



COVID FAQs

RETURNING TO WORK

Q: An educator has COVID-19 related symptoms. When can the member report to work? CDC guidelines suggest the following:

Employee tested positive:
A: Fever-free for 24 hours without medication; and symptoms have improved and 14 days have passed since first symptoms; or symptoms have improved and 14 days since positive test received

Employee was symptomatic but tested negative:
A: 14 days have passed since first symptoms

Employee was symptomatic but not tested:
A: Fever-free for 24 hours without medication, symptoms have improved, and 14 days since first symptoms appeared

Employee was within 6 feet for more than 15 minutes with a COVID-19 positive person:
A: Not symptomatic and 14 days from exposure

Employee was within 6 feet for more than 15 minutes with a COVID-19 positive person:
A: Symptomatic but has not sought testing and 14 days from exposure

Q: Someone within an educator's school tested positive for COVID-19, must the educator go to work?
A: Yes. Unless and until their employer says otherwise, they must report to work.

HEALTH, SAFETY, AND PRIVACY

Q: Is an employer required to notify its employees when someone in the building tests positive for COVID-19?

A: No. They are not legally required to.

Q: An educator was in contact with a person who tested positive for COVID-19, must they quarantine?

A: Only if they were in close contact with a positive person. Close contact is defined as within 6 feet for more than 15 minutes.

Q: A child in a member's class tested positive for COVID-19, who can the member notify?

A: Follow each school's specific reporting policy. Always remember the importance of confidentiality.

Q: Who is going to provide disinfectants and sanitizers for classrooms and buses?

A: Schools should be providing members with disinfectants and sanitizers via CARES Act funds.

Q: How often must a school sanitize?

A: The July 15, 2020, Order of the State Health Officer states schools shall take reasonable steps, where practicable, to regularly disinfect frequently used items and surfaces. Educators should refer to each district's reopening plan for additional guidance on sanitizing.

Q: Can an employer require an employee to report COVID-19 symptoms or test results?

A: Yes. Because COVID-19 poses a direct threat to the health and safety of the workplace.

Q: Can an employee who reports COVID-19 health-related information expect privacy?

A: Employers must treat reports confidentially so as to protect anonymity. But employers may notify the Superintendent, ADPH, and the public generally.

Q: Can an employer require a negative COVID-19 test before an employee returns to work?

A: Some employees may have difficulty gaining access to tests, especially in places where widespread testing is unavailable. If an employer is mandating a negative test, AEA may need to step in and determine if the requirement is feasible and legal.

Q: Can an employer require a high-risk educator to take leave or other accommodations?

A: No. This would be a violation of the ADA.

ACCOMMODATIONS

Q: The employer knows the educator is high risk and has not offered an accommodation.

A: An educator desiring an accommodation must request one. The employer is under no obligation to offer an accommodation.

Q: An educator has a child who is high risk and would be considered disabled under the ADA, must the employer provide the member with an accommodation?

A: No. The ADA only protects the member, not the family members of the member.

CARES ACT FUNDS

Q: How can we determine how much money was given to each school district?

A: The amount of money each district received can be found in the chart located in August Issue of the *Alabama School Journal*.

Q: My district is refusing to provide necessary COVID-19 supplies because it already used its CARES Act money. What can I do for my members who need COVID-19 supplies?

A: Each school system is entitled to additional state and federal funds from the State Department of Education. These funds are available upon request. If your district is not taking advantage of this opportunity, contact the local Superintendent immediately.

LEAVE

Q: Must an educator use sick leave if they are experiencing COVID-19 symptoms?

A: It depends. If the member seeks medical attention or a COVID-19 test, then 10 days of FFCRA emergency paid sick leave is available to them.



HELPING YOU NAVIGATE THE UNKNOWN

FFCRA Emergency Paid

Q: Educators are being forced to stay home for building cleaning purposes and/or students testing positive but due to no fault on the part of the educator. The educator does not have FFCRA or paid leave available. What can be done?

A: AEA and the Alabama Association of School Boards (AASB) are encouraging schools to provide paid administrative leave under these circumstances. It is not, however, legally mandated.

Q: An educator is planning to use FMLA leave in January. Can the member take 12 weeks of FFCRA leave now and then take another 12 weeks of FMLA leave in January?

A: No.

Q: May an educator take the 10 days of emergency paid sick leave for self-quarantine and then another 10 days of emergency paid sick leave to care for a family member?

A: No. The total number of time for which you receive paid sick leave is capped at 10 days/80 hours under the Emergency Paid Sick Leave Act.

Q: Can an employer require an educator to use sick leave or personal leave before taking FFCRA leave?

A: No. The employee may choose to utilize sick leave or personal leave under certain scenarios but cannot be forced to use their own accrued leave before being eligible for FFCRA leave.

Q: An educator's daycare

closed due to COVID-19. The employer denied member's request to take up to 10 weeks FFCRA leave under expanded FMLA because other daycares are open.

A: The fact that other daycares are open is irrelevant. All that is required to utilize the 10-week FFCRA expanded FMLA leave is that the member's daycare closes.

Q: An educator has an 18 year old high school senior. The high school closed. Can the educator take 10 weeks of FFCRA expanded FMLA leave?

A: No. The child must be under 18 in order to qualify for expanded FMLA leave.

Q: An educator needs to take leave to care for a family member but cannot afford to take a reduction in pay. What can be done?

A: An educator can supplement the reduction in pay with leave hours so the employee receives 100% pay.

Q: Can an educator use FFCRA leave more than once?

A: Yes. But, the FFCRA leave is capped at 12 weeks (2 weeks for emergency paid sick leave and 10 weeks for expanded FMLA for qualifying child care purposes).

Q: Can an educator use 10 weeks of FFCRA expanded FMLA leave if the child's school is only closed for a few days?

A: No. Once the school reopens, the member must return to work.

School systems are NOT required to advise our members of their right to FFCRA leave. Good systems will remind an employee who is impacted but the employee who fails to request the leave, may lose the leave.

During the COVID-19 pandemic, you may have to deal with seven main categories of leave.

1. Families First Coronavirus Response Act (FFCRA)
2. Traditional Family Medical Leave Act (FMLA)
3. Traditional Sick Leave (Sick Leave)
4. Personal Days
5. Vacation Days (for members who earn them)
6. Paid Administrative Leave
7. Unpaid Leave

Understanding the first category of leave, FFCRA leave, will help you know when and how you will utilize categories 2 through 7.

There are two types of leave provided under the FFCRA:

Type 1: Emergency Paid Sick Leave (FFCRA Emergency Paid Sick Leave)

Type 2: Expanded FMLA Leave (Expanded FMLA)

**It is extremely important that you do not confuse or combine these two types of leave because the rules that apply to the subcategories are different.*

Type 1: FFCRA Emergency Paid Sick Leave has two parts.

Part 1: 100% pay
Part 2: 67% pay

In order to qualify for Part 1: 100% pay you must:

1. Be advised to quarantine by healthcare provider, but do not need to be seeking a test; or
2. Be experiencing symptoms and seeking a diagnosis.

If you are not seeking a diagnosis and do not have an order from your healthcare provider to quarantine, then you cannot use FFCRA Emergency Sick Leave. Instead, you would need to use your accrued sick leave or personal leave.

In order to qualify for Part 2: 67% pay, one of the following must apply:

1. Caring for a person subject to quarantine orders from government officials.
2. Caring for a person subject to quarantine orders from a health care provider.
3. Caring for a child whose school or daycare is closed or whose childcare provider is unavailable due to COVID-19.

(Continued from previous page) **Note: A member can supplement the 1/3 salary deficiency by using accrued sick or personal leave to supplement his or her pay to the normal amount. An employer may NOT require a member use their accrued leave concurrently.*

*** Note: The person does not*

COVID FAQs



It can be anyone in the member's immediate family, a person who lives in the employee's home on a regular basis, or a person who has a relationship with the employee that creates a reasonable expectation that the employee would provide care for that person.

Part 1 and Part 2 of the FFCRA Emergency Paid Sick Leave have the following rules:

- Applies to full time or part time employees
- Can be taken before using accrued sick or personal days
- Are available up to 10 work days/80 hours combined. (A member can use all 10 days for Part 1 leave or all 10 days for Part 2 leave or a combination of both Part 1 and Part 2 but the total for all FFCRA emergency Paid Sick Leave cannot exceed 10 days/80 hours.)
- Can be used intermittently
- Are only available while the reason for the leave exists
- Ex. Member is experiencing a fever and seeking a diagnosis. Member utilizes Part 1, Type 1 of FFCRA Leave (100% FFCRA Emergency Paid Sick Leave). Member sees doctor on day 3 and doctor attributes fever to tooth infection. Doctor releases member to return to work. Member cannot continue taking 100% FFCRA Emergency Paid Sick Leave because

the reason for the leave is no longer present. Member must return on day 4 and will have 7 more days of FFCRA Emergency Paid Sick Leave to utilize later.

Scenarios related to FFCRA Emergency Paid Sick Leave (Type 1, Part 1 and 2)

1. Jane has COVID-19 symptoms. The system is requiring her to use her sick or personal leave before using FFCRA leave. Is this permissible?

a. No. Jane is eligible for 100% pay for up to 10 working days/80 hours under the FFCRA Emergency Paid Sick Leave provided she seeks a test or a medical diagnosis. She does not have to use her accrued leave to be eligible for FFCRA leave, but she must request it.

2. Jane tested positive for COVID-19 in August. She used 80 hours of FFCRA Emergency Paid Sick Leave at 100% pay. Her husband was away on business in August and managed to avoid getting the virus. But in September, he wasn't so lucky. Jane now wants to take an additional 80 hours of FFCRA Emergency Paid Sick Leave at 67% pay. Is this permissible?

No. Even though the FFCRA Emergency Paid Sick Leave may be used intermittently, once the member has exhausted the 80 hours, they can no longer claim it even if it is for a different reason.

3. What would Jane do in scenario 2 since FFCRA

Emergency Paid Sick Leave is not available to her?

a. Jane would now want to utilize Category 3-Traditional Sick Leave, Category 4-Personal Days, or Category 5- Vacation Days (if applicable).

b. If Jane does not have Traditional Sick Leave, Personal Days, or Vacation Days available, she may be eligible for Traditional FMLA Leave but only if her husband's symptoms are severe enough to constitute a "serious health condition."

4. Emily's mother is the caregiver for her 2-year old. Emily's mother has contracted COVID-19 and cannot care for the child. Can Emily take FFCRA Emergency Paid Sick Leave?

a. Yes. She will receive 67% of her pay for up to 10 work days.

FFCRA Expanded FMLA Leave

*It is best to view this leave for what it is, another way in which our members can receive FMLA leave. Viewing this leave as an expansion of FMLA will help you answer FMLA and FFCRA Expanded Leave related leave questions.

FFCRA Expanded FMLA Leave is only available under the following circumstances:

1. Child's school or daycare closed due to COVID-19
2. Childcare provider is unavailable

*Note: A childcare provider can include a family member who is unable to provide care due to COVID-19.

***Note: A member cannot be denied FFCRA Expanded FMLA Leave because some schools or daycares are open. As long as THEIR school is closed, they are entitled to this leave.*

FFCRA Expanded FMLA Leave allows members to take up to 12 weeks of leave to care for a child whose school or daycare is closed or whose childcare provider is unavailable due to COVID-19.

FFCRA Expanded FMLA Leave can be used intermittently.

- Where an employee has already taken some FMLA leave in the current twelve-month leave year, the maximum twelve weeks of FFCRA Expanded FMLA leave is reduced by the amount of the FMLA leave entitlement taken in that year.
- The first two weeks of the member's use of the FFCRA Expanded FMLA Leave are, technically, unpaid. The next ten weeks are paid at 67%. However, see below for further clarification.
- Type 1 and Type 2 of the FFCRA were intended to work together to provide a continuous stream of income for the employee. Thus, generally, when an employee qualifies for leave under both Type 1 (FFCRA Emergency Paid Sick Leave) and Type 2 (FFCRA Expanded FMLA Leave) an employee may first use the two week of paid leave provide for



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in Type 1. This will run concurrent with the first two weeks of unpaid leave under Type 2.

- After the first two week of FFCRA Emergency Paid Leave expires, an employee may choose, or an employer may require, that an employee use the FFCRA Expanded FMLA leave concurrently with personal or vacation leave. An employer may NOT require an employee use sick leave concurrently with FFCRA Expanded FMLA Leave.

Scenarios related to FFCRA Expanded FMLA Leave

1. John took 6 weeks of Traditional FMLA paternity leave in August and early September. In October, John's family daycare closes for COVID-19 related reasons. Can John still take 12 weeks of expanded FMLA leave for childcare reasons?

a. No. John would only be eligible for 6 weeks of FFCRA Expanded FMLA Leave.

2. Mark and Sarah are husband and wife and are both teachers. Can both Mark and Sarah take FFCRA Expanded FMLA Leave?

a. No. Mark or Sarah can take the leave or they can split the leave. But they cannot both take the leave at the same time.

3. Jennifer is home with her child because her school or place of care is closed,

or childcare provider is unavailable, does Jennifer get emergency paid sick leave, expanded family and medical leave, or both—how do they interact?

a. Jennifer may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. She may take both FFCRA Emergency Paid Sick Leave at 67% of her pay, which may (at her election) be run concurrent with accrued leave so as to have no pay reduction. The FFCRA Emergency Paid Sick Leave thus covers the first ten workdays of FFCRA Expanded FMLA, which are otherwise unpaid under the FFCRA Expanded FMLA Leave. After the first ten workdays have elapsed, Jennifer will receive 2/3 or 67% of her regular rate of pay under the FFCRA Expanded FMLA. Jennifer's employer can require she use her accrued personal days or vacation days concurrently so as to have no pay reduction but her employer CANNOT require her to use her traditional sick leave days. **** Note that you can only receive the additional 10 weeks of expanded family and medical leave under the FFCRA Expanded FMLA 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.*

Leave of Absence

Reserved for last resort! A member does not have a disability, does not have a qualifying FFCRA related leave issue, but does not feel comfortable returning to work. Alabama Code Section 16-24C-13 allows tenured or non-probationary public education employees to take a one-year unpaid leave of absence without any impact on tenure. The leave must be board approved and the member would have to pay the substantial cost for COBRA benefits if they wished to maintain PEEHIP health insurance coverage.

Traditional FMLA Leave

*A member cannot use traditional FMLA Leave because of school closures or because they are afraid to return to work.