COVID-19 Frequently Asked Questions
for Idaho School Districts & Charter Schools

NOTE: There is some uncertainty as to whether the paid sick leave and expanded family and medical leave provisions of the Families First Coronavirus Response Act (FFCRA) apply to districts and charter schools with more than 500 employees. Further details on this issue are available below. **For the time being, we advise that the safest course may be to offer leave under the EFMLEA regardless of district/ school size.**

Questions as of April 13, 2020

Q - Our District has an employee who is stuck in a village in Europe. How will the new legislation relating to COVID-19 apply to the employee?

Presuming the question has to do with leave under the new legislation, the Families First Coronavirus Relief Act (FFCRA) is the specific legislation that will apply. The employee has indicated that she is unable to leave the French village she is staying in, due to whatever regulations they have in place in that part of France, and thus cannot get to the airport on the (limited) days there are flights available to the U.S.

So long as the District office/school/the employee's place of work is open, and she has not been furloughed, it appears the employee will be entitled to two weeks of paid sick leave under the FFCRA. Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) because the employee (1) is subject to a Federal, State, or local quarantine or isolation order related to COVID-19. In this case, it would be a "local" (French) quarantine or isolation order. For this qualifying reason (1), a full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

Per the Department of Labor (DOL), any employer such as the District should document:

The name of your employee requesting leave;

- The date(s) for which leave is requested;The reason for leave; andA statement from the employee that he or she is unable to work because of the reason.

Continued on the following pages. . .

If your employee requests leave because he or she is subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally document the name of the government entity that issued the order. Therefore, the District should ask the employee what French governmental entity has issued the order or regulation that is keeping her from traveling out of the village she is in. The leave under FFRCA would only run from April 1, 2020, so if the employee has been stuck in France and unable to work since before then, they will have to use their accrued PTO or sick leave for any March 2020 dates, or go unpaid for those dates. Her rate of pay for the leave would be either her regular rate of pay, or Federal minimum wage, whichever is higher, up to $511 per day and $5,110 in the aggregate (over a 2-week period). Finally, the regulations and the guidance state that employees are not entitled to FFCRA paid leave if their workplace is closed (and telework is not available) or if the employees have been furloughed.

Q - If a District decides to furlough or lay off classified employees during this crisis, what effect will that have on their PERSI? Can the District continue to provide benefits during the layoff?

For current employees, if they take emergency paid sick leave under FFCRA, that emergency paid sick leave should still be recorded as PERSI-eligible, and, as with regular sick leave, PERSI contributions will still need to be made. PERSI will be affected by furloughs and layoffs.

The employer cannot continue to provide PERSI benefits during an unpaid furlough or layoff. If the furlough is paid, i.e., the employee were to still be receiving salary, the PERSI contributions would be made as normal, though you might choose to use a different payroll code. In addition, being furloughed or laid off would mean that time period would not count toward service time at the time of retirement. However, if the employee were to work 15 days in a month, and be furloughed the other half of the month, that month would count toward service time. The employee needs to work 15 days in a month for compensation for it to count as a service month.

Q - What about health benefits? Can a District furlough staff but pay their health benefits during the furlough? I know this happens at the private level, but can we do that as a school District?

Yes. A district may pay employees and/or provide them paid benefits even when it is not legally obligated to pay them, so long as the district avoids the improper use of public funds. In particular, a District's board should ensure that the expenditures are documented and the funds are accounted for.

If the monies to pay such benefits are coming from contingency funds, this will likely need board approval, and even if the monies to pay such benefits are not coming from contingency funds, if it is a major expenditure, the board should approve it first. If you use the ISBA Model Policies, Policies 1205 and 7110 will cover this.

Q - Can the District require employees to pay the full costs of their benefits while they are on emergency unpaid leave?

Presumably this refers to FMLA or the first two weeks of expanded family and medical leave. The DOL has stated the following about FMLA:

If an employee is provided group health insurance, the employee is entitled to the continuation of the group health insurance coverage during FMLA leave on the same terms as if he or she had continued to work. If family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. The employee must continue to make any normal contributions to the cost of the health insurance premiums.

If paid leave is substituted for FMLA leave, the employee's share of group health plan premiums must be paid by the method normally used during paid leave (usually payroll deduction). An employee on unpaid FMLA leave must make arrangements to pay the normal employee portion of the insurance premiums in order to maintain insurance coverage.

In some instances, an employer may choose to pay the employee's portion of the premium, for example, in order to ensure that it can provide the employee with equivalent benefits upon return from FMLA leave. In that case, the employer may require the employee to repay these amounts. In addition, the employer may require the employee to repay the employer's share of the premium payment if the employee fails to return to work following the FMLA leave unless the employee does not return because of circumstances that are beyond the employee's control, including a FMLA-qualifying medical condition.

An employee's rights to benefits other than group health insurance while on FMLA leave depend upon the employer's established policies. Any benefits that would be maintained while the employee is on other forms of leave, including paid leave if the employee substitutes accrued paid leave during FMLA leave, must be maintained while the employee is on FMLA leave.

Thus, it appears the District likely cannot require the employees to pay the full cost of their benefits while they are on emergency unpaid leave.

Q - The District is providing the 80 hours of paid leave for COVID related absences. We are having trouble figuring out if we have the ability to deduct these payments from our monthly IRS payments. Some resources say we can, but others say we can't because we are a government.

Your question was whether the District can deduct the payments it is making to employees for COVID-related absences (80 hours of leave), from monthly IRS payments the District makes. The question arises because the District is a governmental entity.

As you are aware, the District must comply with the FFCRA, because generally the FFCRA applies to non-Federal public sector employees, i.e., persons who work for "the government of a state, the District of Columbia, a territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar entity." (https://www.dol.gov/agencies/whd/pandemic/ffcra-questions) Thus, the obligation under the FFCRA to provide paid leave benefits applies to all private employers and nonprofit organizations with fewer than 500 employees and most governmental employers of any size.

So the question remains, will governmental employers be entitled to a tax credit? Unfortunately, the FFCRA provides that governmental employers such as the District will not be entitled to a tax credit.

According to Division G of the Act, "Tax Credits For Paid Sick And Paid Family And Medical Leave," at Sec. 7001, "Payroll Credit For Required Paid Sick Leave," at subsection (e), "Special Rules"s:

(4) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing. [emphasis added]

(https://www.congress.gov/116/plaws/publ127/PLAW-116publ127.pdf)

Therefore, the District will not be able to deduct COVID-related payments from its tax payments.

Q - Do substitute teachers and other substitute employees qualify for the COVID-19 sick leave reasons and the expanded FMLA leave to care for a child? If they do qualify for the expanded FMLA, are they eligible for a full day's substitute rate of pay for the entire 10 weeks or is there some way to base it on how much they have worked? They aren't treated as part-time employees in a true sense,as they are really on-call type employees. They don't work a regular schedule and can take as many or as few jobs as they want in a year. The District has some that work regularly and others that work only a couple of times per year.

For the few substitutes who work regularly as daily substitutes, it may make sense to treat them as part-time employees. The Department of Labor has given the guidance:

A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that. If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment. [emphases added]

As for long term-substitutes, if they have a regular work schedule, i.e., they are working full-time hours filling in on a long-term basis for a teacher who has left, the District can treat those long-term substitutes as it would a regular employee.

However, for the substitutes who rarely work in the District and come in only a few times a year, the District will not even be able to do the above calculations as it would for daily substitutes who work regularly. The substitutes who rarely work in the District likely will not be entitled to FFCRA paid leave. If the District is not providing pay to that substitute employee and is not providing them an option to continue working, they likely will be able to file for unemployment compensation. Conversely, if the District provides such a person paid sick leave or expanded family and medical leave, he or she would not be eligible for unemployment insurance.

Questions as of April 7, 2020

Q - If an employee requests emergency sick leave for qualifying reason #5 under the Act, the rate of pay is 2/3 of their regular rate (or no less than minimum wage). This is also true if they continue to take leave under the expanded FMLA. Is this correct?

Yes. For qualifying reason #5, an employee is entitled to up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 their regular rate of pay (or minimum wage, if that is higher), for up to $200 daily and $12,000 total. For qualifying reason #5, this rate applies to both types of leave.

Q - In a District or Charter School with several staff members with small children, which now provides online instruction, some certified staff are teaching online from home and helping their children with their school work. Some paraprofessionals and preschool teachers are trying to work from home with small children. Because of their childcare responsibilities, they can only work for a few hours. Can these staff members work part time and receive FMLA leave the other amount of time? Do they have to take 2 weeks of leave all at once and/or 10 weeks at 2/3 pay all at once?

Just as with typical FMLA, the employee can work part time and receive extended family leave(?) for the other part of the time they are unable to work due to a qualifying reason (their children being home because school or daycare is closed due to COVID 19, in this case).

Q - If the employee is working on-site part time, because the child's school or place of care is closed due to COVID-19-related reasons, intermittent family and medical leave should be permitted if you are able to agree upon such a schedule. If the employee is teleworking part time, and is prevented from working his or her normal schedule of hours because of his or her need to care for the child whose school or place of care is closed because of COVID-19 related reasons, the District and the employee can agree that the employee can take expanded family medical leave intermittently while teleworking.
In such an instance, would the employee use 2 weeks of sick leave at full pay first, and then the 10 weeks of 2/3 paid leave, or would the District or Charter School pay the 2/3 pay leave and not use the sick leave because it is a child care issue?

Because it is a child care issue—qualifying reason #5 under the Act—there would not be a 2 week/10 week split. Instead, for qualifying reason #5 ("An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee is caring for his or her child whose school or place of care is closed [or child care provider is unavailable] due to COVID-19 related reasons"), employers covered under the Act must generally provide employees up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for up to $200 daily and $12,000 total. So, all 12 weeks allowed under the Act are paid at 2/3 (or federal minimum wage, if that is higher).

Questions as of April 2, 2020

Q - Do only employees who have been directed by a medical professional not to come to work qualify for the 80 hours of paid sick leave, or does it apply to anyone in a quarantined area who just chooses not to come to work?

This question relates to point 1 of the qualifying reasons for paid sick leave under the Families First Coronavirus Response Act (FFCRA):

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

Generally, at the current time, Idaho school employees should be considered to be an exception to point 1. Governor Little's stay-at-home order carves out 'Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six feet per person is maintained to the greatest extent possible." This implicates Point 1 and school employees are not "subject" to the isolation (stay-at-home) order since they are carved out of the order.
This does not apply to points 2-6. Thus, it is too stringent to say that that "only employees who have been directed by a medical professional" may have leave. This is true for Point 2. But Points 3-6 may apply in the absence of directions from a medical care provider.

As for "choosing not to come to work," that is not covered under the Act. The DOL has given the guidance that "You are entitled to paid sick leave if you are **unable to work or telework due to a qualifying reason related to COVID-19.**" [emphasis added]

For school employees, generally, the Idaho Governor's stay-at-home will not be a qualifying reason simply based on the current stay-at-home Order because school employees are carved out of the Order. That may change if additional or different orders or quarantines are issued by the state, Federal, or local governments.

Q - Are school district employees considered federal employees covered by Title II of the Family and Medical Leave Act (FMLA)?

Idaho school district employees are not federal (U.S.) employees.

Q - For part-time staff who do not normally receive paid sick leave, are they also eligible for the emergency paid leave allowed by the Act?

Yes, if a part-time employee becomes qualified for sick leave for any of the reasons listed in the FFCRA, the part-time employee is eligible for emergency leave for the number of hours that the employee is normally scheduled to work over that period.

Q - For a school district with 500+ employees, it appears that the only item that applies is the Emergency Paid Sick Leave Act for part-time staff. Is that true or does the FMLA Expansion also apply?

The extended FMLA provisions will apply only to districts and charter schools with fewer than 500 employees.

The emergency sick leave provisions will apply to all districts and charter schools—regardless of how many employees they have, (as long as they have more than one).

There is a lingering question about if the EFMLA indeed applies to all public employers, which will be covered later in this guidance.

Q - If an employee declines to work or telework and comes forth as unable to work based on the high-risk factors, should we require them to use accrued leave?

The leave under the Emergency Paid Sick Leave Act can be used before accrued sick leave. However, leave under the Emergency Paid Sick Leave Act does not apply to staying home in order to avoid getting sick. That being the case, if the staff member can work remotely, that would be the best option. If they choose to work at the District or school, unless they are sick with coronavirus or COVID-19, or have been exposed, or are in quarantine, the District or school cannot make them stay home. If they choose to work even though they are high risk (but not sick and not contagious or exposed to a sick person), it is advised to just let them work. If they choose to stay home because they are high risk, and they cannot work remotely, and they are not sick, they should use their accrued leave.

Q - If a District requires essential staff to return to work, but a particular employee is in the high-risk category (over 65; pregnant, etc.) and they decline to work, can the District or charter school require that staff member to use accrued leave?

If a health-care provider has told the, e.g., pregnant person or the person over 65 to self-quarantine, the Act covers them and a District or charter school cannot require them to use accrued leave. If they are just fearful of getting sick, the Act does not cover that, even if they are high-risk. However, it would not be hard for such a person to talk to their doctor and find out if they are, in fact, advised to self-quarantine.

Q - Can a District or charter school require a doctor's note if leave under the Act is claimed or taken?

Yes, an employer can require a doctor's note to prove either that the employee is out sick with COVID or Coronavirus or that the employee has been symptom-free long enough to return to work. However, recall that medical providers may be overwhelmed and it may be more difficult or take longer than usual for an employee to procure a note.

Q - Is the FFCRA retroactive? In other words, if an employee has already used sick leave (last week), related to self-quarantine or District -required stay-at home (due to visiting Washington), do we have to retroactively give back that sick leave usage?

No, the paid sick leave and expanded family and medical leave requirements are not retroactive.

However, a District or charter school cannot deny an employee paid sick leave if the District or charter school already gave the employee paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

Q - If districts who employ over 500 follow both the expanded FMLA and extended sick leave, is there federal relief?

Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA, paid to an employee who takes leave under the Act for a qualifying reason. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage.

Q - Can we require proof of a medical professional asking someone to self-quarantine or documenting care of a family member?

Yes, a District or charter school can require proof that a medical professional has diagnosed an employee; advised the employee to self-quarantine; or (without providing personal health information regarding the non-employee) that the employee is caring for, e.g., a family member who is infected with the novel coronavirus or COVID-19.

Q - This is a question regarding the following: "Qualifying Reasons for Leave: Under the FFCRA, an employee qualifies for expanded family and medical leave if the employee is unable to work (or unable to telework) due to a need for leave because the employee: … 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis" Can we require any proof? If not, can't anybodymake this claim in an effort to use FMLA to take home and collect a paycheck?

A District or charter school may require proof from a medical professional.

Q - Do we need to comply with extended sick leave if an essential employee's reason is childcare? Can they decline to do their job and receive sick days while staying home?

In short, yes, Districts or charter schools must comply with the extended sick leave rquirements if the reason is childcare, which is a qualifying reason for leave. If an employee is home with his or her child because the child's school or daycare if closed, or the child's care provider is unavailable, due to COVID-19 related reasons, the employee may be eligible for both paid sick leave, and expanded family and medical leave, but only for a total of twelve weeks of paid leave.

The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This paid leave covers the first 10 workdays of the expanded family and medical leave (which would otherwise be unpaid under the Emergency and Family Medical Leave Expansion Act). After the first ten paid workdays, the employee would be eligible to receive 2/3 of his or her regular rate of pay for his or her regularly-scheduled hours for the next 10 weeks, under the Emergency and Family Medical Leave Expansion Act. The leave must be occasioned by a lack of childcare or school closure "due to COVID-19 related reasons."

Q - Could you provide an overview is what we need. I've heard some say that with the new act, it might be a better deal for some employees to actually get laid off than to work (i.e. transportation employees?).

The Families First Coronavirus Relief Act, the Emergency Paid Sick Leave Act, and the Emergency Family and Medical Leave Expansion Act apply to current employees. They do not provide relief for employees who are laid off. Per the Department of Labor, "If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits."

This question may be prompted by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which became law on March 27, 2020, and which expands eligibility for unemployment insurance and provides people with an additional $600 per week on top of the unemployment amount determined by each state. Because CARES excludes from eligibility "Assistance for American Workers, Families, and Businesses" employees who have the ability to telework with pay and those who are receiving paid sick leave or other paid benefits (even if they otherwise satisfy the criteria for unemployment under the new law), questions of this type may arise.

However, Title II of CARES only provides for individuals who receive unemployment insurance to be eligible for an additional $600 per week for up to four months, through July 31, 2020. The determination of whether it would be a "better deal" for a particular employee to be laid off will have to be made on a case-by-case basis, and should take into consideration other benefits of employment which the employee might lose by being laid off.

Q - Please define what "impacted by the Coronavirus" means.

The FFCRA does not use the language "impacted by the Coronavirus," and only speaks of "impact" when it discusses "employers directly impacted by COVID–19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers."

In general, an employee may be entitled to leave when there is a "qualifying reason for leave."

Under the FFCRA, an employee qualifies for expanded family and medical leave if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

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

Under the FFCRA, an employee qualifies for expanded family and medical leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

"Impacted by the coronavirus" is language used in the CARES Act, which states that some funds available to a governor may, in certain circumstances, be released to local boards "most impacted by the coronavirus." In practice, this will likely lead to such funds being distributed based on local need.

Q - What is Medicaid's role in all of this?

After the FFCRA was signed into law, Congress passed a larger economic stimulus package, the CARES Act, which became law on March 27, 2020, and amended some provisions of the FFCRA.

FFCRA, as amended by CARES, includes three policy changes that:

1. Temporarily increase the federal Medicaid matching rate
2. Require states to cover COVID-19 testing via Medicaid;
3. Allow states to extend Medicaid coverage for testing to the uninsured.

Medicaid may be implicated in other ways, as well. For instance, CARES mandates that the additional unemployment compensation provided for under its Title II (up to a $600 weekly benefit) is not considered "income" for purposes of Medicaid and CHIP (Children's Health Insurance Program).

Q - Will Districts be expected to pay for staff internet while working at home?

Perhaps. Employers may not require employees who are covered by the Fair Labor Standards Act (FLSA) to pay or reimburse the employer for such items (such as Internet, increased phone lines, or increased electricity costs) that are business expenses of the employer if doing so reduces the employee's earnings below the required minimum wage or overtime compensation. Further, employers may not require employees to pay or reimburse the employer for such items if telework is being provided to a qualified individual with a disability as a reasonable accommodation under the Americans with Disabilities Act (ADA).

Q - In what order are different types of leave to be used?

Which type of leave is taken will be determined by the qualifying reason for the leave.

Under the FFCRA, an employee qualifies for expanded family and medical leave if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

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

For reasons 1-3, the leave would likely be sick leave. For reasons 4 and 5, it may be paid sick leave, and then expanded family and medical leave. For reason 6, it may be paid sick leave.

Employees may take the leave allowed by the FFCRA before utilizing their already-accrued regular sick leave or PTO.

Note that while an employee is eligible for paid sick leave regardless of length of employment, an employee must have been employed for 30 calendar days in order to qualify for expanded family and medical leave.

Q - I would like to know the recommended sequence of the type of leave to use if we have vulnerable employees whom we want to continue to pay, but who must stay home during the crisis.

In general, leave under the Act may be taken first. However, a qualifying reason must exist for the leave under the Act to be taken (and for covered employers to qualify for the dollar-to-dollar tax credit reimbursement). Simply being "vulnerable" is not a qualifying reason for leave under the Act, unless the employee "has been advised by a health care provider to self-quarantine related to COVID-19."

If a qualifying reason exists, for instance, the employee has been advised by a health care provider to self-quarantine related to COVID-19, he or she may elect to use up to two weeks of paid sick leave under the Act before using accrued PTO or existing, accrued sick leave.

Q - Can you clarify how employees can use the 80 hours of leave they are entitled to and who pays for them?

Generally, employers covered under the Act must provide employees up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3, up to $511 daily and $5,110 total;
- 2/3 for qualifying reasons #4 and 6, up to $200 daily and $2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 for up to $200 daily and $12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

The employer pays, but is eligible for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA.

Q - Regarding item #4 on caring for an individual must self-quarantine or who is diagnosed with COVID-19, does this apply to any person that they are caring for or only to certain family members?

Qualifying reason #4 is simply "caring for an individual subject to an order described in (1) or self-quarantine as described in (2)" and is not limited to certain family member types.

Q - What are the top three things Districts or charters need to know, along with their HR Directors? What are some of the immediate action(s) we need to take in getting a letter out to staff?

Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements.

Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA

However, the Department of Labor will not bring enforcement actions against any public or private employer for violations of the Act occurring within 30 days of the enactment of the FFCRA, i.e. March 18 through April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the Act.

In terms of immediate actions, and the mandate that each covered employer must post a notice of the FFCRA requirements in a conspicuous place on its premises, an employer may satisfy this requirement by emailing or direct mailing the notice to employees, or posting this notice on an employee information internal or external website.

Q - A lingering question exists as to whether the Emergency Family and Medical Leave Expansion Act (EFMLEA), a part of the Families First Coronavirus Response Act (FFCRA), will apply to districts with more than 500 employees. In other words, will the EFMLEA apply to all public agencies, including all school districts, regardless of size?

The Department of Labor (DOL) has given the guidance that "The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees." The question is who are the "certain public employers" to which the provisions of the EFMLEA will apply?

Even the guidance from the DOL on the applicability of the EFMLEA is somewhat equivocal, couched in terms of "it depends," "in general," and "probably":

I am a public sector employee. May I take paid family and medical leave under the Emergency Family and Medical Leave Expansion Act?
It depends. In general, you are entitled to expanded family and medical leave if you are an employee of a non-federal public agency. Therefore, you are probably entitled to paid sick leave if, for example, you work for the government of a State, the District of Columbia, a Territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar entity.

But if you are a Federal employee, you likely are not entitled to expanded family and medical leave. The Act only amended Title I of the FMLA; most Federal employees are covered instead by Title II of the FMLA. As a result, only some Federal employees are covered, and the vast majority are not. In addition, the Office of Management and Budget (OMB) has the authority to exclude some categories of U.S. Government Executive Branch employees with respect to expanded and family medical leave. If you are a Federal employee, the Department encourages you to seek guidance from your respective employers as to your eligibility to take expanded family and medical leave.

Further, health care providers and emergency responders may be excluded by their employer from being able to take expanded family and medical leave under the Act. See Questions 56-57 below. These coverage limits also apply to public-sector health care providers and emergency responders.

As of yet, the DOL has not issued any Opinion Letters, Ruling Letters, Administrator Interpretations, or Field Assistance Bulletins on the application of the EFMLEA to 500-plus, non-federal public agencies. However, since an employer may face administrative and other penalties if it does not comply with FFCRA, including EFMLEA, the safest course may be to offer leave under the EFMLEA regardless of district size. Unsurprisingly, the DOL has given the guidance that "You may pay your employees in excess of FFCRA requirements." Thus, a 500-plus district or charter school may choose to offer extended leave under the EFMLEA and the DOL may at some point issue guidance or clarification that it is required.