRUS RESPONSE ACT  
GUIDELINES FOR STATE EMPLOYEES (FFCRA Guidelines) at**

**<https://www.nj.gov/csc/employees/FFCRA%20Guidelines.FINAL.June30.2020.pdf>**

**OR**

**FAMILIES FIRST CORONAVIRUS RESPONSE ACT FAQs  
(FFCRA FAQs) at:**

**<https://www.nj.gov/csc/employees/FFCRA%20FAQs.FINAL.June%2030.2020.pdf>**

**FREQUENTLY ASKED QUESTIONS**

- 1. If I am home with my child because his or her school or place of care is closed, or childcare provider is unavailable, do I get paid EPSLA leave, expanded family and medical leave, or both—how do they interact?**

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both paid EPSLA leave and expanded family and medical leave to care for your child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons. The EPSLA provides for an initial two weeks of paid leave at 2/3 of your regular rate of pay, if taken for purposes of child care leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the EFMLEA. If you choose not to use your EPSLA leave, or have already exhausted that leave, you can elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, you will receive 2/3 of your regular rate of pay for the hours you would have been scheduled to work in the subsequent ten weeks under the EFMLEA.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the EFMLEA for leave to care for your child whose school or place of care is closed, or child care

provider is unavailable, due to COVID-19 related reasons. Please refer to FFCRA Guidelines and FFCRA FAQs for more information.

**2. My school district has given parents the option of sending their children to school for in person instruction or virtual learning. We have chosen virtual learning for our children. Under these circumstances, am I eligible for EFMFLEA or EPSLA?**

No, an employee is not eligible to take paid leave under the FFCRA because the employee's child's school is not "closed" due to COVID-19 related reasons; it is open for the employee's child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If the employee's child is home not because his or her school is closed, but because the employee has chosen for the child to remain home, the employee is not entitled to FFCRA paid leave. However, if, because of COVID-19, the employee's child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, the employee may be eligible to take paid leave to care for him or her. Please refer to FFCRA Guidelines and FFCRA FAQs for more information.

**3. If the employee's child's usual child care center closed due to COVID and then reopened at reduced capacity and does not have sufficient slots to permit the child to return to its care, is the employee eligible for leave to stay home with the child?**

Based on this scenario, the child care center is "unavailable" for that child. The FFCRA states that an employee is entitled to paid leave if "the Child Care Provider of such son or daughter is unavailable, for reasons related to COVID-19." Thus, the employee would be eligible for FFCRA benefits if their child care center did not have sufficient slots to permit a child to return to its care and there is no obligation to find alternative child care.

**4. My child's school is beginning the school year under a remote learning program out of concern for COVID-19, but has announced it will continue to evaluate local circumstances and make a decision about reopening for in-person attendance later in the school year. May I take paid leave under the FFCRA in these circumstances?**

Yes, you are eligible to take paid leave under the FFCRA while your child's school remains closed. If your child's school reopens, the

availability of paid leave under the FFCRA will depend on the particulars of the school's operations. See FAQ 2 and 5.

**5. If a school engages in a hybrid model of instruction, are the intermittent days the child is engaging in remote learning a "closure"?**

Yes, an employee is eligible to take paid leave under the FFCRA on days when the employee's child is not permitted to attend school in person and must instead engage in remote learning, as long as the employee needs the leave to actually care for the child during that time and if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively "closed" to the child on days that he or she cannot attend in person. The employee may take paid leave under the FFCRA on each of the child's remote-learning days.

**6. What records does the employee need to provide when taking paid EPSLA leave or expanded family and medical leave?**

If the 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 should provide, and employer should document:

- The name of the child being cared for;
- The name of the school, place of care, or childcare provider that has closed or become unavailable; and
- A statement from the employee that no other suitable person is available to care for the child.

**7. May I take my expanded family and medical leave intermittently while my child's school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?**

Yes, with your employer's permission. Intermittent expanded family and medical leave should be permitted only when you and your employer agree upon such a schedule. For example, if your employer and you agree, you may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while your child is at home because your child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of your leave.

Departments are encouraged to collaborate with their employees to achieve maximum flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department should consider such voluntary arrangements.

### **8. What is a “place of care”?**

A “place of care” is a physical location in which care is provided for your child. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

### **9. Who is my “childcare provider”?**

A “childcare provider” is someone who cares for your child. This includes individuals paid to provide childcare, like nannies, au pairs, and babysitters. It also includes individuals who provide childcare at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.

### **10. Can more than one guardian take EPSLA leave or expanded family and medical leave simultaneously to care for a child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons?**

An employee may take paid EPSLA leave or expanded family and medical leave to care for a child only when they need to, and actually are, caring for the child if the employee is unable to work or telework as a result of providing care. Generally, an employee does not need to take such leave if a co-parent, co-guardian, or usual child care provider is available to provide the care the child needs.

### **11. My child’s school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home. Is it “closed”?**

Yes. If the physical location where your child received instruction or care is now closed, the school or place of care is “closed” for purposes of paid EPSLA leave and expanded family and medical leave. This is

true even if some or all instruction is being provided online or whether, through another format such as “distance learning,” your child is still expected or required to complete assignments.

**12. May I take paid EPSLA leave to care for a child other than my child?**

It depends. The EPSLA leave that is provided under the FFCRA to care for one (or more) of your children when their place of care is closed (or child care provider is unavailable), due to COVID-19 related reasons, may only be taken to care for your own “son or daughter.”

However, paid sick leave is also available to care for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. If you have a need to care for a child who meets these criteria, you may take paid sick leave if you are unable to work or telework as a result of providing care. But in no event, may your total paid sick leave exceed two weeks.

**13. May I take expanded family and medical leave to care for a child other than my child?**

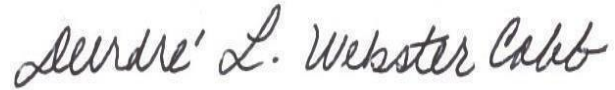
No. Expanded family and medical leave is only available to care for your own “son or daughter.”

**14. If a day care center has reopened, and the employee chooses not to put their child back in the center, can they use this leave time?**

No. Leave for child care purposes under the EPSLA and EFMLEA is available only if the school or place of care is closed, or the childcare provider is unavailable, due to COVID-19 related reasons. If the employee’s day care center has reopened and the employee makes a choice not to put their child back in the center, then such leave is not available.

**15. How do we address families with two state employees and the fact that at least one could be available to watch the child?**

As indicated in the Guidelines, employees should provide a “representation” that no other suitable person will be caring for the child during the period for which the employee takes paid EPSLA leave.

A handwritten signature in black ink that reads "Deirdre L. Webster Cobb". The signature is written in a cursive, flowing style.

Deirdre L. Webster Cobb, Esq.  
Chair/Chief Executive Officer