



## Frequently Asked Questions about COVID-19 Families First Coronavirus Response Act

**Families First Coronavirus Response Act (FFCRA)** – On April 1, 2020, the U.S. Department of Labor announced new action regarding how American workers and employers will benefit from the protections and relief offered by the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act, both part of the Families First Coronavirus Response Act (FFCRA).

Below are answers to provide general guidance on some of the most frequently asked questions pertaining to how the leave benefits provided under the FFCRA will apply to ALL Orange County employees. The questions have been divided into three sections, **1) Definitions, 2) Emergency Paid Sick Leave (EPSL)** and **3) Emergency Family and Medical Leave Expansion Act (EFMLEA)**, in order to better assist employees in understanding the two new leave benefits. Human Resources will continue to update this guidance as circumstances may change.

### Key Terms:

**Paid sick leave** – means paid leave under the Emergency Paid Sick Leave Act (EPSL).

**Expanded family and medical leave** – means paid leave under the Emergency Family and Medical Leave Expansion Act (EFMLEA).

### Benefit Summary:

FFCRA provides employees with EPSL, as well as EFMLEA for specified reasons related to COVID-19. Under EPSL employees are entitled to up to 80 hours of paid leave if the employee is unable to work or telework due to covered reason. Under EFMLEA employees are entitled to 12 weeks of job protected leave when the employee is unable to work or telework due to child care needs provided they meet all the criteria.

### More Information:

Employees are encouraged to review the FAQs contained in this document and visit the employee [Coronavirus \(COVID-19\) OrangeNet page](#) to obtain additional information and the forms necessary to access the benefits offered under the FFCRA. Additionally, employees may contact their supervisor and/or Human Resources.

## Definitions

1. [Who is a son or daughter?](#)
2. [Who is considered a full-time employee under the EPSL Act?](#)
3. [Who is considered a part-time employee under the EPSL Act?](#)
4. [Who is a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave?](#)
5. [What is my regular rate of pay for purposes of the FFCRA?](#)
6. [When am I eligible for paid sick leave based on a “substantially similar condition” specified by the U.S. Department of Health and Human Services?](#)
7. [What is a “place of care”?](#)
8. [Who is my “child care provider”?](#)

### 1. **Who is a son or daughter?**

Under the FFCRA, a “son or daughter” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child.

In light of Congressional direction to interpret definitions consistently, the Department of Labor clarifies that under the FFCRA a “son or daughter” is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability.

### 2. **Who is a full-time employee under the Emergency Paid Sick Leave Act?**

For purposes of the EPSL Act, a full-time employee is normally scheduled to work 40 or more hours per week. In contrast, EPSL does not distinguish between full- and part-time employees, but rather on the number of hours an employee normally works each week which affects the amount of pay the employee is eligible to receive.

### 3. **Who is considered a part-time employee under the EPSL Act?**

For purposes of the EPSL Act, a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week. In contrast, EMFLEA does not distinguish between full- and part-time employees, but rather on the number of hours an employee normally works each week which affects the amount of pay the employee is eligible to receive.

**4. Who is a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave?**

The term “health care provider,” means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

**5. What is my regular rate of pay for purposes of the FFCRA?**

The regular rate of pay used to calculate your paid leave is the average of your regular rate over a period of up to six months prior to the date on which you take leave. If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.

If you are paid with commissions, tips, or piece rates, these amounts will be incorporated into the above calculation to the same extent they are included in the calculation of the regular rate under the Fair Labor Standards Act.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

**6. When am I eligible for paid sick leave based on a “substantially similar condition” specified by the U.S. Department of Health and Human Services (HHS)?**

HHS has not yet identified any “substantially similar condition” that would allow an employee to take paid sick leave. If HHS does identify any such condition, the Department of Labor will issue guidance explaining when you may take paid sick leave on the basis of a “substantially similar condition.”

**7. What is a “place of care”?**

A “place of care” is a physical location in which care is provided for your child. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

**8. Who is my “child care provider”?**

A “child care provider” is someone who cares for your child. This includes individuals paid to provide child care, like nannies, au pairs, and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.

# Emergency Paid Sick Leave

# Emergency Paid Sick Leave (EPSL)

## Frequently Asked Questions

1. [What is the effective date of FFCRA, which includes the EPSL Act and EFMLEA?](#)
2. [What is the benefit for employees who are covered under the FFCRA?](#)
3. [Who is eligible under FFCRA for EPSL?](#)
4. [What are the covered reasons for being eligible for EPSL?](#)
5. [Is there any waiting period associated with EPSL?](#)
6. [When am I eligible for paid sick leave to care for someone who is subject to a quarantine or isolation order?](#)
7. [Can I take paid sick leave to care for any individual who is subject to a quarantine or isolation order or who has been advised to self-quarantine?](#)
8. [When am I eligible for paid sick leave to care for someone who is self-quarantining?](#)
9. [As an employee, how much will I be paid while taking Paid Sick Leave under the FFCRA?](#)
10. [How are the hours worked by a part-time employee for purposes of EPSL calculated?](#)
11. [Are overtime hours included in the calculation for EPSL?](#)
12. [Are EPSL and EMFLEA retroactive?](#)
13. [Can an employee take 80 hours of Paid Sick Leave for self-quarantine and then another amount of Paid Sick Leave for another reason provided under the EPSL Act?](#)
14. [How does an employee apply for the benefits under EPSL Act?](#)
15. [What documents are required to apply for EPSL?](#)

## Eligibility

### 1. What is the effective date of the FFCRA, which includes the EPSL Act and EFMLEA?

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. What is the benefit for the employees who are covered under the FFCRA?

FFCRA provides employees with EFMLEA, as well as EPSL for specified reasons related to COVID-19.

Under EFMLEA employees are entitled to 12 weeks of job protected leave when the employee is unable to work or telework due to child care needs provided they meet all the criteria.

Under EPSL employees are entitled to up to 80 hours of paid leave if the employee is unable to work or telework due to covered reason.

### 3. Who is eligible under FFCRA for EPSL?

Under FFCRA, EPSL is available to all employees if the employee is unable to work or telework due to a covered reason. This [job aid](#) is a great tool to assist employees in quickly determining their eligibility.

For part-time employees who work a consistent schedule, pay will be based on the average number of hours worked over a two-week period. For part-time employees who have a varied schedule, pay will be based on the average number of hours per week over the past six months.

### 4. What are the covered reasons for being eligible for EPSL?

EPSL can be requested under two leave categories:

- Self-care if:
  - employee received a Federal, State or local quarantine or isolation order;
  - employee's health care provider recommends self-quarantine; or
  - employee is experiencing symptoms and self-quarantines while awaiting a diagnosis.
- Care of others if:
  - care of another who is under Federal, State or local ordered quarantine or isolation;
  - care for child or children younger than 18 years of age or an adult child who is incapable of self-care when school, daycare or care provider is unavailable due to COVID-19; or
  - any other substantially similar condition as specified by the Secretary of the Federal Department of Health and Human Services.

**5. Is there any waiting period associated with EPSL?**

No, there is no waiting period. Employees will get paid from first day of their EPSL if they are unable to work or telework due to a covered reason. Employees are not required to use other sources of leave before using the EPSL.

**6. When am I eligible for paid sick leave to care for someone who is subject to a quarantine or isolation order?**

You may take paid sick leave to care for an individual who, as a result of being subject to a quarantine or isolation order, is unable to care for him or herself and depends on you for care and if providing care prevents you from working and from teleworking.

Furthermore, you may only take paid sick leave to care for an individual who genuinely needs your care. Such an individual includes an immediate family member or someone who regularly resides in your home. You may also take paid sick leave to care for someone if your relationship creates an expectation that you would care for the person in a quarantine or self-quarantine situation, and that individual depends on you for care during the quarantine or self-quarantine.

You may not take paid sick leave to care for someone with whom you have no relationship. Nor can you take paid sick leave to care for someone who does not expect or depend on your care during his or her quarantine or self-quarantine.

**7. Can I take paid sick leave to care for any individual who is subject to a quarantine or isolation order or who has been advised to self-quarantine?**

No. You may take paid sick leave under the FFCRA to care for an immediate family member or someone who regularly resides in your home. You may also take paid sick leave under the FFCRA to care for someone where your relationship creates an expectation that you care for the person in a quarantine or self-quarantine situation, and that individual depends on you for care during the quarantine or self-quarantine.

However, you may not take paid sick leave under the FFCRA to care for someone with whom you have no relationship. Nor can you take paid sick leave under the FFCRA to care for someone who does not expect or depend on your care during his or her quarantine or self-quarantine due to COVID-19.

**8. When am I eligible for paid sick leave to care for someone who is self-quarantining?**

You may take paid sick leave to care for a self-quarantining individual if a health care provider has advised that individual to stay home or otherwise quarantine him or herself because he or she may have COVID-19 or is particularly vulnerable to COVID-19 and provision of care to that individual prevents you from working or teleworking.

## Payout

### **9. As an employee, how much will I be paid while taking EPSL under the FFCRA?**

It depends on an employee's normal schedule, as well as why an employee is taking leave. If an employee is taking EPSL because he or she is unable to work or telework due to a need for leave because of the reasons one, two and three below, then the employee will receive pay for each applicable hour at their regular rate of pay up to a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period:

1. subject to a Federal, State, or local quarantine or isolation order related to COVID-19; or
2. advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
3. experiencing symptoms of COVID-19 and are seeking medical diagnosis.

If the employee is taking EPSL because of reasons four, five and six listed below then the employee will receive pay at 2/3 of their regular rate up to a maximum of \$200 per day, or \$2,000 over the entire two week period:

4. caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
5. caring for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or
6. experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services.

### **10. How are the hours worked by a part-time employee for purposes of EPSL calculated?**

For part-time employees who work a consistent schedule, pay will be based on the average number of hours worked over a two-week period, not exceeding a total of 80 hours. For part-time employees who have a varied schedule, pay will be based on the average number of hours per week over the past six months, not exceeding a total of 80 hours.

### **11. Are overtime hours included in calculation for EPSL?**

Yes. The payment is based on the number of hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week. However, EPSL requires that paid sick leave be paid only up to 80 hours over a consecutive two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the EPSL is capped at 80 hours during the consecutive two-week period.

**12. Are the EPSL and EMFLEA retroactive?**

No, the leaves are not retroactive.

**13. Can an employee take 80 hours of EPSL for self-quarantine and then another amount of EPSL for another reason provided under the EPSL Act?**

No. An employee can take up to two weeks 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 EPSL Act.

## Process

**14. How does an employee apply for the benefits under EPSL Act?**

Employees should complete the EPSL request form if they wish to apply for this benefit, which goes into effect on April 1, 2020. The form should be submitted to his/her manager or designee.

**15. What documents do I need to give my employer to be eligible to receive EPSL?**

You must provide to your employer documentation in support of your EPSL as specified in applicable IRS forms, instructions, and information.

Your employer may also require you to provide additional 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 may include 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. Your employer must retain this notice or documentation in support of expanded family and medical leave, including while you may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

Please note, all existing certification requirements under the 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 EPSL 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 if required by your employer.

# **Emergency Family Medical Leave Expansion Act**

# Emergency Family and Medical Leave Expansion Act (EFMLEA)

## Frequently Asked Questions

1. [What is the effective date of FFCRA, which includes the EPSL Act and EFMLEA?](#)
2. [What is the benefit for the employees who are covered under the FFCRA?](#)
3. [Who is eligible under FFCRA for EMFLEA?](#)
4. [What are the covered reasons for EMFLEA?](#)
5. [How do I know if I have “been employed for at least 30 calendar days by the employer” for purposes of EMFLEA?](#)
6. [Is there any waiting period associated with EMFLEA?](#)
7. [May I take paid sick leave or expanded family and medical leave if I am receiving workers’ compensation or temporary disability benefits through an employer or state-provided plan?](#)
8. [May I take paid sick leave or expanded family and medical leave under the FFCRA if I am on an employer-approved leave of absence?](#)
9. [As an employee, how much will I be paid while taking EMFLEA under the FFCRA?](#)
10. [Can an employee take EMFLEA intermittently?](#)
11. [Can an employee utilize other leaves to supplement the balance 1/3 pay when using EMFLEA?](#)
12. [Is the EMFLEA retroactive?](#)
13. [How does an employee apply for the benefits under EMFLEA?](#)
14. [What documents are required to apply for EMFLEA?](#)

## Eligibility

### **1. What is the effective date of FFCRA, which includes the EPSL Act and EFMLEA?**

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. What is the benefit for the employees who are covered under the FFCRA?**

The FFCRA provides employees with EFMLEA, as well as EPSL for specified reasons related to COVID-19.

Under EFMLEA employees are entitled to 12 weeks of job protected leave when the employee is unable to work or telework due to child care needs provided they meet all the criteria.

Under EPSL employees are entitled to up to 80 hours of paid leave if the employee is unable to work or telework due to covered reason.

### **3. Who is eligible under FFCRA for EMFLEA?**

Under FFCRA, regular employees who have been employed for at least thirty (30) days are eligible to take leave under the EMFLEA.

### **4. What are the covered reasons for EMFLEA?**

An employee can request for 12 weeks of EFMLEA for the purposes of child care as a result of COVID-19 provided they meet the following criteria:

- The child or children must be younger than 18 years of age or
- An adult child may also qualify if the child has a disability or is incapable of self-care

There is a waiting period of two weeks before the benefits begins. If you are taking expanded family and medical leave, you may take paid sick leave for the first two weeks of that leave period if eligible, or you may substitute any accrued vacation leave, personal leave, or medical or sick leave you have under your employer's policy.

### **5. How do I know whether I have "been employed for at least 30 calendar days by the employer" for purposes of EFMLEA?**

An employee is considered to have been employed for at least 30 calendar days if they have been on the payroll for 30 calendar days immediately prior to the day the leave would begin. For example, if an employee would like to take leave on April 1, 2020, the employee would need to have been on Orange County Government's payroll as of March 2, 2020.

If someone has been working as a temporary employee, and then got hired on a fulltime basis, any days previously worked as a temporary employee will get counted toward this 30 day eligibility period.

**6. Is there any waiting period associated with EMFLEA?**

There is a waiting period of two weeks before the benefits begins. If you are taking EMFLEA, you may take paid sick leave for the first two weeks of that leave period if eligible, or you may substitute any accrued vacation leave, personal leave, or medical or sick leave you have under your Orange County Government’s applicable policy.

**7. May I take paid sick leave or expanded family and medical leave if I am receiving workers’ compensation or temporary disability benefits through an employer or state-provided plan?**

In general, if an employee receives workers’ compensation or temporary disability benefits because of the inability to work, an Orange County Government employee **may not** take paid sick leave or expanded family and medical leave. However, there is an exception only for Orange County Government firefighter/paramedics. If a County employee is a certified firefighter/paramedic who was able to return to light duty, but a qualifying reason prevented the return to work, they may take EFMLEA at 2/3 of their average weekly rate and make up the difference using Personal, Term, Sick, Old Sick Leave and/or Floating Holiday.

**8. May I take paid sick leave or expanded family and medical leave under the FFCRA if I am on an employer-approved leave of absence?**

It depends on whether your leave of absence is voluntary or mandatory. If your leave of absence is voluntary, you may end your leave of absence and begin taking paid sick leave or expanded family and medical leave under the FFCRA if a qualifying reason prevents you from being able to work or telework. However, you may not take paid sick leave or expanded family and medical leave under the FFCRA if your leave of absence is mandatory. This is because it is the mandatory leave of absence—and not a qualifying reason for leave—that prevents you from being able to work or telework.

In the instance of a mandatory leave of absence, you may be eligible for unemployment insurance benefits. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

## Payout

### 9. As an employee, how much will I be paid while taking EFMLEA under the FFCRA?

If the employee is taking EFMLEA, the employee may take paid sick leave if he or she is eligible for the first two weeks of that leave period, or may substitute Personal, Term, Sick, Old Sick Leave and/or Floating Holiday.

For the following 10 weeks, the employee will be paid for their leave at an amount no less than 2/3 of their regular rate of pay for the hours they would be normally scheduled to work. If the employee takes paid sick leave during the first two weeks of unpaid EMFLEA, they will not receive more than \$200 per day or \$12,000 for the 12 weeks that include both paid sick leave and expanded family and medical leave due to COVID-19 related reasons. If the employee takes employer-provided accrued leave during those first two weeks, they are entitled to the full amount for such accrued leave, even if that is greater than \$200 per day.

### 10. Can an employee take EFMLEA intermittently?

Yes, employees can take leave intermittently if they are unable to telework your normal schedule of hours due to one of the qualifying reasons. The leave must be taken in full day increments. This is applicable only if an employee has not exhausted their FMLA time.

### 11. Can an employee utilize other leaves to supplement the balance 1/3 pay when using the Emergency Family and Medical Leave?

Employees may use their Personal, Term, Sick, Old Sick Leave, and/or Floating Holiday, if applicable, to make up the difference in pay.

### 12. Are the EPSL and EFMLEA retroactive?

No, the leaves are not retroactive.

## Process

### 13. How does an employee apply for the benefits under EFMLEA?

Employees should complete the respective request forms if they wish to apply for this benefit, which goes into effect on April 1, 2020 and submit it to their HR representative. This [job aid](#) is a great tool to assist employees in quickly determining their eligibility.

### 14. What documents are required to apply for EFMLEA?

The employee must provide documentation in support of paid sick leave as specified in applicable IRS forms, instructions, and information.

The employer may also require the employee to provide additional documentation in support of their expanded family and medical leave taken to care for their child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. For example, this may include 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. The employer must retain this notice or documentation in support of expanded family and medical leave, including while the employee may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

Please note, all existing certification requirements under the FMLA remain in effect if the employee is taking leave for one of the existing qualifying reasons under the FMLA. For example, if the employee is taking leave beyond the two weeks of EPSL because their medical condition for COVID-19 related reasons rises to the level of a serious health condition, the employee must continue to provide medical certifications under the FMLA if required by the employer.