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**The information in this article is current through April 7, 2020. However, given the fast changing nature of the nation's response to the COVID-19 pandemic, we acknowledge that facts will change and invite you to visit our pandemic [site](#) where we maintain up-to-date information.**

## COVID-19 and Qualifying Leave

After the passage of the Families First Coronavirus Response Act (the Act), many employers are faced with questions about whether their employees will qualify for either leave under the Act or “traditional” leave under the Family and Medical Leave Act (FMLA). “Traditional” FMLA leave includes leave for an eligible employee’s own serious health condition that makes the employee unable to perform the functions of his or her job.

- An employee is “unable to perform the functions of the position” when a health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position, within the meaning of the Americans with Disabilities Act (ADA), as amended.
- An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of his or her position during the absence for treatment.

“Traditional” FMLA leave also allows leave for an eligible employee when the employee is needed to care for certain qualifying family members (child, spouse or parent) with a serious health condition. (The definition of son or daughter includes individuals for whom the employee stood or is standing “[in loco parentis](#)”. The definition of parent includes individuals who stood “[in loco parentis](#)” to the employee.)

“Needed to care for” encompasses both physical and psychological care. It includes, for example:

- Providing care for a qualifying family member who, because of a serious health condition, is unable to care for his or her own basic medical, hygienic, nutritional or safety needs, or is unable to transport himself or herself to the doctor, etc.;



- Providing psychological comfort and reassurance that would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care; or
- Filling in for others who normally care for the family member or to make arrangements for changes in care (transfer to a nursing home, for example).

The employee need not be the only individual or family member available to care for the qualifying family member.

In addition to “traditional” FMLA leave, Congress introduced two types of leave through the Families First Coronavirus Response Act – Public Health Emergency Leave and Emergency Paid Sick Leave. To qualify for Public Health Emergency Leave, an individual must require time off to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

In contrast, to qualify for Emergency Paid Sick Leave, the employee must establish a need because of one of the following:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- The employee is caring for an individual who is subject to a quarantine or isolation order as described in (1), above, or has been advised as described in (2), above.
- The employee is caring for a son or daughter whose school or place of care has been closed, or the child care provider is unavailable, due to COVID-19 precautions.
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Below, we highlight some frequently asked questions about which type of leave may apply in the context of COVID-19. Note that for purposes of these examples, we have assumed that both the employer and the employee are covered for

purposes of the applicable leave with regard to employer size and employment history. For more information about the leave applicability for Public Health Emergency Leave and Emergency Paid Sick Leave, please see our article, [Family First Response Act Becomes Law](#).

	“Traditional” FMLA	Public Health Emergency Leave	Emergency Paid Sick Leave
<b>I have a cough and a fever and I’m self-isolating, do I qualify for leave?</b>	No. Unless you receive inpatient care (i.e., you’re hospitalized) or are under continuing care (i.e., you visited a doctor AND received prescription treatment OR you have visited a doctor two or more times for the same cough and fever) for more than three days, then even if you have a cough and fever for more than three days, it does not qualify for “traditional” FMLA leave.	No.	No. Unless you are advised by a health care provider to self-quarantine due to concerns about COVID-19 or are seeking a medical diagnosis due to COVID-19 symptoms.
<b>I’ve been diagnosed with COVID-19 and my doctor told me to remain in self-isolation for 14</b>	No. Unless you receive inpatient care (i.e., you’re hospitalized) or are under continuing care (i.e., you visited a doctor AND received prescription treatment OR you have	No.	Yes. You qualify because you have been diagnosed with COVID-19 and are quarantined or isolated under a doctor’s recommendation.



	<b>“Traditional” FMLA</b>	<b>Public Health Emergency Leave</b>	<b>Emergency Paid Sick Leave</b>
<b>days, do I qualify for leave?</b>	visited a doctor two or more times for the cough and fever) for more than three days, then even if you are ill with COVID-19 for more than three days, it does not qualify for “traditional” FMLA leave.		
<b>I’ve been diagnosed with COVID-19 and my doctor told me to remain in self-isolation for 14 days, do I qualify for PAID leave?</b>	No.	No.	Yes. You qualify because you are experiencing symptoms associated with COVID-19 and are self-isolated on a health care provider’s advice.
<b>My child’s middle school has suspended classes for an indefinite period because of COVID-19, do I qualify?</b>	No.	Yes. You qualify because the leave is to care for a son or daughter under 18 years of age of because the child’s school or place of care has been closed due to a public health emergency so long as a co-parent, co-guardian or your normal caregiver is not	Yes. You qualify because the leave is to care for your child because the child’s school or place of care has been closed due to the coronavirus so long as a co-parent, co-guardian, or your normal care giver is not available to care for the child.



	<b>“Traditional” FMLA</b>	<b>Public Health Emergency Leave</b>	<b>Emergency Paid Sick Leave</b>
		available to care for your child. However, the first two weeks are unpaid unless you are able to substitute some other form of paid leave or Emergency Paid Sick Leave.	
<b>My mother-in-law has been hospitalized with COVID-19, do I qualify for leave?</b>	No. “Traditional” FMLA leave does not extend to in-laws.	No.	Probably not. Although you could obtain leave to care for her if your mother-in-law was self-isolated due to her diagnosis with COVID-19, this scenario involves hospitalization rather than a doctor’s recommendation for self-isolation, so you would not be needed to care for your mother-in-law.
<b>My employer has ordered me to stay home for the next 30 days, do I qualify for leave?</b>	No. Unless you or a family member has a “serious health condition,” you do not qualify for “traditional” FMLA leave.	No.	Maybe. If your employer ordered you to stay home because it does not have work for you to do, you do not qualify. If your employer ordered you to stay home and you are unable to work or telework because of a federal, state, or local shelter-in-place or stay-at-home



	“Traditional” FMLA	Public Health Emergency Leave	Emergency Paid Sick Leave
			order and your employer has work for you, you will qualify, but paid leave is only available for two weeks.
<b>I’ve been furloughed by my employer, do I qualify for leave?</b>	No. A furlough, unfortunate as it is, is not a serious health condition.	No. A furlough, unfortunate as it is, is not a qualifying reason for Public Health Emergency Leave.	No. A furlough, unfortunate as it is, is not a qualifying reason for Emergency Paid Sick Leave.
<b>I’ve been diagnosed with COVID-19 and hospitalized, do I qualify for leave?</b>	Yes. Your own inpatient care in a hospital, hospice, or residential medical care facility is considered to qualify you as having a serious health condition.	No.	Presumably yes. Emergency Paid Sick leave applies to individuals who seek a diagnosis after experiencing symptoms associated with COVID-19.
<b>My father was diagnosed with COVID-19 and hospitalized, do I qualify for leave?</b>	Maybe. You may qualify for “traditional” FMLA leave in order to care for certain family members, such as a spouse, a child, or a parent, but you must establish that you are needed to care for that family member. Since your father	No.	Probably not. Although you could obtain leave to care for him if your father was self-isolated due to his diagnosis with COVID-19, this scenario involves hospitalization rather than self-isolation, so you would not be needed to care for your father.



	“Traditional” FMLA	Public Health Emergency Leave	Emergency Paid Sick Leave
	would be hospitalized, it is not likely that a healthcare provider would certify that you are needed to care for your father. However, you may be able to qualify after your father is released in order to help him recover.		
<b>My spouse was exposed to COVID-19 as part of his job and has been ordered by his doctor to self-isolate because he poses a threat to the community, do I qualify for leave?</b>	No. Unless your spouse has a “serious health condition” as defined by FMLA, you do not qualify for leave.	No.	Probably, if you’ve been advised by a health care provider to self-quarantine. If your spouse has COVID-19, but is still asymptomatic, you may also have been exposed to the virus through him, and a healthcare provider may also order you to self-isolate.
<b>I have flu-like symptoms, and I think I may have COVID-19 and am waiting on test</b>	No. Unless you have a serious health condition that lasts more than three days, you do not qualify. However, you may become qualified if you	No.	Yes. If you self-isolate while waiting for a diagnosis, you qualify for Emergency Paid Sick Leave, even if it is later determined that you do not have COVID-19.



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	“Traditional” FMLA	Public Health Emergency Leave	Emergency Paid Sick Leave
<b>results, do I qualify for leave?</b>	are under continuing treatment or inpatient care.		

*The intent of this analysis is to provide general information regarding the provisions of current federal laws and regulation. It does not necessarily fully address all your organization’s specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization’s general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.*