1. When can eligible employees use EPSL and EFML?


The FFCRA’s paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

2. Who is an “eligible employee” for EPSL? For EFML?

For EPSL: Employees are eligible from their first day of employment. There is no waiting period. It is immediately available upon hire.

For EFML: Employees must have been employed with UTEP for at least 30 calendar days.

For both EPSL and EFML: Both full-time and part-time employees are eligible for both types of leave.

3. What are the reasons that an eligible employee can take EPSL?

An eligible employee who is unable to work (or remote work) may take EPSL for one of 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 also seeking a medical diagnosis;

4. The employee is caring for an individual (not required to be a family member) who is subject to an order as described under reason 1 or has been advised as described under reason 2;

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

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 Labor.
4. What is the reason that an eligible employee can take EFML?

School closure/unavailability of childcare: An eligible employee who is unable to work (or remote work) may take EFML when an emergency has been declared by a federal, state, or local authority related to COVID-19 and the employee is unable to work (or remote work) because the employee must care for a son or daughter under age 18 whose elementary or secondary school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19.

5. What amount of leave and pay are eligible employees entitled to receive under the EPSL? Under the EFML?

**EPSL**

- Eligible full-time employees are entitled to two weeks of paid time off (up to 80 hours total).
- Eligible part-time employees are entitled to the typical number of hours they are scheduled to work in a two-week period.
- EPSL payments are subject to the following limitations:
  - If an employee takes EPSL for reasons 1, 2, and 3 above, the paid leave is at the employee’s normal rate of pay, up to $511/day (or $5,110 in the aggregate).
  - If an employee takes EPSL for reasons 4, 5, and 6 above, the paid leave is at 2/3 the employee’s normal rate of pay, up to $200/day (or $2,000 in the aggregate).

**EFML**

- The first 2 weeks (10 days) of EFML are unpaid.
  - An employee may elect to use accrued vacation or compensatory time (including EPSL) to be paid during the first 10 days of EFML. Employees may not elect to use accrued state sick leave, which cannot be used for child care reasons.
- After the first two weeks, employees are entitled to 10 weeks of EFML paid at two-thirds (2/3) of the employee’s regular rate for the number of hours the employee would otherwise be scheduled to work, subject to a cap of $200/day or $10,000 in the aggregate.
  - Eligible full-time employees are entitled to 40 hours of pay each week.
  - Eligible part-time employees are entitled to pay for the average number of hours that they would otherwise be normally scheduled
to work.
  
  - If an eligible employee works a varying schedule such that the number of hours the employee would have otherwise worked is not known with certainty, the employee is entitled to the average number of hours the employee was scheduled per day over the prior 6 months or, if the employee did not work over that period, the reasonable expectation at hiring of the average number of hours the employee would work per day.

6. **Does the EFML extend employees’ 12-week traditional FMLA entitlement by an additional 12 weeks?**

   No. EFML temporarily provides an additional reason to take FMLA leave, 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.

7. **How much EPSL and EFML is an employee entitled to due to school closures/unavailability of childcare?**

   An eligible employee who is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to a declared public health emergency related to COVID-19, is eligible for up to 12 weeks of paid leave, conditioned upon the employee’s available FMLA leave.

   This maximum entitlement is calculated by combining two weeks of EPSL with up to subsequent 10 weeks of EFML. However, if an employee exhausts EPSL and does not have other accrued state paid leave (vacation or compensatory time), the first two weeks of EFML will be unpaid.

*Summary:*
• **First 80 hours/two weeks:** unpaid EFML
  - Employees may substitute other accrued paid state leave, such as vacation or comp time, or EPSL school closure/unavailable childcare leave at 2/3 rate of pay; either state leave or EPSL would run concurrently with the first two weeks of EFML.

• **Remaining 10 weeks:** paid at 2/3 of employee’s regular rate, for the number of hours the employee would otherwise be scheduled to work; maximum payment of $200/day and $10,000 total.

8. **Does the EFML change an employee’s entitlement to use traditional FMLA if the employee or the employee’s family member becomes sick due to COVID-19?**

EFML does not impact an employee’s normal rights under the FMLA. If an employee needs to request leave for a traditional FMLA-qualifying reason, they should contact UTEP’s Leave Administration unit at HRLeaveAdmin@utep.edu and follow the processes set forth in the UTEP Handbook of Operating Procedures, Section V, Chapter 17

9. **Will an employee be restored to their position if the employee’s position is eliminated while the employee is out on EFML?**

Generally, yes, employees returning from EFML will be restored to their original or an equivalent position.

10. **Are employees required to provide advanced notice of the need for leave?**

**EPSL:** After the first workday (or portion thereof) an employee receives EPSL, the employee must provide advanced notice prior to taking additional leave whenever possible.

**EFML:** The employee must provide as much notice of leave as is practicable when the need for leave is foreseeable.

11. **What documentation must employees submit to the institution to support the need for leave?**

Employees must submit online a completed FFCRA Emergency Leave form to: HRLeaveadmin@utep.edu

Employees requesting EPSL for reasons 2, 3 and 4 will be required to submit a note from a health care provider to support the leave of absence.
12. May an employee use EPSL or EFML intermittently?

Yes. This answer is subject to change based on Department of Labor (DOL) guidance.

13. Can employees carry over unused EPSL beyond December 31, 2020?

No.

14. Can employees take EPSL or EFML due to school closure or unavailability of childcare if their son or daughter is not their biological child?

Yes. Children are defined as any biological, adopted, foster, 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.

15. If I am home with my child because his or her school or place of care is closed, or child care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both—how do they interact?

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency Family and Medical Leave Expansion Act unless you elect to use existing vacation, personal, or medical or sick leave under your employer’s policy. After the first ten workdays have elapsed, you will receive 2/3 of your regular rate of pay for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

16. May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid
sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

17. If an employee can perform their job duties remotely but cannot work due to a COVID-19-related school closure or unavailability of childcare is the employee still eligible to use EPSL or EFML?

Yes, if the child’s school or place of care has been closed, or the child’s childcare provider is unavailable, due to COVID-19.

18. May I use paid sick leave and expanded family and medical leave together for any COVID-19 related reasons?

No. The Emergency Family and Medical Leave Expansion Act applies only when you are on leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons. However, you can take paid sick leave under the Emergency Paid Sick Leave Act for numerous other reasons.

19. Are employees paid out for unused EPSL or EFML upon separation or death?

No.

20. Is EPSL or EFML time credited for TRS and ORP?

Yes. This answer is subject to change based on Teachers Retirement System (TRS) guidance.

21. Is all leave under the FMLA now paid leave?

No. The only type of family and medical leave (FMLA) that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

22. Are the paid sick leave and expanded family and medical leave requirements retroactive?

No.

23. What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?

You are entitled to paid sick leave if you are unable to work or remote work due to a qualifying reason related to COVID-19. You must provide documentation in
support of the reasons for your paid sick leave. These documents may include a copy of the Federal, State or local quarantine or isolation order related to COVID-19 or written documentation by a health care provider advising you to self-quarantine due to concerns related to COVID-19.

You must provide documentation in support of your expanded family and medical leave taken to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. For example, this requirement may be satisfied with a notice of closure or unavailability from your child’s school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider.

Please also note that all existing certification requirements under the Family Medical Leave Act (FMLA) remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to provide medical certifications under the FMLA.

24. When am I able to remote work under the FFCRA?

You may remote work when your supervisor permits or allows you to perform work while you are at home or at a location other than your normal workplace. Remote work is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.

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

You are unable to work if your supervisor 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 by means of remote work.

If you and your supervisor 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 you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

26. Has the institution posted the official federal government notice regarding the FFCRA?

UTEP has provided an electronic copy of the model notification via campus bulletin and on the HR Leave Administration website along with the COVID-19 Campus Information Page.