

Families First Coronavirus Response Act (FFCRA) Emergency Paid Sick Leave Act (EPSL) and the Emergency Family and Medical Leave Expansion Act (EFMLA)

The Families First Coronavirus Response Act (FFCRA) went into effect April 1, 2020 and seeks to assist employees impacted by the COVID-19 pandemic. The FFCRA includes two types of paid leave for employees who are unable to work, including those who are not able to work remotely, for COVID-19 related reasons: Emergency Paid Sick Leave Act (EPSL) and Emergency Family and Medical Leave Expansion Act (EFMLA).

Emergency Paid Sick Leave Act (EPSL)

EPSL provides up to 80 hours of paid sick leave for employees who are unable to work (onsite or remotely) and who meet one of six qualifying reasons related to COVID-19.

Who is eligible?

All employees, including employees who do not currently earn leave, are eligible from their first day of employment. This includes temporary/casual and student employees.

What are the six qualifying reasons for EPSL?

EPSL is provided if an employee is unable to work onsite or remotely for one or more the following reasons:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. A self-imposed quarantine without medical advice does not qualify.
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
4. The employee is caring for an individual (not specifically limited to family members) subject to or advised to quarantine or self-isolate.
5. The employee is caring for the employee's child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 precautions
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 the State.

How many hours of emergency paid sick leave can be taken?

Full-time employees (those who are regularly scheduled to work 40 hours per week) are entitled to 80 hours of emergency paid sick leave. Part-time employees are entitled to paid leave for the number of hours equal to the number of hours that such employee works, on average, over a two- week period.

How do I count hours worked by a part-time employee for purposes of emergency paid sick leave or expanded family and medical leave? (Source:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>)

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 emergency 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.

Is the emergency paid sick leave paid at the regular rate of pay?

The Texas A&M University System will pay employees at their regular rate of pay based on the number of hours the employee would otherwise be normally scheduled to work.

Can emergency paid sick leave be taken intermittently?

Yes, leave under the Emergency Paid Sick Leave Act can be taken on an intermittent basis. If an employee is unable to work their normal schedule of hours due to one of the qualifying reasons, they may take emergency sick leave in less than full-day increments.

Example: John Doe regularly works 8 hours per day, but he is only be able to telework for 5 hours per day due to one of the qualifying reasons. John Doe would then be paid his regular salary for the 5 hours he teleworked and paid 3 hours of emergency paid sick leave.

Does emergency paid sick leave carry-over to next year?

The FFCRA's paid leave provisions are effective on April 1, 2020, and only apply to leave taken between April 1, 2020, and December 31, 2020. Paid leave provided under the FFCRA does not carry over from year to year.

Can emergency paid sick leave be used for absences before April 1, 2020?

No. Emergency Paid Sick Leave cannot be used for absences prior to April 1, 2020.

Do employees need to use other forms of leave first?

No. Employees do not have to use other paid leaves before they use paid leave under the FFCRA. The employee may, however, choose to use other paid leave available prior to or instead of the leave provided under the FFCRA.

Emergency Family and Medical Leave Expansion Act (EFMLA)

EFMLA expands the federal Family and Medical Leave Act to provide leave for employees who are unable to work, including those who are not able to work remotely, as a result of having to care for a minor child due to a COVID- 19 related closure of a school or childcare center.

Who is eligible?

Employees are eligible to take leave under EFMLA if they have been employed at least 30 calendar days. This includes employees in non-leave accruing positions, such as temporary/casual and student employees. Unlike the other provisions of the Family Medical Leave Act (FMLA), there are no hours worked requirements for eligibility, and employees are not required to work the normal 12-month period for leave taken pursuant to the EFMLA.

How many weeks of leave does EFMLA cover?

The EFMLA amends and expands the federal Family and Medical Leave Act (FMLA), on a temporary basis, to provide qualifying employees 12 weeks of leave (only weeks 3-12 are paid) if the employee is unable to work, including working remotely, due to the need to care for the employee's child (under 18 years of age) if the child's school or place of care is closed or the child care provider is unavailable due to a public health emergency. A public health emergency is "an emergency with respect to COVID-19 declared by a Federal, State, or local authority."

May I take emergency paid sick leave or expanded family and medical leave to care for my child who is 18 years old or older?

(Source: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>)

It depends. Under the FFCRA, emergency paid sick leave and expanded family and medical leave include leave to care for one (or more) of your children when his or her school or place of care is closed or child care provider is unavailable, due to COVID-19 related reasons. This leave may only be taken to care for your non-disabled child if he or she is under the age of 18. If your child is 18 years of age or older with a disability and cannot care for him or herself due to that disability, you may take emergency paid sick leave and expanded family and medical leave to care for him or her if his or her school or place of care is closed or his or her child care provider is unavailable, due to COVID-19 related reasons, and you are unable to work or telework as a result.

In addition, emergency paid sick leave is available to care for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. If you have a need to care for your child age 18 or older who needs care for these circumstances, you may take emergency paid sick leave if you are unable to work or telework as a result of providing care. But in no event may your total emergency paid sick leave exceed two weeks.

Is EFMLA leave paid or unpaid?

The first 10 workdays of EFMLA may be unpaid, although an employee can choose to substitute accrued vacation or sick leave during this time or utilize their two weeks (up to 80 hours) of emergency paid sick leave under the FFCRA. After the first 10 workdays, paid leave will be provided for the remaining leave taken under the EFMLA. This includes leave taken by employees who do not currently earn leave.

The EFMLA requires employees to be paid based on the hours they would have been normally scheduled to work.

If an employee chooses to take accrued sick leave during the first ten days of EFMLA, will they be required to submit medical documentation that they were sick?

For purposes of FFCRA, an employee who requests accrued sick leave for any and all of the first 10 days of EFMLA coverage is not required to submit medical documentation that they or a member of their family were sick. The requirements of System Regulation 31.03.02, Sections 4.2 and 4.3, are waived specifically for this circumstance.

Can employees use Emergency Paid Sick Leave to cover the first 10 days of unpaid leave?

Yes. Employees are able to use leave provided through the Emergency Paid Sick Leave Act (EPSL) and Emergency Family and Medical Leave Expansion Act (EFMLA) **concurrently**.

Is EFMLA leave paid at the employee's regular rate of pay?

The Texas A&M University System will pay employees at their regular rate of pay based on the number of hours the employee would otherwise be normally scheduled to work.

Can employees combine EFMLA paid leave with other types of leave?

Yes. Employees can use any accrued leave to augment leave taken under EFMLA.

Are employees required to take other types of leave before taking EFMLA?

No. Employees are not required to take other leave prior to taking EFMLA leave. Employees may also choose to use other types of leave available prior to taking Emergency Paid Sick leave or EFMLA leave.

Can EFMLA be taken intermittently?

Yes, leave under the EFMLA can be taken on an intermittent basis.

Does EFMLA carry-over to next year?

The FFCRA's paid leave provisions are effective on April 1, 2020, and only apply to leave taken between April 1, 2020, and December 31, 2020. Paid leave provided under the FFCRA does not carry over from year to year.

Can EFMLA be used for absences before April 1, 2020?

No. EFMLA cannot be used for absences prior to April 1, 2020.

Does EFMLA protect my job?

EFMLA provides the same job protections as FMLA.

Is the 12 workweeks of leave provided under the EFMLA included in the 12 workweeks of leave provided under the FMLA?

Yes. Employees are limited to a combined total of twelve weeks of leave taken under the EFMLA and FMLA during the fiscal year (which runs September to August). If an employee has already taken 12 workweeks of FMLA leave during the applicable 12-month period, they may not take additional leave under the EFMLA.

How is 30 calendar days calculated for purposes of determining eligibility for EFMLA?

An employee is considered to have been employed for 30 calendar days if the employee has been on payroll with any state agency for the 30 calendar days immediately prior to the day the leave would begin. This does not necessarily mean that the employee has actually worked 30 calendar days. For example, the employee was placed on payroll beginning March 2, 2020, eligibility begins 30 calendar days from March 2, 2020, even if they only worked Monday through Friday of this period.

If the employee worked as a temporary/casual or student employee and then transferred to a budgeted position, the total time worked in both positions should be added to determine if the 30-day timeframe has been met.

General FAQs about FFCRA

What documentation is required by an employee to substantiate the qualifying reason for leave under the FFCRA?

Employees should provide written notice of the need for leave using the following form(s) prior to entering the time off in Workday.

- Employee Statement for Emergency Paid Sick Leave Request
- Employee Statement for Emergency Family Medical Leave Request

In addition, the usual FMLA medical certification requirements continue to apply for reasons such as the employee's own serious health condition or caring for a family member with a serious health condition.

However, the U.S. Equal Employment Opportunity Commission (EEOC) has advised that, because of the pandemic, employees may not be able to provide certification of their medical condition or their family members' medical condition quickly. In such cases, employers should be flexible and may accept other types of documentation of the condition, such as health insurance payments (e.g., co-pays) prescriptions filled, or a form, stamp, or email from a local clinic. If the employer is waiting to receive documentation, it may want to provide the accommodation on a temporary basis.

What does it mean to be unable to work, including remotely, for COVID-19 related reasons?

(Source: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>)

You are unable to work if your employer has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or remotely.

If you and your employer agree that you will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

If I am or become unable to work remotely, am I entitled to emergency paid sick leave or expanded family and medical leave?

(Source: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>)

If you are permitted to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for emergency paid sick leave, then you are entitled to take emergency paid sick leave.

Similarly, if you are unable to perform those tasks because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave. Of course, to the extent you are able to work remotely while caring for your child, emergency paid sick leave and expanded family and medical leave is not available.

Additional FAQs for the Families First Coronavirus Response Act can be found at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.