

Families First Coronavirus Response Act – FFCRA ([full text of the Act](#)) – **FOR COURTS**

Consult [DOL Fact Sheet](#) & [DOL FFCRA Q & A](#) for more details – **Updated April 16, 2020**

Employees have these two categories of additional paid and unpaid leave from April 1 – December 31, 2020:

<p>EPSLA</p> <p>Emergency Paid Sick Leave Act</p> <p>Division E of the Act</p>	<p>EPSLA exists on top of employers’ regularly provided paid leave (e.g., sick, vacation)</p> <p>Begins on first day of employment</p> <p>All public employers (portions relating to employers with < 500 employees only apply to private sector employers)</p> <p>100% of regular pay* (up to \$511 daily / \$5,110 total) for the employee’s own issues that preclude them from working/teleworking:</p> <ol style="list-style-type: none"> 1. Employee is subject to federal, state, or local COVID-19-related quarantine/isolation order. 2. Employee has been advised by healthcare provider to self-quarantine for COVID-19-related reason. 3. Employee has symptoms of COVID-19, and is seeking a diagnosis. <p>67% of regular pay* (up to \$200 daily / \$2,000 total) if the following circumstances preclude work/telework:</p> <ol style="list-style-type: none"> 4. Employee is caring for an individual subject to an order described in #1 or in self-quarantine as described in #2. 5. Employee is caring for his or her child or those <i>in loco parentis</i> whose school, daycare, or child care provider is closed/unavailable due to COVID-19-related reasons.** (Children 15-17 years old require statement describing the special circumstances requiring the employee to provide care, e.g., special needs; available for adult children incapable of self-care.) 6. Employee is experiencing any other substantially-similar condition specified by the U.S. Dept. of HHS, DOL, and Treasury as meriting time off. <p>Employee can choose to use this leave first instead of employer-provided regular sick / vacation leave (and most employees <i>should</i> – this time will disappear after 12/31/2020; doesn’t roll over; doesn’t get paid if unused).</p>	<p>Full-time: Up to 10 workdays or 80 hours</p> <p>Part-time: Up to the number of hours they are scheduled to work in a 2-week period</p> <p>*Do not include overtime in calculations of regular pay; only calculate regular pay by regular rate.</p> <p>**May overlap with EFMLE if employee is caring for children with school/daycare closure</p>
<p>EFMLE</p> <p>Emergency Family and Medical Leave Expansion</p> <p>“Emergency FMLA”</p> <p>Division C of Act</p>	<p>EFMLE / Expanded FMLA is <i>only</i> for school/daycare closures (#5, above), and <i>it’s the only form of partially paid FMLA leave - on top of employers’ regularly provided paid leave (e.g., sick, vacation)</i></p> <p>All public sector employees are eligible for this form of FMLA leave (<i>only</i>) after 30 days of employment – NO 1,250 hour / 12 months of employment requirement, NO requirement they work at a site with ≥ 50 employees within 75 miles. (All other types of FMLA leave still require these conditions.) [Personal Staff/ Policymaker exclusions still apply / Key Employees still have restricted rights.]</p> <p>67% of regular pay* (up to \$200 daily / \$10,000 total) after 10 workdays missed (although EPSLA available for these days); ONLY available if employee is caring for child (including adult children incapable of self-care & those <i>in loco parentis</i>) with COVID-19-related school/daycare closure. Employer can’t require employee to use / if employee doesn’t use it, no entitlement to payout.</p> <p>If employee has already exhausted FMLA balance, EFMLE is unavailable until additional leave is available (through 12/31/2020). EFMLE time will count against employees’ other FMLA balance—this is merely another form of FMLA leave. FMLA leave remains available for all other FMLA-qualifying events (e.g., serious health conditions of employee or covered family; birth/placement of a child, military provisions, <i>etc.</i>); but those events remain unpaid (unless employee uses paid time off).</p>	<p>*Do include overtime in calculations of regular pay.</p> <p>Up to 12 weeks; paid leave only begins after 10 days of unpaid leave (but may use paid EPSLA for those 10 days of unpaid EFMLE)</p>

Supplementing Paid FFCRA Leave: If mutually agreed, employee can supplement any missing portion of regular pay during EPSLA with accrued paid leave (e.g., sick, personal, vacation pay), up to the employee’s normal earnings. However, if FMLA policy provides for employees using accrued paid leave concurrently with regular FMLA, employers may *compel* employees to use this to supplement the missing portion of their pay during EFMLE.

Recordkeeping: Names/dates/reasons for leave; documentation of reason (e.g., notice of school closure, medical certification—but discourage trips to the doctor, just for certification; phone call/email/telehealth certifications are fine), proof of payment. FFCRA requires 3 year retention; Ohio R. Super. 26.01(J) requires 10 years post-employment.

Families First Coronavirus Response Act – FFCRA ([full text of the Act](#))

OPTIONAL EXCLUSION OF EMPLOYEES WHO PROVIDE HEALTH CARE & EMERGENCY RESPONDERS

Consult [DOL Fact Sheet](#) & [DOL FFCRA Q & A](#) for more details

Employers' Ability to Optionally Exclude Health Care Providers & Emergency Responders from EPSLA and/or EFMLE

Employers of “Health Care Providers” and “Emergency Responders” *may* exclude them from receiving EPSLA and EFMLE “on a case-by-case basis.” DOL encourages employers to “be judicious” in excluding staff. Exclusions are designed to ensure vital operations aren’t debilitated by extensive absences; consider excluding all FFCRA vs. caregiving events under EPSLA / EFMLE only. **Exclusions are broader than they seem; DOL will *always* look at duties, not titles, in making determinations.**

Health Care Provider Exclusion

Health Care Provider: Anyone employed at any...health care center, clinic, [and] 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 [and anyone else the Governor designates as a Health Care Provider].

Court-employed Health Care Providers?

In Court settings, consider nurses, doctors, assistants, and other providers of medical services in court-run facilities (*e.g.*, juvenile detention centers).

Emergency Responder Exclusion

Emergency Responder: Anyone who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19...[including]... law enforcement officers, correctional institution personnel, physicians, nurses...individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility...[and anyone else the Governor designates].

Court Probation Officers as Emergency Responders?

[FLSA Reg. 541.3](#) characterizes Probation Officers as typically ineligible for FLSA white collar exemptions because they, along with “police officers, detectives, deputy sheriffs, state troopers, highway patrol officers,” and others are “first responders.” *See* [Fact Sheet #17\(j\)](#). If courts already treat probation officers as eligible for alternate overtime arrangements under FLSA 7(k), [29 U.S.C. § 207\(k\)](#) (*see* [DOL Fact Sheet #8](#); [29 CFR 553.211\(f\), \(g\)](#); and [29 CFR 553.230\(b\)](#)) (or if they don’t but could) it helps demonstrate they are “emergency responders,” which the DOL defines as including “law enforcement officers.” Look to whether the duties are more like law enforcement vs. social work: Does the employee carry a weapon; make arrests; make unannounced field visits; carry a caseload of reporting probationers? In the juvenile justice setting (where we avoid terminology that mimics the adult criminal justice system), look to the duties performed / nature of the offenses supervised.

Court security bailiffs, court security officers, and courtroom bailiffs as Emergency Responders?

[FLSA Reg. 541.3](#) characterizes these individuals as “first responders” (not FFCRA “emergency responders”): “deputy sheriffs...[and those] who perform work such as preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole.” This won’t match the work of most court security personnel & bailiffs—their work usually requires too much bailiff/administrative work to be deemed law enforcement work. But if the duties are largely law enforcement-related, it’s possible.

Note: Dedicated courtroom bailiffs assigned to a single judge are likely to be personal staff of an elected official—and therefore excluded from the definition of “Employee” in the FMLA (and therefore the EFMLE) - [29 CFR 825.102](#) (Employee - (2)(iii)(B)(2)); [29 USC 203 \(e\)\(2\)\(C\)\(ii\)\(II\)](#).

Also note: Personal staff of elected officials are excluded from the FMLA (and therefore the EFMLE), but they still qualify for EPSLA, unless they meet a FFCRA exclusion.)

Staff of Juvenile Court-operated detention / treatment / school facilities as Emergency Responders?

If courts already treat juvenile detention/corrections staff as engaging in **law enforcement activities** and/or **correctional institution personnel** who merit alternate overtime arrangements under FLSA 7(k), [29 U.S.C. § 207\(k\)](#) (*see* [DOL Fact Sheet #8](#); [29 CFR 553.211\(f\), \(g\)](#); and [29 CFR 553.230\(b\)](#)) (or if they don’t but could), it helps demonstrate they are “emergency responders,” which the DOL Guidance defines as including “law enforcement officers” and “correctional institution personnel.” The juvenile justice system deliberately uses language designed to avoid criminal associations. However, look to the actual setting/duties to make these assessments—the more the function resembles an adult correctional facility, the easier to argue that all essential staff are “emergency responders.”

While [29 CFR 553.211\(g\)](#) doesn’t include “civilian” employees of law enforcement agencies in the alternate overtime arrangements of FLSA 7(k), [FFCRA](#) excludes all staff of facilities employing law enforcement officers and correctional institutional personnel whose work is necessary to maintain its operations—think “essential” functions like maintenance, repairs, culinary, teaching, custodial, etc.