**Employer FAQs Regarding Staffing, Paid Sick Leave, and Tax Credits During COVID-19**

What are doctors required to do if they are exposed to a COVID-19 positive individual (patient or staff member) while in the office and constantly wearing PPE?

The doctor should self-monitor for any COVID-19 symptoms.

What are staff members required to do if they are exposed to a COVID-19 positive individual (patient or staff member) while in the office and constantly wearing PPE?

The doctor should self-monitor for any COVID-19 symptoms.

What are doctors required to do if they are exposed to a COVID-19 positive individual (patient or staff member) while in the office and while not wearing PPE?

The doctor should follow ADOH recommendations related to testing and self-quarantining.

What are staff members required to do if they are exposed to a COVID-19 positive individual (patient or staff member) while in the office and while not wearing PPE?

The staff member should follow ADOH recommendations related to testing and self-quarantining.

What are doctors required to do if they are exposed to a COVID-19 positive individual outside of the office and while not wearing PPE?

The doctor should follow ADOH recommendations related to testing and self-quarantining.

What are staff members required to do if they are exposed to a COVID-19 positive individual outside of the office and while not wearing PPE?

The staff members should follow ADOH recommendations related to testing and self-quarantining.

What are employers required to do if the Department of Health requires an employee to quarantine?

ADOH is currently requesting that employees who have been exposed to someone who has tested positive to COVID-19 be tested and to self-quarantine at their homes. ADOH is issuing a
“letter of release” when certain release criteria have been met and that document can be used as proof to the employer that the employee has been released to work.

If the ADOH has determined it necessary that the employee self-quarantine, it is likely that employee is eligible for FFCRA paid sick leave in an amount of 100% of their regular pay for any missed shifts in a 2 week period – up to 80 hours – with a maximum of $511 per day and $5,110 total for the 2 week period.

If the ADOH recommends quarantining beyond the 2 week period and the use of the full 80 hours, then the employee will be required to use PTO or any applicable unpaid leave that the employer provides.

Are employers required to pay employees to stay home if they have symptoms of COVID-19, have tested positive for COVID-19 or have been exposed to someone who has tested positive for COVID-19?

Likely yes. Unless a dentist can prove that if they let the employee stay home, they would have to shut down their business (i.e. they were the only dental assistant in the office), then they are required to pay for the sick leave pursuant to the Families First Coronavirus Response Act if certain circumstances are present. The next FAQ addresses specific scenarios and whether paid sick leave is required and how much employers are required to pay.

Is an employee eligible for FFCRA paid sick leave under the following scenarios? If so, how much are you required to pay?

- An employee has been tested and is waiting to receive results. What if the test is positive?

  If an employee becomes ill with COVID-19 symptoms, the employee may take paid sick leave under the FFCRA only to seek a medical diagnosis or if a health care provider (which can include the ADOH) otherwise advises the employee to self-quarantine. If an employee tests positive for the virus associated with COVID-19 or is advised by a health care provider to self-quarantine, the employee may continue to take paid sick leave. The sick leave will be paid out at 100% of the rate that the employee would receive during the days they missed and were scheduled to work with a maximum of $511 per day and $5,110 total for the 2 week period. Employees may take up to 80 hours in a 2 week period, but will only be paid for the hours they regularly worked. Therefore, if an employee regularly worked 30 hours per week, they would be paid a maximum of 60 hours for the two week period.

- An employee is in quarantine because of a spouse or child testing positive for COVID-19, but they themselves are negative.

  An employee may take paid sick leave to care for an individual who, as a result of being subject to a quarantine or isolation order, is unable to care for him or herself and depends on the employee for care and if providing care prevents the employee from working and
from teleworking. This paid sick leave would be paid out at a 2/3 rate for shifts missed during the up to 2 week period.

An employee may also take paid sick leave to care for a self-quarantining individual if a health care provider has advised that individual to stay home or otherwise quarantine him or herself because he or she may have COVID-19 or is particularly vulnerable to COVID-19 and provision of care to that individual prevents an employee from working (or teleworking).

Furthermore, an employee may only take paid sick leave to care for an individual who genuinely needs the employee’s care. Such an individual includes an immediate family member or someone who regularly resides in the employee’s home. An employee may also take paid sick leave to care for someone if the relationship creates an expectation that the employee would care for the person in a quarantine or self-quarantine situation, and that individual depends on the employee for care during the quarantine or self-quarantine.

An employee may not take paid sick leave to care for someone with whom the employee has no relationship. Nor can an employee take paid sick leave to care for someone who does not expect or depend on the employee’s care during his or her quarantine or self-quarantine.

• **An employee’s child has a fever or cough, but the child tests negative for COVID-19.**

Likely the employee would be eligible for paid sick leave during the testing period while waiting on the results of the test – up to the 80 hours covered under the FFCRA. The sick pay would be based on 2/3 of the base daily paid rate up to $200 per day and $2,000 in total for 80 hours.

• **Is there any required documentation?**

The temporary rules published by the DOL state that an employee is required to provide the employer documentation containing the following information prior to taking paid sick leave: employee’s name; date for which leave is requested; qualifying reason for the leave; and an oral or written statement that the employee is unable to work for the qualified reason. To take paid sick leave for a qualifying reason under reason (1), an employee must also provide the name of the government entity that issued the quarantine or isolation order; to take leave under reason (2), the employee must also provide the name of the health care provider who advised the self-quarantine; to take leave under reason (3) the name of the government entity that issued the quarantine or isolation order to which the individual being care for is subject; or the name of the health...
care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.

If an employee was in close proximity to someone outside of work who later tested positive for COVID-19, is this a covered situation under the FFCRA?

An employee may not take paid sick leave under the FFCRA if he or she unilaterally decide to self-quarantine for an illness without medical advice, even if he or she has COVID-19 symptoms. However, if the employee seeks a test and treatment by a medical provider, the time waiting for the test results and/or when the medical provider recommends quarantine may be covered by the FFCRA and would be paid at 100% of the rate for the missed shifts.

If an employee is experiencing periodic symptoms of COVID-19, but has had one or more negative COVID-19 tests and has been cleared by a healthcare provider to return to work, but the employee wants to wait on another test to come back and see if it is negative. Is the employee eligible for Paid Sick Leave under the FFCRA if he or she “thinks” he or she has coronavirus, despite negative test results and clearance by a healthcare provider?

The employee is likely not eligible for paid sick leave under the FFCRA. The Department of Labor states that employees are eligible for paid sick leave if a health care provider directs or advises the employee to stay home or otherwise quarantine themselves because the health care provider believes that he or she may have COVID-19 or are particularly vulnerable to COVID-19 and quarantining prevents the employee from working or teleworking. The DOL also says that if an employee becomes ill with COVID-19 symptoms, the employee may take paid sick leave under the FFCRA only to seek a medical diagnosis or if a health care provider otherwise advises the employee to self-quarantine. If an employee test positive for the virus associated with COVID-19 or is advised by a health care provider to self-quarantine, the employee may continue to take paid sick leave. However, the employee may not take paid sick leave under the FFCRA if he or she unilaterally decide to self-quarantine for an illness without medical advice, even if he or she has COVID-19 symptoms.

An employee may take paid sick leave for one of the following reasons:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who either is subject to a 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.

What if an employee takes 2 weeks of COVID-19 paid sick leave to care for an individual and then later gets sick themselves and needs to take additional leave?
The FFCRA only requires employers to pay for up to 80 hours of paid sick leave in a 2 week period – one time. Therefore, if the employee used all of their paid sick leave during a 2 week period they could not take additional leave thereafter for their own condition. They would have to use PTO or other types of leave.

However, the DOL has stated that if an employee only used 40 hours (1 week) to care for an individual and then two weeks later needed another week to quarantine for their own condition (per medical direction), the employee was entitled to take that 40 hours (1 week) as paid sick leave under the FFCRA – even though it was not consecutively used but still equaled a total of 80 hours.

**What if an employee has exhausted all of their FMLA leave for a non-COVID related reason (i.e. pregnancy, surgery, etc.), are they still entitled to up to 80 hours of paid sick leave?**

Yes.

**Does an employee have to be employed for a certain period of time to be eligible for the 80 hours of paid sick leave?**

No, they are eligible on the first day of employment.

**What should an employer do if an employee exhibits symptoms of COVID-19?**

During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

**Does the ADA allow employers to require employees to stay home if they have symptoms of COVID-19?**

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

**What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?**

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

1. The employee’s name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.
In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person’s name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee’s inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

**What additional records should an Eligible Employer maintain to substantiate eligibility for the sick leave or family leave credit?**

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer creates and maintains records that include the following information:

1. Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.

2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. See FAQ 31 (“Determining the Amount of Allocable Qualified Health Plan Expenses”) for methods to compute this allocation.

3. Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.

4. Copies of the completed Forms 941, Employer’s Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer’s entitlement to the credit claimed on Form 941).

**How long should an Eligible Employer maintain records to substantiate eligibility for the sick leave or family leave credit?**

An Eligible Employer should keep all records of employment taxes for at least 4 years after the date the tax becomes due or is paid, whichever comes later. These should be available for IRS review.

**May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and the Employee Retention Credit under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)?**
Yes, if an Eligible Employer also meets the requirements for the employee retention credit, it may receive both credits, but not for the same wage payments.

Section 2301 of the CARES Act allows certain employers subject to a full or partial closure order due to COVID-19 or experiencing a significant decline in gross receipts a tax credit for retaining their employees. This employee retention credit is equal to 50% of qualified wages (including allocable qualified health plan expenses) paid to employees after March 12, 2020, and before January 1, 2021, up to $10,000 in qualified wages for each employee for all calendar quarters. However, the qualified wages for the employee retention credit do not include the amount of qualified leave wages for which the employer received tax credits under the FFCRA.

May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and a Small Business Interruption Loan under the CARES Act?

Yes. However, if an Eligible Employer receives tax credits for qualified leave wages, those wages are not eligible as “payroll costs” for purposes of receiving loan forgiveness under section 1106 of the CARES Act.

Employee Retention Credit

The IRS announced a tax credit will be available to employers who retain employees during the coronavirus crisis. The credit is available to employers of any size, provided that they are not recipients of small business loans. Qualifying employers can receive a maximum credit of 50 percent of $10,000 in qualifying wages. An employer will qualify if (a) the employer’s business is fully or partially suspended by government order due to COVID-19 during the calendar quarter, or (b) the employer’s gross receipts are below 50 percent of the comparable quarter in 2019. Once the employer's gross receipts go above 80 percent of a comparable quarter in 2019, they no longer qualify after the end of that quarter.

The definition of qualified wages depends on the employer’s number of employees. If an employer averaged more than 100 full-time employees during 2019, qualified wages are generally those wages, including certain health care costs, (up to $10,000 per employee) paid to employees that are not providing services because operations were suspended or due to the decline in gross receipts. These employers can only count wages up to the amount that the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

If an employer averaged 100 or fewer full-time employees during 2019, qualified wages are those wages, including health care costs, (up to $10,000 per employee) paid to any employee during the period operations were suspended or the period of the decline in gross receipts, regardless of whether or not its employees are providing services.

Employers who believe they may qualify for the Employee Retention Credit are advised to read the entire IRS publication on this subject: [https://www.irs.gov/newsroom/employee-retention-credit](https://www.irs.gov/newsroom/employee-retention-credit)
Do the FFCRA tax credits cover any lost income of the employer for the employee being absent due to a positive COVID-19 test result?

The FFCRA tax credits are for the amounts paid for compensation for the employees who are out on covered leave. Unfortunately, the tax credits do not cover any “lost income” of the employer for the employee being absent.