

## SECTION 1: NEW FEDERAL COVID-19 LEAVE LAWS<sup>1</sup>

	FMLA Expansion Act	Emergency Paid Sick Leave Act
<b>1. Effective Date</b>	April 1, 2020	April 1, 2020
<b>2. Which employers are covered?</b>	Private sector employers with fewer than 500 employees and all public sector employers, except for small businesses in specific scenarios. <sup>2</sup>	Private sector employers with fewer than 500 employees and all public sector employers, except for small businesses in specific scenarios. <sup>3</sup>
<b>3. Which employees are eligible?</b>	Any employee (as defined under the FLSA) who has been employed for at least 30 days regardless of the number of hours worked, <sup>4</sup> except that the employer may elect to exempt health care providers <sup>5</sup> and emergency responders. <sup>6</sup>	All employees (as defined under the FLSA) regardless of how long they have been employed, except that the employer may elect to exempt health care providers <sup>7</sup> and emergency responders. <sup>8</sup>

	FMLA Expansion Act	Emergency Paid Sick Leave Act
<b>4. Basis for using leave</b>	An employee is unable to work (or telework <sup>9</sup> ) because the employee needs <sup>10</sup> leave to care for a son or daughter under the age of 18 <sup>11</sup> whose school or place of care has closed, or whose child care provider <sup>12</sup> is unavailable, because of COVID-19 (“public health emergency leave”).	<p>An employee is unable to work for any of the following reasons related to COVID-19:</p> <ol style="list-style-type: none"> <li>(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.<sup>13</sup></li> <li>(2) The employee has been advised by a health care provider<sup>14</sup> to self-quarantine due to concerns related to COVID–19.</li> <li>(3) The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.</li> <li>(4) The employee is caring for an individual<sup>15</sup> who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).</li> <li>(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions.<sup>16</sup></li> <li>(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.</li> </ol>
<b>5. Duration of leave</b>	Up to 12 weeks.	<p>Full-time employees are entitled to 80 hours of paid sick leave.</p> <p>Part-time employees are entitled to paid sick leave equivalent to the number of hours they work on average in a two-week period.<sup>17</sup></p>

	FMLA Expansion Act	Emergency Paid Sick Leave Act
<b>6. Notice Requirements</b>	In any case where the necessity for public health emergency leave is foreseeable, an employee must provide the employer with such notice of leave as is practicable.	After the first workday (or portion thereof) an employee receives paid sick time under this law, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time. Additionally, the DOL is preparing a model notice that employers will be required to post.
<b>7. Other conditions for taking leave</b>		The employer may not require employees to find substitutes as a condition for taking leave.
<b>8. Rate of pay while on leave</b>	<p>The first ten days of public health emergency leave are unpaid, but an employee may use accrued leave or emergency paid sick leave during the initial ten-day period.</p> <p>For the last ten weeks, the employee is entitled to 2/3 of the employee's normal salary, subject to a maximum of \$200 per day or \$10,000 in total</p>	<p>For reasons (1) – (3) in Question 4 above, the paid sick time is capped at \$511 per day and \$5,110 in total.</p> <p>For any other reason, the paid sick time is capped at \$200 per day and \$2,000 in total.</p>

	FMLA Expansion Act	Emergency Paid Sick Leave Act
<p><b>9. Do employees have job protection while on leave?</b></p>	<p>The employee must be restored to their job after taking public health emergency leave unless the employer has <b>fewer than 25 employees and the following conditions are met:</b> (1) the position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer caused by a public health emergency during the period of leave; (2) the employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment; (3) if the reasonable efforts of the employer fail, the employer makes reasonable efforts, for a period beginning one year from the end of their leave period, to contact the employee if an equivalent position becomes available.</p>	<p>Although the Emergency Paid Sick Leave Act does not address this issue, DOL Guidance<sup>18</sup> makes clear that the same rule from the FMLA Expansion Act (see discussion in the box to the left) applies to leave taken under the Emergency Paid Sick Leave Act.</p> <p>In addition, the Emergency Paid Sick Leave Act clearly provides that an employee may not be terminated, disciplined, or otherwise the subject of an adverse employment action on the basis of their use of emergency paid sick leave.</p>
<p><b>10. How do other leave benefits affect this leave benefit?</b></p> <p><b>(See Section 2 below for what benefits may be available in certain scenarios)</b></p>	<p>Employees may elect to use accrued paid leave to supplement the portion of leave that is unpaid under the FMLA Expansion Act (so long as the employer's leave policies permit such supplementation), but the employer may not require it.<sup>19</sup></p> <p>Note: An eligible employee is not prohibited from using 12 weeks of public health emergency leave under the FMLA Expansion Act followed by 12 additional weeks of PFML (if otherwise eligible for PFML). However, if an employee's FMLA leave has been exhausted, the FMLA (as amended) does not impose an obligation on the employer to maintain the employee's health insurance during any other period of leave, although employers may be subject to such obligation under other laws, policies, or agreements.</p>	<p>The employer may not require the employee to use other forms of paid leave before using this leave.</p>

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<b>11. Is the employer required to maintain health insurance benefits during leave?</b>	Yes, although the employee is required to make their ordinary contributions to premiums. <sup>20</sup>	Not addressed in the law; whether an employee is entitled to keep their health insurance during the period of emergency paid sick leave will be governed by the specific health plan documents and other applicable laws.
<b>12. Is an employer required to compensate an employee for unused leave upon separation?</b>	Although the FMLA Expansion Act does not address this question, there is no requirement under the FMLA (as amended) to compensate employees for unused leave.	No.
<b>13. Enforcement</b>	The rights under the FMLA Expansion Act are enforced the same as other rights under the FMLA.	The failure to pay emergency paid sick leave constitutes a failure to pay wages under the FLSA, and an unlawful termination on the basis of the use of paid sick leave is an unlawful termination under the FLSA.
<b>14. Employer Assistance</b>	For private employers, there is a refundable tax credit against payroll taxes for each calendar quarter for 100% of the qualified public health emergency leave wages paid in that calendar quarter. <sup>21</sup>	For private employers, there is a refundable tax credit against payroll taxes for each calendar quarter for 100% of the qualified sick leave wages paid in that calendar quarter. <sup>22</sup>
<b>15. How long is this law in effect?</b>	Until December 31, 2020	Until December 31, 2020

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<sup>1</sup> Both the Emergency Family and Medical Leave Expansion Act (the “FMLA Expansion Act”) and the Emergency Paid Sick Leave Act are part of the Families First Coronavirus Response Act, the text of which is available at <https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>. The laws and regulations discussed in this document are new and regulations and other guidance are still in the process of being promulgated. The accuracy of the information in this document is subject to change as laws and regulations are adopted and modified.

<sup>2</sup> According to DOL Guidance, employers with fewer than 50 employees are exempt if an authorized officer of the business has determined that (1) the provision of paid sick leave or expanded family and medical leave would result in the business’s expenses and financial obligations exceeding available business revenues and cause the business to cease operating at a minimal capacity; (2) the absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the business because of their specialized skills, knowledge of the business, or responsibilities; or (3) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity. **However**, this exemption only applies in the situation where an employee is taking leave (under either the FMLA Expansion Act or the Emergency Paid Sick Leave Act) for the specific reason that the employee’s child’s school or place of care is closed or child care provider is unavailable due to COVID-19 related reasons. See DOL Guidance at <https://www.dol.gov/agencies/whd/pandemic/ffcrq-questions> (Question 58). Thus, an employee taking emergency paid sick leave for any of the other five reasons provided under the Emergency Paid Sick Leave Act (see Question 4 below) will not be affected by this exemption. Employers who have determined that they qualify for this exemption are instructed to document the facts and circumstances that justify the exemption and retain such information in their own records rather than send it to the DOL. See Section III.D of the DOL commentary preceding the new regulation (85 FR 19326-01) available at <https://www.govinfo.gov/content/pkg/FR-2020-04-06/pdf/2020-07237.pdf>.

<sup>3</sup> See Note 2.

<sup>4</sup> Some federal employees may not be eligible for this leave. Federal employees should consult with their agency.

<sup>5</sup> According to DOL Guidance, “health care provider” means anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions. This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the Governor determines is a health care provider necessary for the State of Washington’s response to COVID-19. See 12 CFR § 826.30(c)(1) and DOL Guidance at <https://www.dol.gov/agencies/whd/pandemic/ffcrq-questions> (Question 56). **However**, these regulations were recently challenged and overturned

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by the U.S. District Court for the Southern District of New York in *State of New York v. U.S. Dep't of Labor et al.* (opinion available at <https://www.fmlainsights.com/wp-content/uploads/sites/813/2020/08/State-of-NY-v.-USDOL.pdf>). Based on this court's ruling, which is not expressly limited to New York, the definition of "health care provider" offered by the DOL is overbroad and therefore invalid. Although the court does not specify what definition should apply, it suggested that the definition should be limited to workers who are "capable of providing healthcare services." This decision is subject to appeal and the analysis of this point can change rapidly, so consult with your attorney regarding the details of your particular situation. For now, the scope of the exception for "health care providers" is uncertain.

<sup>6</sup> According to DOL Guidance, "emergency responder" means an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, 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 that the Governor determines is an emergency responder necessary for the State of Washington's response to COVID-19. See DOL Guidance at <https://www.dol.gov/agencies/whd/pandemic/ffcr-questions> (Question 57).

<sup>7</sup> See Note 5.

<sup>8</sup> See Note 6.

<sup>9</sup> According to DOL regulations, an employee is able to telework if their employer has work for them, the employer permits them to work from their location, and there are no extenuating circumstances (such as serious COVID-19 symptoms) that prevent them from performing that work. See 29 CFR § 826.20(a).

<sup>10</sup> Based on DOL regulations, an employee only qualifies for this leave if "no suitable person is available to care for his or her son or daughter during the period of such leave." See 29 CFR § 826.20(a). The DOL indicates that "an employee may take paid sick leave to care for his or her child only when the employee needs to, and actually is, caring for his or her child. Generally, an employee does not need to take such leave if another suitable individual—such as a co-parent, co-guardian, or the usual child care provider—is available to provide the care the employee's child needs." See Section III.B of the DOL commentary preceding the new regulation (85 FR 19326-01) available at <https://www.govinfo.gov/content/pkg/FR-2020-04-06/pdf/2020-07237.pdf>.

<sup>11</sup> Under DOL regulations, the terms "son or daughter under the age of 18" also includes sons or daughters who are age 18 and over if they are incapable of self-care because of a mental or physical disability. See Section III.A of the DOL commentary preceding the new regulation (85 FR 19326-01) at <https://www.govinfo.gov/content/pkg/FR-2020-04-06/pdf/2020-07237.pdf>.

<sup>12</sup> The term "child care provider" under the FMLA Expansion Act is defined as a provider who receives compensation for providing child care services on a regular basis. However, DOL guidance makes clear that any person who regularly cares for an employee's child, including unpaid friends and family members, will qualify as a child care provider. See DOL guidance at <https://www.dol.gov/agencies/whd/pandemic/ffcr-questions> (Question 68) and 29 CFR § 826.10(a).

<sup>13</sup> DOL regulations suggest that, in order to qualify for emergency paid sick leave on this basis, an employee must be able to perform work that is otherwise allowed or permitted by his or her employer, either at the employee's normal workplace or by telework, but a quarantine order prevents the employee from working. Note that an employee is not "subject to" a quarantine order merely because their employer has closed their business—and in fact DOL regulations make clear that an employee will be ineligible for emergency paid sick leave in that scenario because there is no work for the employee to perform. See 29 CFR § 826.20(a). However, these regulations were challenged and overturned by the U.S. District Court for the Southern District of New York in *State of New York v. U.S. Dep't of Labor et al.* (opinion available at <https://www.fmlainsights.com/wp-content/uploads/sites/813/2020/08/State-of-NY-v.-USDOL.pdf>). Based on this court's ruling, which is not expressly limited to New York, an employee may arguably be eligible for emergency paid sick leave even where their employer does not have work for them for reasons other than a quarantine order. This decision is subject to appeal and the analysis of this point can change rapidly, so consult with your attorney regarding the details of your particular situation.

<sup>14</sup> According to DOL Guidance, a "health care provider" for the purpose of identifying individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for emergency paid sick leave means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA. The full definition can be found at [29 USC § 2611\(6\)](#) and [29 CFR § 825.125](#). This is not the same definition of "health care provider" for the purpose of which employees are potentially exempt (see discussion in Note 5).

<sup>15</sup> DOL regulations define an "individual" for this purpose as "an employee's immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the Employee would care for the person if he or she were quarantined or self-quarantined." This does not include "persons with whom the employee has no personal relationship." See 29 CFR § 826.20(a).

<sup>16</sup> Although there are slight variations in how this basis is presented in comparison to the basis for taking public health emergency leave under the FMLA Expansion Act, the DOL has adopted regulations that interpret these two bases for taking leave as imposing identical conditions. See Note 10 for discussion of when an employee qualifies for emergency paid sick leave on the basis of the need to care for a son or daughter, and Note 11 for discussion of who qualifies as a son or daughter. This is because the DOL "believes it would create needless confusion and complication to have different rules for when an employee may take leave to care for his or her son or daughter whose school or place of care is closed or child care provider is unavailable due to COVID-19 related reasons." See Section III.A of the DOL commentary preceding the new regulation (85 FR 19326-01) available at <https://www.govinfo.gov/content/pkg/FR-2020-04-06/pdf/2020-07237.pdf>.

<sup>17</sup> Employees whose variable schedules preclude any determination of the number of hours the employee would have worked during the leave period are entitled to a number of hours of paid sick leave equal to the average number of hours that the employee was scheduled per day over the six-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type, multiplied by ten (i.e., for two weeks). If the employee did not work over such period, the employee is entitled to paid sick leave in an amount equivalent to the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work, multiplied by ten (i.e. for two weeks).

<sup>18</sup> See <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (Question 43).

<sup>19</sup> See DOL Guidance at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (Questions 32 and 33).

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<sup>20</sup> See [Section 104\(c\) of the FMLA](#), which is not altered by the FMLA Expansion Act.

<sup>21</sup> In the event that an employer pays less in payroll taxes than the amount paid in leave wages under this Act, then the employer should consult with a CPA regarding eligibility to achieve the remainder refund necessary to achieve the intended 100% refund. Employers should also be aware that the IRS may impose conditions on these tax credits that are not necessarily present in the FFCRA or attendant regulations. For example, in order to demonstrate that an employer is entitled to a tax credit on the basis of leave granted to an employee who needed to care for their child due to a school closure, the IRS requires the employer to obtain a statement from the employee indicating “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.” This latter requirement does not appear in the FFCRA or attendant regulations.

<sup>22</sup> See Note 21.

## SECTION 2: COMPARISON OF BENEFITS AVAILABLE IN COVID-19 SCENARIOS<sup>23</sup>

Scenario	WA Paid Sick Leave	WA Unemployment (as expanded by CARES Act <sup>24</sup> )	WA Paid Family Medical Leave (PFML)	WA Industrial Insurance (workers' compensation)	Federal FMLA Expansion Act	Federal Emergency Paid Sick Leave Act
1. Worker is mildly ill with COVID-19.	Yes	Yes <sup>25</sup>	Maybe <sup>26</sup>	Maybe <sup>27</sup>	No	Yes
2. Worker is severely ill with COVID-19.	Yes	Yes <sup>28</sup>	Yes	Maybe <sup>29</sup>	No	Yes
3. Worker was exposed and quarantined. Business remains open.	Yes	Yes	No	Maybe <sup>30</sup>	No	Yes
4. Worker is caring for sick family member.	Yes	Yes <sup>31</sup>	Yes	No	Maybe <sup>32</sup>	Maybe <sup>33</sup>
5. Schools are closed by a public official because of COVID-19 and worker has no childcare.	Yes	No	No	No	Maybe <sup>34</sup>	Yes
6. Worker is immune-compromised and advised to self-quarantine.	Maybe <sup>35</sup>	Yes	Maybe <sup>36</sup>	No	No	Yes

Scenario	WA Paid Sick Leave	WA Unemployment (as expanded by CARES Act <sup>24</sup> )	WA Paid Family Medical Leave (PFML)	WA Industrial Insurance (workers' compensation)	Federal FMLA Expansion Act	Federal Emergency Paid Sick Leave Act
7. Worker is afraid of gathering in a group and refuses to go to work (self-distancing).	No	No	No	No	No	No
8. Employer must shut down due to a quarantine by a public official.	Yes	Yes	No	No	No	No <sup>37</sup>
9. Employer shuts down due to a business slowdown or lack of demand.	No	Yes	No	No	No	No
10. Employer reduces available hours due to business slowdown or lack of demand.	No	Yes	No	No	No	No
11. Employer stays open in defiance of public health urging to close.	No	Maybe <sup>38</sup>	No	No	No	No <sup>39</sup>

Scenario	WA Paid Sick Leave	WA Unemployment (as expanded by CARES Act <sup>24</sup> )	WA Paid Family Medical Leave (PFML)	WA Industrial Insurance (workers' compensation)	Federal FMLA Expansion Act	Federal Emergency Paid Sick Leave Act
<b>12. Health care workers and first responders are under quarantine.</b>	Yes	No	No	Yes <sup>40</sup>	No	Maybe <sup>41</sup>

<sup>23</sup> These scenarios and some of the other information in this Section were adapted from a chart prepared by the Washington Employment Security Department, available at <https://esdorhardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/newsroom/COVID-19/covid-19-scenarios-and-benefits.pdf>

<sup>24</sup> The CARES Act is a federal law that greatly expands the universe of people who are eligible for unemployment benefits through each state's existing unemployment insurance program (among many other things). The CARES Act is a complex law that cannot be adequately summarized here, and it is unclear at what point its effects will be fully implemented at the state level. As such, the answers to the questions in this column may depend on the extent to which the CARES Act rules have been implemented by the Washington Employment Security Department (ESD) at any given time. Employees and employers with questions about unemployment benefits under the CARES Act should contact their attorney. The full text of the CARES Act is available at <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

<sup>25</sup> Under the CARES Act, any employee who is unable to work because they have been diagnosed with COVID-19 is generally eligible for unemployment benefits. See Section 2102(a)(3)(A)(ii)(I)(aa) of the CARES Act available at <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

<sup>26</sup> Yes, if the employee's health care provider certifies the illness as a serious health condition; otherwise no.

<sup>27</sup> When the contraction of COVID-19 is incidental to the workplace or common to all employment (such as an office worker who contracts the condition from a fellow employee), a claim for exposure to and contraction of the disease will be denied by L&I. In order to be allowed, the employee's health care provider must certify that the following three criteria are satisfied: (1) There must be an increased risk or greater likelihood of contracting the condition due to the worker's occupation (such as a first responder or health care worker); (2) If not for their job, the worker would not have been exposed to the virus or contracted the condition; (3) the worker can identify a specific source or event during the performance of his or her employment that resulted in exposure to the new coronavirus (examples include a first responder or health care worker who has actually treated a patient with the virus). See L&I Guidance at <https://lni.wa.gov/agency/outreach/workers-compensation-coverage-and-coronavirus-covid-19-common-questions>. This guidance indicates that a claim may be filed even if the employee's health care provider is unsure whether the three conditions have been met.

<sup>28</sup> See Note 25.

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<sup>29</sup> See Note 27.

<sup>30</sup> L&I will accept claims of health care workers and first responders who are quarantined after COVID-19 exposure on the job. Other quarantine claims will be looked at on a case-by-case basis. For an exposure claim to be considered, it must meet the three criteria set forth in Note 27 AND the worker must have been quarantined by a public health officer or physician because of that exposure.

<sup>31</sup> [Under](#) the CARES Act, any employee who is unable to work because they are caring for a family member who has been diagnosed with COVID-19 is generally eligible for unemployment benefits. See Section 2102(a)(3)(A)(ii)(I)(bb) of the CARES Act available at <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

<sup>32</sup> Yes, so long as the family member is a minor child and their school was closed because of COVID-19; otherwise no.

<sup>33</sup> Yes, if the sick family member is (i) subject to a quarantine, or (ii) a child whose school was closed; otherwise no. (Note that although this benefit appears to be available under the Emergency Paid Sick Leave Act if the worker is caring for any individual subject to a quarantine, not just family members, DOL regulations make clear that the definition of “individual” for this purpose is generally limited to family members; see 29 CFR § 826.20(a) and discussion in Note 15)

<sup>34</sup> Yes, if the child needing care is a minor or is otherwise incapable of self-care, and the employee “needs” to care for the child under the conditions discussed in Note 10; otherwise no.

<sup>35</sup> Paid sick leave is available for (among other things) an absence resulting from an employee's physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care. If a quarantine order from a health care provider related to an employee's compromised immunity constitutes a qualifying health condition, then yes; otherwise no.

<sup>36</sup> Yes, if the immunity issue is certified as a serious health condition by the employee's health care provider; otherwise no.

<sup>37</sup> Guidance from the DOL indicates that employees are not eligible to use emergency paid sick leave when their employer has shut down, regardless of the reason for the shutdown. See <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (Question 24). See discussion in Note 13 as well. Paid sick leave under Washington law may still be available to employees in this scenario, since a closure of the workplace by order of a public official for any health-related reason is an expressly authorized basis for taking paid sick leave under RCW 49.46.210(1)(b)(iii).

<sup>38</sup> ESD offers the following guidance to employees: “If you are following guidance issued by a medical professional or public health official to isolate or quarantine yourself as a result of exposure to COVID-19 and you are not receiving paid sick leave from your employer, you may be eligible to receive unemployment benefits. Eligibility decisions are made on a case-by-case basis.” See <https://esd.wa.gov/newsroom/covid-19#PFML>. The fact that an employer might defy an order to shut down does not appear to affect their employees' eligibility for unemployment benefits where a quarantine has been ordered. An employee in this situation might also be eligible for unemployment benefits under the CARES Act.

<sup>39</sup> See discussion in Note 37.

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<sup>40</sup> L&I will accept claims of health care workers and first responders who are quarantined after COVID-19 exposure on the job. Other quarantine claims will be looked at on a case-by-case basis. For an exposure claim to be considered, it must meet the three criteria identified in Note 27 AND the worker must have been quarantined by a public health officer or physician because of that exposure.

<sup>41</sup> Health care providers (which, although expansively defined, may not necessarily include all health care workers) and emergency responders (which, although expansively defined, may not necessarily be the same as first responders) are, at the employer's election, exempt under the Emergency Paid Sick Leave Act. See Note 5 for discussion of who qualifies as a "health care provider" and Note 7 for discussion of who qualifies as an "emergency responder" under the Emergency Paid Sick Leave Act, and note that the definition of "health care provider" has been challenged and overturned by a federal court (see further discussion in Note 5). Even assuming the workers in this scenario are not exempt, the DOL has made clear that an employer's closure is not an authorized basis for using emergency paid sick leave. See discussion in Notes 37 and 13.