

# HR COVID-19 FAQ'S

Source: <https://www.tasb.org/covid-19-resources/return-to-school/>

## **Leave questions**

**Q: If an employee has already exhausted their FML for the year, are they eligible for EFML during that same year?**

**A:** An employee is entitled to a total of 12 weeks of family and medical leave (FML) in the 12 months designated by the employer (e.g., FML year). This includes standard FML and EFML. If an employee uses 12 weeks of FML for their own serious health condition, to care for a family member with a serious health condition, or to care for a child following birth, adoption, or foster care placement, they do not have any leave remaining for EFML during the designated FML year.

When a new FML year begins (e.g., July 1 or the start of the school year), the employee would be eligible to take 12 weeks of leave for a qualifying reason, including EFML. Remember, even if your FML year restarts with the new school year, an employee is limited to a total of 12 weeks of EMFL from April 1, 2020 to December 31, 2020.

For example, if an employee took six weeks of FML to recover from surgery in the 2019–2020 FML year, he or she could take an additional six weeks of EFML to care for a child. At the start of the 2020–2021 FML year, the employee would only be eligible to take six weeks of EFML up to December 31, 2020.

**Q: Does FFCRA allow for intermittent use of leave?**

**A:** Yes, An employer may allow the use of intermittent leave for a qualifying EPSL reason while an employee is teleworking (Remotely working from home). Additionally, WISD will allow intermittent use of EFML to care for a child. Employees may contact the Human Resources Department and/or Risk Management Department to request the [FFCRA leave request form](#).

**Q: Can an employee take FFCRA leave during the summer when school is out of session for childcare purposes?**

**A:** Yes, if summer childcare arrangements, including a camp, recreational program, day care center, or individual provider, are closed or unavailable because of COVID-19, the employee may take FFCRA leave. Documentation of the closure is required and may include a closure notice or statement from the facility or individual who provides the care.

**Q: Is an employee who chooses to homeschool their child on a full-time basis eligible for FFCRA leave when school reopens in the fall?**

**A:** Choosing to withdraw a child when schools physically reopen and begin full-time homeschooling is not a qualifying reason for EFML. FFCRA leave only applies if the parent must care for his or her child whose school or place of care is closed (or childcare provider is unavailable) due to a COVID-19 related reason.

A school facility closed but providing online instruction or other models of instruction requiring students to complete assignments at home may serve as a qualifying reason for an employee to request FFCRA leave. An employer may also consider remote work arrangements in these situations.

**Q: Is an employee eligible for leave if they are fearful to return to work due to COVID-19?**

**A:** To be eligible for FFCRA leave, an employee must be subject to a quarantine or isolation order, advised by a health care provider to self-quarantine, or experiencing COVID-19 symptoms and seeking a medical diagnosis. If an employee, absent a medical condition, is fearful or reluctant to return to the workplace, steps taken to ensure their safety will be provided.

For positions where responsibilities can effectively be performed remotely, WISD will evaluate each request to consider allowing the employee to do so. Decisions on whether remote work is permitted will be based on a legitimate business reason. If remote work is not feasible (e.g., custodial, maintenance, food service) and the employee continues to refuse to return, leave policies will be followed and access to accrued paid and unpaid leave (e.g., discretionary personal leave or vacation) will also be considered. An employee's refusal to return may be considered a resignation.

**Q: May an employee be exempt from wearing a face mask due to a health condition?**

**A:** Wearing a face mask for safety precautions may be required, but an exemption may be necessary as an accommodation for an employee unable to comply. WISD will begin the Americans with Disabilities Act (ADA) interactive process to identify what prevents the employee from using a face mask and what accommodations are available. Safety reasons may prevent us from waiving these requirements, but this will be determined through the interactive process.

**Q: Is remaining at home the only option for an employee who has a high-risk health factor?**

**A:** While continuing to work remotely is an accommodation available to an employee with a high-risk health factor, it is not the only option. When engaging in the interactive process the district may consider the role served by the employee, location of work performed, and amount of interaction with the public to determine an appropriate accommodation. The district may be able to limit the individual's contact with others by establishing one-way hallways or aisles, using plexi-glass or other barriers, adjusting the work schedule, or assigning the employee to a temporary position. If the district is unable to accommodate at the worksite, continuing to work remotely may be an option.

**Q: What are the district's expectations for receiving medical certification from an employee?**

**A:** District Policies DEC (LOCAL) and DBB (LOCAL), address medical documentation as it relates to use of leave or the need for an ADA accommodation. Employees may have difficulty accessing their health care provider during these unprecedented times. If the reason for a leave of absence or accommodation is obvious, the level of required documentation may be adjusted. Being practical and flexible will help the district navigate these requirements and accommodations will be considered with an intention to obtain documents when they may be available.

**Q: Can we use an employee's accrued comp time when an employee is paid to be idle?**

**A:** Accrued compensatory (comp) time cannot be used to offset the cost incurred because the district chose to pay people their full salary during the crisis. An employee with accrued comp time will be able to use the accrued time as time off.

**Q: Are there limitations on staff returning to the workplace?**

**A:** The May 18, 2020, Executive Order No. GA-23 establishes the limits for students, teachers, and staff presence on school campuses:

*"Public education teachers and staff are encouraged to continue to work remotely from home if possible, but may return to schools to conduct remote video instruction, to perform administrative duties, and, beginning June 1, 2020, to provide in-person classroom instructional activities and learning options as permitted and offered by school districts, under the minimum standard health protocols found in [guidance issued by the TEA](#)."*

**Q: Can we require an employee to take Families First Coronavirus Response Act (FFCRA) leave before accessing accrued paid leave?**

**A:** No, districts can't require an employee to use accrued leave instead of emergency paid sick leave (EPSL). During EPSL the employee may choose to use their accrued leave only, EPSL, or if allowed by the employer, use a portion of accrued leave to receive 100 percent of pay (e.g., top off or offset).

During expanded family and medical leave (EFML), an employer can require the use of paid leave concurrently with expanded family and medical leave (EFML). However, it is the employee's choice to use EPSL or accrued leave for the first two weeks. After the first two workweeks (usually 10 workdays) of expanded family and medical leave, the employee may elect—or be required by the employer—to use paid leave concurrently. Once accrued leave is exhausted, the remaining EFML would be paid at 2/3 the regular rate of pay up to a maximum of \$200 per day.

**Q: Can an employee take emergency paid sick leave for more than one reason?**

**A:** Yes. The employee can take EPSL for any of the designated reasons for leave. However, the amount of leave taken April 1–December 31, 2020 is limited to a total of 80 hours.

**Q: Can EFML be taken for more than one qualifying reason?**

**A:** No. There is only one qualifying reason for EFML—to care for your son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.

**Q: Can the district ask for documentation to verify the need for EPSL and EFML? If so, what type of documentation can we require?**

**A:** Yes. A [Department of Labor FAQ](#) outlines the type of documentation an employer can require (see Q15 and Q16). An employee must provide an employer either orally or in writing the following information:

- Name
- Date(s) requested for leave

- The reason for leave
- A statement that the employee is unable to work because of a qualifying reason

If the request for leave is because the employee is subject to a quarantine or isolation order or to care for an individual subject to such an order, the employee should additionally provide the name of the governmental entity that issued the order. If the 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, the name of the health care provider who gave advice should be included.

If an 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 can be required to provide the following information:

- Name and age of the child
- Name of the school, place of care, or childcare provider that has closed or become unavailable
- A statement that no other suitable person is available to care for the employee's child

**Q: Can we ask for a release to return to work if the employee is absent for medical reasons related to COVID-19?**

**A:** Yes, the district may follow established procedures and require a doctor's release or fitness for duty certification if the employee was absent for an illness, including COVID-19. Medical documentation should be required if a person is known to have been exposed to or treated for a communicable disease. Under current circumstances, an employee may not be able to visit a health care provider in person, may be advised to recover at home, or need care following exposure. While it is always important to treat similarly situated individuals the same, we may also need to consider individual circumstances. Requests for medical documentation will be done consistently and fairly for all similarly situated employees.

**Q: What about an employee on leave? Do they get pay during closure without having to use their leave?**

**A:** Districts have some discretion as to how pay during closure is handled for employees on leave. If an employee had taken time off for a vacation that was canceled and is able and willing to work, the district may consider granting this employee pay during the closure and allowing them to keep their time off to use at a future date.

An employee on medical leave who is unable to work presents a more complicated situation. The district could determine the employee is unable to work and therefore isn't eligible for pay during closure. Or, the district could determine that employees on medical leave are equally as idle as other employees in the district and should be entitled to the same pay during closure as other employees. As long as the district treats all employees on medical leave similarly and makes consistent determinations, both options are viable.

**Q: How does a district closure impact Family Medical Leave (FML) entitlement? What about Temporary Disability Leave (TDL)?**

**A:** A full week in which the district is closed will not count against an employee's FML entitlement. However, TDL is the only leave measured in calendar days, so all days—even during a district closure—will count against an employee's TDL entitlement.

**Q: A teacher on FML wants to return to work because the district is moving to distance/virtual learning. Can she return to work?**

**A:** If the employee's expected date for return to work was based on a standard teacher job description, the district could provide the employee with a new job description that reflects changes in duties for the distance learning teaching work and request a new authorization from the employee's physician.

### **General HR guidance**

**Q: What should we do if we know an employee has been exposed to or tested positive for COVID-19?**

**A:** All employees should be instructed to notify their immediate supervisor, HR and the Risk Management Departments if they have been exposed to or have been diagnosed with COVID-19. Supervisors will also notify HR and the Risk Management Departments and forward any documentation received by the employee.

Upon notification, employees will be given information regarding applicable leave, instructions for staying away from the workplace, and return to work provisions. If the employee was in the workplace within the past 72 hours, take steps to sanitize any areas the employee visited. HR and the Risk Management departments will determine if any employees or others (students, parents, and community members) were exposed to the individual in the course of work and compile a list of those who might have been exposed within the past 14 days.

When informing others of the potential for exposure care will be taken to do this in a way that does not identify the employee who was exposed or tested positive. All information gathered, including information related to an employee's medical information, must always remain confidential.

### **Compensation Questions**

**Q: We have DEA (LOCAL) policy language that says we'll pay any nonexempt employee who is required to work during an emergency closure at a premium pay rate (e.g., time-and-one-half, double time). How does that work?**

**A:** Premium pay is attached only to the hours physically worked by a nonexempt employee. For example, if a custodian normally works 40 hours per week at \$10 per hour, he would receive 40 hours of regular pay (\$400) during closure if authorized by policy and/or resolution. However, if policy and/or resolution call for premium pay at time and one-half, and the employee physically works 10 hours, the employee's pay would be calculated as follows:

$$\begin{array}{r} 30 \text{ hours} \times \$10 = \$300 \\ 10 \text{ hours} \times \$15 = \$150 \\ \hline 40 \text{ hours} = \$450 \end{array}$$

Some districts have mistakenly calculated the premium pay rate as pay **in addition to** the regular weekly pay. This is not the intent of premium pay and results in the employee's work being paid at significantly higher rates (e.g., 2.5 times the regular rate of pay).

**Q: What about premium pay for exempt staff required to work during a closure?**

**A:** Exempt staff are already receiving a salary that covers for all time worked, so granting premium pay is unnecessary. Also, most exempt staff in a district are contract employees, so increasing pay during the school year without requiring additional work is not advisable.

### **Other Questions**

**Q: What if our district cannot complete T-TESS evaluations during the school year due to closure?**

**A:** A [recent law change](#) resulting from House Bill 3 allows for a teacher appraisal to occur *for* a school year rather than *during* a school year, which grants more flexibility in timing. The appraisal could occur after the instructional year has ended.