

COVID-19 FAQ

8. We have an employee that is in isolation due to her full-time job and being exposed to COVID-19. Do we have to pay her for her missed shift here?

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Answer: An ambulance service is not required to pay the employee for the missed shift. But an ambulance service may voluntarily pay the employee for the missed shift. It depends upon whether the EMS employer chooses to exclude its employees under the Emergency Paid Sick Leave Act.

EMS employers, as health care providers, have a choice when it comes paying for certain sick leave related to COVID-19. The Families First Coronavirus Response Act (FFCRA) created new emergency leave requirements in response to the COVID-19 pandemic through The Emergency Paid Sick Leave Act (EPSLA). The Emergency Paid Sick Leave Act *generally* requires an employer to pay sick leave to a full time or part time employee, for up to two weeks (up to 80 hours) in accordance with prescribed standards, because the employee is quarantined or isolated pursuant to federal, state, or local government order or advice of a health care provider, and/or is experiencing COVID-19 symptoms and seeking a medical diagnosis. See additional guidance on that [here](#).

However, pursuant to 29 CFR § 826.30(c)(2), health care providers (including emergency responders like EMS personnel and ambulance drivers) may be *excluded* from the Emergency Paid Sick Leave Act's paid sick leave requirements. This means that EMS employers may choose to **not** follow the paid sick leave provisions of the Emergency Paid Sick Leave Act. For some more info about this "exclusion" (see FAQs 55-57), see [here](#).

If an ambulance service chooses to *exclude* its personnel from EPSLA coverage, but the EMS provider wishes to take time off (and is otherwise entitled to paid sick leave) under the Ambulance Service policies (i.e. accrued PTO), then that leave must be provided.

If an ambulance service chooses *not* to exclude its EMS personnel from the paid sick leave provisions of EPSLA, it must permit the EMS provider to use EPSLA paid sick leave before any other sick leave to which the EMS provider is otherwise entitled (i.e., accrued PTO).

Interestingly, DOL guidance indicates that the intent behind the health care provider exemption was to minimize the spread of COVID-19, but also not to force employees to choose between their job and preventing the spread. However, in the health care field, this becomes counterintuitive by allowing healthcare employers to use the exemption. This exemption, in turn *encourages* healthcare workers to put more of a priority on their job (and possible exposure and spread of disease) over their paycheck (or loss thereof, should they have to quarantine or isolate).

Accordingly, the DOL encourages employers to be "judicious" when using the exemption for health care providers and emergency responders. Employers should view the health care provider exemption as a balancing act between protecting their employees while at the same time being able to provide essential and necessary services needed to protect public health from COVID-19. That is, by allowing all

(or most) employees to be out on paid sick leave under the act, there would be no healthcare workers available to perform the essential healthcare duties. Thus, while health care employers are allowed to apply the exemption, they can choose not to apply it, and instead pay its employees for time off under the EPLSA. You should consult your attorney if you have questions about the best course of action.