Families First Coronavirus Response Act Policy

This policy provides guidance on the Emergency Paid Sick Leave Act (EPSLA) and Emergency Family and Medical Leave Expansion Act (EFMLEA), enacted as part of the Families First Coronavirus Response Act (FFCRA). Per the Act, these provisions are effective April 1, 2020 through December 31, 2020.

The University of Texas at El Paso (UTEP), in compliance with applicable federal laws and regulations, strives to maintain an environment free from discrimination against individuals on the basis of race, color, national origin, sex, age, religion, disability, sexual orientation, genetic information, veteran status, or retaliation.

The University of Texas at El Paso will not retaliate against or discipline employees or trainees for appropriate use of paid leave under the Act, whether the leave is Emergency Paid Sick Leave (EPSL) or Emergency Family Medical Leave (EFML). Employees or trainees who retaliate in any way against an individual who takes leave in accordance with this plan will be subject to disciplinary action, up to and including termination.

This plan is subject to change based on forthcoming regulations from the U.S. Department of Labor, issued federal or state guidance, or other legal authority.

Target Audience

An “employee” is defined for the purpose of this plan as all administrative and professional staff, classified staff, faculty, and trainees. This plan does not apply to contingent workers or individuals who otherwise are not employees of UTEP.

The leave provided under the FFCRA does not modify an employee’s right to use their sick leave, vacation leave, vacation leave within their first six months, sick leave pool, donated sick leave, or compensatory time as defined by the UTEP Handbook of Operating Procedures.

Emergency Paid Sick Leave (EPSL)

Eligibility

• EPSL eligibility begins on the first day of employment.

• Under the FFCRA, UTEP will grant the following EPSL accruals:

  o Full time employees receive 80 hours of EPSL.

  o Eligible part-time employees are entitled to a pro-rated amount based on their full-time equivalency (FTE).

• Employees may use EPSL if they are unable to work (or remote work) for 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;

  (3) The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1), or has been advised to self-quarantine as described in subparagraph (2);

(5) The employee is caring for a son or daughter if the school or place of care has been closed or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or

(6) The employee is experiencing any other substantially similar conditions are specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Considerations

• If the EPSL is for the reasons stated in (1), (2), or (3) above, the paid leave is at the employee’s regular rate of pay, up to $511/day (or $5,110 in the aggregate).

• If the EPSL is for the reasons stated in (4), (5), or (6) above, the paid leave is at 2/3rd of the employee’s regular rate of pay, up to $200/day (or $2,000 in the aggregate).

• As stated above, employees who take FFCRA-related leave are permitted to supplement their rate of pay for those hours by using other accrued paid leave available to them. In other words, use of accrued leave can be used concurrently with FFCRA-based leave.

• Employees cannot carryover unused EPSL time beyond December 31, 2020. Any remaining hours will automatically expire.

• Unused EPSL leave balances are not eligible for payout following separation of employment from UTEP or following death.

• Employees are not required to exhaust accrued leave, as defined in the UTEP Handbook of Operating Procedures, prior to use of EPSL.

• If reason (5) is used, employees may use EPSL if they are unable to work (or remote work) due to:
  • The employee is caring for a son or daughter if the school or place of care has been closed or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; and
  • A son or daughter is defined as any biological child, adopted child, foster child, stepchild, legal ward, or a child of a person standing in loco parentis (e.g., grandparents caring for grandchildren). The child must be under the age of 18, unless the child is incapable of self-care due to mental or physical disability.

Process for Requesting EPSL

• Employees who wish to apply for Emergency Paid Sick Leave must submit a completed and signed Families First Leave Request Form and provide appropriate supporting documentation to the HR Leave Administrator in the Office of Human Resources via email at HRLeaveAdmin@utep.edu. • After the first
workday (or portion thereof) an employee receives EPSL under this section, the employee must provide advance notice prior to taking additional EPSL leave whenever possible.

- EPSL ends beginning with the employee’s next scheduled work shift immediately following the termination of need for EPSL under the eligibility section above.
- EPSL can be used for continuous and intermittent leave.
- Upon receipt of the FFCRA Leave Request form, the HR Leave Administrator will code the applicable hours and submit to Absence Management for processing.

Exclusions

- The FFCRA allows employers to exclude certain employees who are in the Police, Fire, and Public Works departments from leave under the EPSL provisions. “Health Care Providers” who can be excluded from EPSL include employees who are: 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 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 highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.
  - To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.
  - As of April 1, 2020, UTEP is not exercising this exclusion. However, UTEP reserves the right to revisit this exclusion at any time. Any change in this exclusion provision will be communicated through regular institutional communication channels.

Emergency Family Medical Leave (EFML) Expansion

Eligibility

- EFML eligibility begins after an employee has worked at least 30 calendar days.
- UTEP will provide up to 10 weeks of paid leave after 10 days unpaid (an employee may substitute unpaid leave by use of accrued leave or EPSL) if the need for EFML is due to the following reason:
• The employee is unable to work (or remote work) and caring for a son or daughter because the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions, and
  o A son or daughter is defined as any biological child, adopted child, foster child, stepchild, legal ward, or a child of a person standing in loco parentis (e.g., grandparents caring for grandchildren). The child must be under the age of 18, unless the child is incapable of self-care due to mental or physical disability.

Considerations

• EFML provisions are effective April 1, 2020 and expire on December 31, 2020.

• Pay during EFML

  • The first 10 days of leave under the EFML are unpaid. However, employees are permitted to supplement their rate of pay by using other accrued paid leave available to them, including EPSL.

  • After the first 10 days of leave under EFML, pay is 2/3 the rate of regular pay. Under the FFCRA, UTEP must provide paid leave as follows:
    o For employees with regular hours of work, at least 2/3 of regular pay for hours normally scheduled to work, not to exceed $200/day and $10,000 in aggregate;
    o Employees are permitted to supplement their rate of pay by using other accrued paid leave (vacation or comp time accruals) available to them.

• The EFML temporarily provides an additional reason to take Family Medical Leave (FML), but it does not entitle employees to a combined 24 weeks of leave. The combined total leave permitted under the FMLA, including the new reason for leave related to school closures/unavailability of childcare, is subject to the 12-week maximum in any 12-month period. Employees who have already exhausted their FMLA are not eligible to take EFML until the employee has accrued additional FMLA time, pursuant to the normal statutory FMLA leave requirements.

Process for Requesting EFML

• Employees who wish to apply for Emergency Family and Medical Leave must submit a completed and signed Families First Leave Request Form and provide appropriate supporting documentation to the HR Leave Administrator in the Office of Human Resources via email at HRLeaveAdmin@utep.edu.

• Employees must provide UTEP as much notice of leave as possible when the need for leave is foreseeable.

• EFML can be used for continuous and intermittent leave.

• Upon receipt of the FFCRA Leave Request form, the HR Leave Administrator will code the applicable hours and submit to Absence Management for processing.
Exclusions

- The FFCRA allows employers to exclude certain employees who are in the Police, Fire, and Public Works departments from leave under the EPSL provisions. “Health Care Providers” who can be excluded from EPSL include employees who are:
  
  - 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 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 highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.
    
    - To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.
  
  - As of April 1, 2020, UTEP is not exercising this exclusion. However, UTEP reserves the right to revisit this exclusion at a later date. Any change in this exclusion provision will be communicated through regular institutional communication channels.

Relevant Statutes/Regulatory Agencies/Legal Guidance

- [United States Department of Labor Guidance issued on March 28 2020](https://www.dol.gov/general/coronavirus-outbreak)
- [UTEP Handbook of Operating Procedures](https://www.utep.edu/handbook/06082.html)