

# Disability Absence Management Webinar Q&A

Questions & Answers for 1 through 10



1. **Q:** Do you have any updates on PFL being increased in 2021?

**A:** No, other than the extension noted below, there have been no recent updates pertaining to the Paid Family Leave temporary wage replacement benefits (PFL) for 2021.

**Background:** On June 27, 2019, Gov. Gavin Newsom signed SB 83, which extended the maximum duration of PFL benefits from 6 to 8 weeks beginning on July 1, 2020. This amount is due to increase to a full six months or 24 weeks by 2021-2022.

2. **Q:** Will bonding increase to 12 weeks per person in 2021?

**A:** SB 83 (discussed in question 1) also created a task force that is working with the Governor's Office to develop a proposal to increase paid family leave for bonding purposes up to 6 months by 2022. According to Liebert Cassidy Whitmore, if/when this increase is enacted, the six-month duration will be a total if both parents claim PFL benefits. For example, each parent can receive PFL benefits for three months, or one parent can receive all six months.

3. **Q:** Are we able to use attestation hours for the question below? *"I need a day off for my son's first day of distancing learning."*

**A:** Natural Disaster Pay is approved at the discretion of the agency. Please consult with your HR and labor relations representatives if you need additional guidance.

4. **Q:** Many of us will be facing a new surge of requests for leaves of absences under the FFCRA for child care / school closures presenting a number of challenges. I would like to discuss what we can do to try and keep people at work as we are already hearing that individuals are planning to take time off once school begins.

**A:** Open for discussion, comments and feedback.

5. **Q:** If my child is over 14 years old with special circumstances, no childcare, and FMLA is exhausted, what steps should be taken?

**A:** 1. Employee should submit an attestation letter that no other caretaker is available, including co-parent, co-guardian, other family member or the usual childcare provider.

2. Employee should include a statement that "special circumstances" exist and what those special circumstances are and submit documentation to support those special circumstances.

3. Employee should submit evidence that the child was enrolled in summer camp or comparable program, which is no longer available due to COVID-19.

You will need to engage in the interactive process with the employee. Since this will be converted to a personal leave, the employee should be made aware of their responsibility to pay the full cost of their health benefits once they reach an unpaid status. Once the above documentation is received, your agency should consider the employee's request for extension based on the information and documentation received that would ideally support the employee's need for additional time off. Keep in mind though that personal leaves are subject to agency discretion.

6. Employee is requesting leave for close to 3 months (August – November) to conduct Distant Learning for her children:

- **Q:** Are we approving these just like the childcare/school closure leaves over the summer?  
**A:** It depends. Is the employee FMLA eligible? If not, have you engaged in the interactive process?
- **Q:** Can we approve 3 months right off the bat?  
**A:** It depends. It is suggested that this be determined with business needs in mind and the facts of the case. It is recommended these cases be reviewed regularly and employees are re-engaged at reoccurring intervals.
- **Q:** Once FMLA is exhausted, these turn to regular Personal Leaves, requiring Supervisor/Manager approval, correct?  
**A:** Correct, but you should engage in the interactive process before you make any decisions.
- **Q:** Is the school information email enough to certify the leave?  
**A:** Yes, an email or written statement from the school or child care provider that documents closure or distance learning is sufficient to certify the leave.

7. **Q:** If department is unable to accommodate the personal leave request (FMLA exhausted) for distance learning school/daycare closure and the EE declines any reasonable accommodation the department provides, at what point can we begin disciplinary action, if any?

**A:** In these unprecedented times, the department is encouraged to be as flexible as possible. However, if you reach a point with substantial documentation and multiple attempts at IPs with different reasonable accommodations including a full leave, then you would engage Labor Relations. Also, prior to getting to that point, we have provided resources (see IP for At-Home Learning) to use as a guide during IP's to assist with exploring reasonable accommodations.

**Note:** If you are already engaging in the interactive process, you should request and receive more documentation to substantiate their case (letters from the school or day care, is family an option for day care or distance learning, why or why not). There are resources out there, but they need to be explored. For example, they may have a need for additional leave due to a family medical leave for their dependents, if they have supporting documentation to back this claim up. In short, letters from the employee would no longer suffice after the FMLA entitlement has been exhausted. The interactive process will serve as a layer of information that needs to be requested and evaluated and what other options they have researched as their return will be inevitable at some point.

8. **Q:** If an EE is going to have a schedule change as a reasonable accommodation due to not being FMLA eligible, for example, EE is dropping to 32 hours a week vs. 40, should an ORG entry be entered into VCHRP prior to Data Change to indicate it is COVID related?

We have created a new Reason code in VCHRP to identify schedule changes that are due to a COVID-related reason (i.e. school closure). This new code will be in VCHRP later today (8/20/20) and can be used for schedule changes that are effective 8/9/20 and beyond. The new action reason combo is DTA/SCC (Data Change – Schedule Change COVID).

9. **Q:** Is the 80 hours of EPSL benefits for school/day care closure reasons to be paid at the employee's full rate of pay OR 2/3rds rate of pay (subject to the daily & aggregate limits)?

**A:** For school/day care closures, it will be 2/3rds rate of pay subject to the daily and aggregate limits.

10. **Q:** If the employee is approved for the remaining 40 hours of County Natural Disaster pay for school/day care closure reasons, are we to apply County Natural Disaster benefits concurrently with the 80hrs of EPSL benefits for school/day care closure as follows:

40 hours of County Natural Disaster Pay at the employee's full rate of pay (runs concurrently with EPSL benefits)

40 hours of remaining EPSL benefits paid at 2/3rds employee's pay (subject to the daily/aggregate limits)

**A:** Yes, it runs concurrently. EPSL runs concurrently either for school closure or a COVID-related illness.