

COVID-19 EMERGENCY SICK LEAVE/FAMILY LEAVE
NAPE/AFSCME Local 61 Guidance to Members
UPDATED APRIL 2, 2020

A new federal law enacted in response to the coronavirus crisis creates a temporary right to paid leave. Employees of the State of Nebraska, State College System, and County Employees can access this leave subject to the provisions below.

What kind of leave is required to be provided?

Two kinds of leave are required. *Emergency paid sick leave* is the most widely available leave of the two kinds but is provided for only two weeks.

Emergency family leave is available for a longer period but only when a parent needs to care for a child due to a COVID-19 related school or daycare closure. An employee generally would take emergency paid sick leave before taking emergency family leave.

For what reasons can an employee take leave?

Emergency paid sick leave is available only when an employee is unable to work (or to telework) due to any of the following reasons related to COVID-19:

1. The employee is under an official quarantine or isolation order.
2. The employee has been advised by a health care provider to self-quarantine.
3. The employee is experiencing COVID-19 symptoms and seeking a medical diagnosis.
4. The employee is caring for an individual who is under an official quarantine or isolation order or who has been advised by a health care provider to self-quarantine.
5. The employee is caring for a son or daughter under 18 years old if the child's school or place of care has been closed, or childcare provider is unavailable, due to COVID-19 precautions.
6. The employee is experiencing substantially similar conditions to those listed above, as specified in the future by the U.S. Secretary of Health and Human Services.

Emergency family leave is available only when an employee is unable to work (or to telework) due to a need to care for the employee's son or daughter under 18 years old if the child's school or place of care has been closed, or childcare provider is unavailable. An employee is entitled to this leave only when the closure or unavailability is due to an officially declared COVID-19 public health emergency. By comparison, emergency paid sick leave is available when the closure or childcare provider's unavailability is due to COVID-19 precautions.

How long is the leave?

Emergency paid sick leave can be taken for up to two weeks. For a full-time employee, this means 80 hours. For a part-time employee, it is the average of hours worked over a 2-week period.

Emergency family leave can be taken for up to 12 weeks. While the first two weeks (i.e., 10 days) of it may be unpaid, the expectation is that an employee will take emergency paid sick leave during that time. This leave counts against your FMLA allotment during the rolling FMLA calendar year. If you do not have FMLA time remaining in the rolling calendar year, you will not be able to access *emergency family leave*. If you utilize all 12 weeks, you will not be eligible for FMLA leave until the next rolling calendar year.

How much does an employee get paid while on leave?

When taking *emergency paid sick leave* to care for oneself (reasons 1–3 under “For what reasons can an employee take leave?”), an employee is paid 100% of the employee’s regular rate of pay multiplied by the number of hours the employee would normally be scheduled to work. Pay is capped at \$511 per day and \$5,110 total. When taking this leave to care for others or for other reasons (reasons 4–6), an employee is paid two-thirds of the employee’s regular rate of pay multiplied by the number of hours. Pay is capped at \$200 per day and \$2,000 total.

After the first 10 days of *emergency family leave*, an employee is paid two-thirds of the employee’s regular rate of pay multiplied by the number of hours the employee would normally be scheduled to work. Pay is capped at \$200 per day and \$10,000 total. Employees can use vacation/comp time to cover the one-third time that is unpaid to receive full pay.

Which employees are eligible for paid leave?

Emergency paid sick leave: Any employee, regardless of hours of work or length of service.

Emergency Family and Medical Leave: Employees who have been employed for at least 30 calendar days by their employer.

Exclusion of Certain Health Care Providers and Emergency Responders:

An employer can deny either kind of leave to employees who are health care providers or first responders. Also, the U.S. Secretary of Labor can issue regulations excluding these workers from eligibility. ~~It is not clear at this time which workers will be considered to be health care providers or emergency responders. Existing Labor Department rules define health care provider relatively narrowly to include jobs like medical doctors, dentists, nurse practitioners, physician assistants, nurse midwives and clinical social workers. The Labor Department might try to broaden the definition to include other kinds of workers, such as those in the nursing profession, which could include our members in 24-hour facilities.~~

As of April 1, the US Department of Labor has excluded all employees who work for health care facilities, hospitals, institutions, and similar facilities. This means that our members who work at the Veterans' Homes and 24 Hour DHHS facilities are no longer eligible for emergency sick or family leave. This is regardless of job classification, and affects all employees at the facility.

The US Department of Labor has issued revised guidance as to who is an emergency responder. All correctional facilities employees are also now considered emergency responders and are excluded from either type of leave. It is our understanding that the Department of Corrections is excluding all staff, which is inappropriate. If you work for NDCS at the central office, or not at an institution, you should qualify for this leave. Institutional staff, regardless of job classification, are considered emergency responders. Contact the NAPE office for assistance.

Additional jobs that are now considered emergency responders include fire fighters, nurses, public health personnel, emergency management personnel, dispatchers, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual whom Governor Ricketts determines is an emergency responder necessary for that State's response to COVID-19. Agencies are encouraged to be as flexible with these definitions as possible.

How do these new leave requirements relate to leave provided for under collective bargaining agreements, employer policies or other laws?

Emergency paid sick leave is not instead of any other paid leave to which an employee has a right (such as sick leave, vacation leave, or comp time under our contract) and does not diminish an employee's rights or benefits under any other law, collective bargaining agreement or existing employer policy. An employer is prohibited from changing its leave policy to get around that requirement.

An employee can choose to take emergency paid sick leave before taking any other kind of paid leave, and an employer cannot require an employee to take other employer-provided paid leave before taking emergency paid sick leave. Any employee who separates from employment is not entitled to payment for any unused emergency paid sick leave. An employee can choose to take any accrued vacation leave, personal leave or medical or sick leave for the unpaid first two weeks of *emergency family leave*. Generally, an employee would be likely to take emergency paid sick leave during that period. An employer cannot require an employee to take other kinds of accrued leave instead of the *emergency family leave*.

Since this new leave is temporary, when will eligible employees have a right to this leave?

These temporary requirements are in effect during the period that begins April 1, 2020 and ends on December 31, 2020. The law does not create a right to pay for leave taken before the effective date.

How do I access this leave?

Employees should contact their HR department. If you have trouble accessing this leave, please contact us immediately for assistance.

Will NAPE/AFSCME provide further information and training?

Yes! NAPE/AFSCME Local 61 hosted a webinar on Wednesday, April. To view a recording, [please click this link](#). Members should check their e-mail for the password.