COVID-19: What To Do If You Need To Take Off Work Because Of The Coronavirus

1. The Family and Medical Leave Act (FMLA) requires state and local government employers and some private employers to provide 12 weeks of job-protected FMLA leave for certain family and medical reasons, including for reasons related to COVID-19. There are two types of FMLA leave.

- **A. Emergency FMLA leave:**
  Starting April 1, 2020 and until December 31, 2020, if you work for an employer with fewer than 500 employees, you can get emergency FMLA leave if you are unable to work because you need to care for your child whose school is closed or childcare provider is unavailable because of the pandemic (COVID-19/coronavirus)

Do I qualify for emergency FMLA leave?
You need to have worked for your employer for at least 30 calendar days.

**Is it Paid or Unpaid Leave?**
The first ten days of emergency FMLA leave doesn't have to be paid, but you can use any paid leave that you had already earned or the Emergency Paid Sick Leave described below. Your employer cannot force you to use other forms of paid leave.

For the next ten weeks of emergency FMLA leave, the employer must pay two-thirds of an employee’s regular rate of pay at the hours the employee would normally be scheduled to work, up to a maximum of $200 per day or $10,000 total. For example, if you normally earn $10 an hour, work 40 hours per week, and make $400 per week, then your pay during this period of emergency FMLA leave would be: $400 x 2/3 = $266.67 per week.

I have partial custody, or my child's daycare is only partially shut down. Can I take emergency FMLA leave just for the days or hours when I’m taking care of my child, and work on the other days?
Yes, but only if your employer agrees. The total amount of leave you take can still only add up to 12 weeks.

My child is over 18. Can I take emergency FMLA leave to care for them?
Only if your child has a disability and cannot take care of themselves, and their normal care provider is unavailable due to COVID-19.

I take care of a child who is not my biological child. Can I take emergency FMLA leave to care for them?
It depends. You can take emergency FMLA leave to care for a child you are a legal guardian for (such as your ward, foster child, adopted child, or stepchild). You can also take emergency leave to care for a child if you normally act like a parent to them—for example, a grandchild or younger sister who has lived with you for the past few years and whose clothes and food you buy. You cannot take emergency FMLA leave to care for a child who isn’t normally your responsibility, such as a nephew who you sometimes watch after school but who lives with your sister.
Any other exceptions?
Smaller employers with less than 50 employees can apply for an exception and ask the government to be excused from the requirement to provide paid emergency FMLA leave for good cause. If you work for a health care provider or in emergency services (such as police, EMTs, or child welfare), your employer may choose not to provide you with this leave. Federal employees are usually not covered, but you should check with your employer. Smaller employers with less than 50 employees can apply for an exception and ask the government to be excused from the requirement to provide this leave for good cause.

B. Regular FMLA leave: This is leave that is not only for reasons related to the pandemic. It applies to all public (government) employers and private employers with 50 or more employees within 75 miles of your worksite, including most temporary help agencies. The FMLA allows employees to take leave for their own serious health condition, to care for their close family members (spouses, parents, and children) with serious health conditions, for the birth or adoption of a child, or for some leave related to active duty military service.

Do I qualify for regular FMLA leave?
You need to have worked for your employer at least 12 months (does not need to be consecutive) and you need to have worked at least 1,250 hours for your employer in the last year (which works out to about 24 hours per week).

Is it Paid or Unpaid?
Your employer does not have to pay you while you are on regular FMLA leave. However, if you have paid leave available through your employer, like vacation or sick leave, you can use up that time. You can use regular FMLA leave a few hours at a time or on a reduced schedule, as needed.

What is a serious health condition?
A “serious health condition” is something that requires an overnight hospital stay or illnesses that cause you or your family member to miss work or school for more than three days and require a doctor’s visit and some ongoing treatment (like prescription medicine), or require more than one doctor visit within a 30-day period. It also includes chronic conditions like diabetes and asthma.

Short-term illnesses that get better on their own without medical help (like colds) are usually not FMLA-protected. For both kinds of FMLA leave, your employer must keep your job for you and continue your health insurance (though you may have to pay the employee’s share of the premium). If you work for an employer with fewer than 25 employees and take emergency FMLA leave, then the employer may not have to return you to your job at the end of the your leave period if your job no longer exists as a result of the public health crisis.

How do I request FMLA leave?
- For emergency leave, notify your employer you need leave as soon as you need it (the same day if possible). Notice in writing isn’t required, but it’s a good idea. Your employer may ask you for other information, like the dates you’ll need leave, your child’s name, the name of the school or childcare provider that is closed or unavailable, and a statement that no one else is available to care for your child.
- For leave that is planned (like a surgery), you must give your employer 30 days’ notice of your need for leave. Notice in writing isn’t required, but it’s a good idea.
- You have to give your employer enough facts about your condition so the employer knows your leave is for a serious health condition or qualifying need (but you don’t have to say “I need FMLA”).
- When you need leave for a serious health condition, follow your employer’s rules for requesting leave. If your employer requests a certification from your doctor, you have to provide it by the deadline and pay for it if your doctor charges a fee.

Other issues related to FMLA leave:
- The 12-week limit is for all FMLA leave—employees do not get 12 weeks of each type.
• Generally, if an employer forces an employee to stay home from work, this time cannot be charged against the 12 weeks of leave available under the FMLA. Also, if an employer requires an employee to work while they are on leave, time spent working should not count against the 12 weeks of leave available.

• If you are written up, demoted, or fired because you take either regular or emergency FMLA leave, you may have a claim to get lost wages, your job back, and other damages under the FMLA. You must file an FMLA claim within 2 years of the employer’s violation of the FMLA. You can contact an attorney for advice. You can also contact the U.S. Department of Labor to file a complaint by calling 1-866-487-9243 or online at https://www.dol.gov/agencies/whd.

2. Emergency Paid Sick Leave.
Starting April 1, 2020 and until December 31, 2020, the Emergency Paid Sick Leave Act requires private employers with fewer than 500 employees and all public (government) employers to provide two weeks of paid sick leave (80 hours for full-time employees and, for part-time employees, the number of hours they usually work over two weeks), to employees who are unable to work for any of the following reasons:

• You are under a state or local quarantine or isolation order related to COVID-19, such as a shelter-in-place or stay-at-home order;
• You have been advised by a health care provider to self-quarantine because of concerns related to COVID-19;
• You are having symptoms of COVID-19 and are seeking a diagnosis;
• You are caring for someone who is under a quarantine order or has been advised to quarantine by a health care provider; or
• You are caring for your child whose school is closed or childcare provider is unavailable.

Unlike FMLA leave, you do not have to have worked for the employer for any period of time before you are eligible for emergency sick leave.

If your boss has said you cannot go to work because of an emergency order, such as a shelter-in-place order, then you should be eligible for paid sick leave. For more information, read “Leave to comply with an emergency order,” below.

What counts as a “symptom of COVID-19”?
Generally, fever, dry cough, or shortness of breath.

Do I have to take my employer provided earned sick leave first?
An employer may not require you to use other earned paid leave before using this new emergency paid sick leave.

Do I have to find someone to cover my shifts?
No. An employer may not require you to search for or find a replacement to cover the hours you miss while out on emergency sick leave.

Is it Paid or Unpaid?
Leave should be paid at your normal rate for a two-week period, but there are limits to the dollar amount of paid sick leave employers must provide. For needs related to the employee’s own health, the limit is $511 per day or $5,110 total. For reasons related to the employee’s care-giving responsibilities, the limit is $200 per day or $2,000 total.

Any exceptions?
If you work for a health care provider or in emergency services (such as police, EMTs, or child welfare), your employer may choose not to provide you with this leave. Smaller employers with less than 50 employees can apply for an exception and ask the government to be excused from the requirement to provide paid sick leave for care-giving reasons if they can show good cause. A small employer cannot be excused from the requirement to provide paid sick leave for reasons involving the employee’s own health.
How do I request paid sick leave?
Notify your employer you need leave as soon as you need it (the same day if possible). If your employer hasn't told you a special way to request emergency paid sick leave, request paid sick leave the same way you’d normally request time off. Notice in writing isn’t required, but it’s a good idea. Your employer may ask you for some extra information, like the name of your health care provider.

What if my employer doesn’t give me leave?
If you are not paid for the time you are on emergency sick leave, you are entitled to unpaid minimum wages and an additional, equal amount. Generally, you have two years to file a claim for unpaid sick pay or up to three years if the failure to pay was done willfully. You can contact an attorney for advice. Your employer cannot fire, discipline, or in any way retaliate against you for requesting or taking emergency sick leave. You can file a complaint for unpaid sick leave (or other unpaid wages) or retaliation with the U.S. Department of Labor by calling 1-866-487-9243 or online.