

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

(This fact sheet is generally geared toward the public sector; however, courts should consult our court-specific fact sheet.)

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

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 meet this criteria:</p> <ol style="list-style-type: none"> Employee is subject to federal, state, or local COVID-19-related quarantine/isolation order. Employee has been advised by healthcare provider to self-quarantine for COVID-19-related reason. Employee has symptoms of COVID-19, and is seeking a diagnosis. <p>67% of regular pay* (up to \$200 daily / \$2,000 total) if:</p> <ol style="list-style-type: none"> Employee is caring for an individual subject to an order described in #1 or in self-quarantine as described in #2. Employee is caring for his or her child (including adult children incapable of self-care & those <i>in loco parentis</i>) whose school or daycare is closed / whose child care provider is unavailable for COVID-19-related reasons.** 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>EFMLA / 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 Employer & Employee agree, employee can supplement any missing portion of employee’s regular pay with accrued paid leave they receive from their employer (e.g., paid sick, personal, vacation, medical leave), up to the employee’s normal earnings.

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; consult local retention schedule for longer requirements.

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

OPTIONAL EXCLUSION OF EMPLOYEES WHO PROVIDE HEALTH CARE & WHO SERVE AS 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 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 institutions 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 that state’s...response to COVID-19.

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. 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 that state’s...response to COVID-19.