

**COUNTY OF LOS ANGELES
FREQUENTLY ASKED QUESTIONS
COVID-RELATED LEAVES IN EFFECT APRIL 1, 2020 THROUGH DECEMBER 31, 2020**

FOR DEPARTMENTS WITH FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) LEAVES
May 15, 2020

1. What is the effective date of the Families First Coronavirus Response Act (FFCRA)?

The FFCRA is effective as of April 1, 2020 and ends on December 31, 2020.

2. How does an employee apply for a leave of absence under the new COVID-related leaves?

Employees in departments with EPSL or “Expanded” FMLA leave are to complete the “Request Form for Leave of Absence Related to COVID-19” in leave Packet A. Employees in departments with COVID Paid Leave or COVID Leave are to complete the “Request Form for Leave of Absence Related to COVID-19” in leave Packet B.

Employees are to submit their completed leave request forms to their Departmental Human Resources Manager. Employees may obtain leave Packet A or B from their department’s Human Resources Office or from the Department of Human Resources’ website, found here: <https://employee.hr.lacounty.gov/leaveforms/>

3. What documents does an employee need to provide to receive EPSL or “Expanded” FMLA leave?

When requesting EPSL or “Expanded” FMLA leave, employees must complete the Request Form for Leave of Absence with the following information:

1. The employee’s name;
2. The date(s) for which the employee requests leave;
3. The reason for leave; and
4. A statement that he or she is unable to work because of the above reason.

If the employee requests leave because he or she is subject to a quarantine or isolation order, or they are caring for an individual subject to such an order, he or she should complete the form to provide the name of the government entity that issued the order. If the employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, he or she should complete the form to provide the name of the health care provider who advised them.

If the employee requests leave to care for a child whose school or place of care is closed, or child care provider is unavailable, he or she should also complete the form to provide:

5. The name of his or her child;
6. The name of the school, place of care, or child care provider that has closed or become unavailable; and

7. A statement that no other suitable person is available to care for his or her child.

Please note that all existing certification requirements under the FMLA remain in effect if an employee is taking leave for one of the existing qualifying reasons under the FMLA, or as required by his or her department for other leave and/or benefits. For example, if an employee is taking leave beyond the two weeks of EPSL because his or her 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 County.

4. **If EPSL or “Expanded” FMLA is approved for an employee who is on an alternate work schedule (i.e., 9/80, 4/40) must the employee’s work schedule be changed to a 5/40?**

For EPSL: Employees can remain on their regular work schedule while taking this leave.

For “Expanded” FMLA: Whether employees can remain on their regular work schedule while using “Expanded” FMLA will depend on the how the leave is taken; employees will need to confer with their departmental Office of Human Resources or Leave Management Unit to discuss their leave and work schedule.

5. **How do employees code their timecards when they have been approved to take any of the new leaves related to impact from COVID-19?**

After employees have been approved to use one of the leaves, they will be provided a copy of the “Timecard Code Reference Tables – For Employees and Supervisors” by their department’s Human Resources Office.

6. **How much will an employee be paid while taking Emergency Paid Sick Leave (EPSL) or expanded family and medical leave under the FFCRA (“Expanded” FMLA)?**

EPSL (80 hours or two-weeks for full-time employees):

- If the employee is taking EPSL because he or she is unable to work or telework due to a need for leave because he or she (1) is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) is experiencing symptoms of COVID-19 and is seeking medical diagnosis, he or she will receive for each applicable hour the greater of:
 1. His or her regular rate of pay,
 2. The federal minimum wage in effect under the FLSA, or
 3. The applicable State or local minimum wage.

In these circumstances, the employee will receive a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period.

- If the employee is taking EPSL because he or she is: (1) 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; (2) caring for his or her child whose school or

place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or (3) experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, he or she will receive compensation at 2/3 of the greater of the amounts above.

In these circumstances, the employee will receive a maximum of \$200 per day, or \$2,000 total over the entire paid sick leave period.

“Expanded” FMLA:

Employees are eligible for up to twelve weeks of FMLA. The first two weeks of “Expanded” FMLA are unpaid. An employee qualifying for EPSL may use EPSL, or other accrued leave (e.g. non-elective leave, vacation, etc.), during the first two weeks of the “Expanded” FMLA. The following ten weeks of “Expanded” FMLA are paid at an amount no less than 2/3 of the employee’s regular rate of pay for the hours he or she would be normally scheduled to work, and will receive a maximum of \$200 per day, or \$10,000 total over the entire twelve week period.

7. May an employee take 80 hours of EPSL for each of the qualifying reasons provided under the FFCRA?

No. Full-time employees may not exceed a total of two weeks or 80 hours, and part-time employees may not exceed the average number of hours he or she works over a typical two-week period, for EPSL regardless of how many qualifying reasons the employee may have to request EPSL.

8. If an employee is home with his or her child because the child’s school or place of care is closed, or the child care provider is unavailable, can the employee receive EPSL, “Expanded” FMLA, or both leaves?

An employee may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. The employee may take both EPSL and “Expanded” FMLA to care for his or her child whose school or place of care is closed, or the child care provider is unavailable, due to COVID-19 related reasons. EPSL provides for up to 80 hours of paid leave. This paid EPSL can be used to cover the first ten workdays of “Expanded” FMLA, which are otherwise unpaid unless the employee elects to use accrued leave (e.g., non-elective leave, vacation, sick leave, etc.). Under “Expanded” FMLA, after the first ten workdays have elapsed, the employee will receive 2/3 of his or her regular rate of pay for the hours they would have been scheduled to work (up to a cap of \$200 per day and \$10,000 total over the last ten weeks period).

9. Can an employee be denied EPSL for a qualifying reason if they used other accrued leave time for an absence prior to April 1, 2020 for the same reason?

No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

10. Are all leaves under the FMLA now paid leave?

No. The only type of leave under the FMLA that is paid is “Expanded” FMLA when such leave exceeds ten days (or two weeks). This is only for leave taken because the employee must care for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

11. Can the EPSL and Expanded FMLA leaves be taken retroactively?

No. These leaves may only be taken from April 1, 2020 through December 31, 2020.

12. How does an employee know whether he or she has “been employed for at least 30 calendar days by the employer” for purposes of “Expanded” FMLA?

Employees are considered to have been employed for at least 30 calendar days if they are on the payroll for the 30 calendar days immediately prior to the day their leave would begin. For example, if the employee wants to take leave on April 1, 2020, he or she would need to have been on the County’s payroll as of March 2, 2020.

If the employee had been working as a temporary employee, and is subsequently hired on a full-time basis, any days previously worked as a temporary employee may be counted towards the 30-day eligibility period.

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

An employee is unable to work if there is work for the employee to complete and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents the employee from being able to perform that work, either under normal circumstances at his or her worksite or by means of telework.

If the employee and his or her supervisor agree that the employee will work his or her normal number of hours, but outside of his or her normally scheduled hours (for instance early in the morning or late at night), then the employee is able to work and leave is not necessary unless a COVID-19 qualifying reason prevents the employee from working that schedule.

14. If an employee is or becomes unable to telework, is he or she entitled to EPSL or “Expanded” FMLA?

If a supervisor permits teleworking—for example, allows an employee to perform certain tasks or work a certain number of hours from home or at a location other than the normal workplace—and the employee is unable to perform those tasks or work the required hours because of one of the qualifying reasons for EPSL, then the employee is entitled to take EPSL.

Similarly, if an employee is unable to perform teleworking tasks or work the required teleworking hours because he or she needs to care for his or her child whose school or place of care is closed, or child care provider is unavailable because of COVID-19 related reasons, then the employee is entitled to take “Expanded” FMLA. Of course, to the extent

the employee is able to telework while caring for his or her child, EPSL and “Expanded” FMLA are not available.

15. May an employee take EPSL or “Expanded” FMLA leave intermittently while teleworking?

Yes, if the employee’s supervisor allows it and if the employee is unable to telework his or her normal schedule of hours due to one of the qualifying reasons in the FFCRA. In that situation, the employee and Department may agree that the employee may take EPSL intermittently while teleworking. Similarly, if the employee is prevented from teleworking his or her normal schedule of hours because he or she needs to care for his or her child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the employee and Department may agree that the employee can take “Expanded” FMLA leave intermittently while teleworking.

Employees may take intermittent leave in any increment, provided that the employee and the Department agree. For example, if there is an agreement for a 90-minute increment, the employee could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

16. May an employee take EPSL intermittently while working at his or her usual worksite (as opposed to teleworking)?

It depends on why the employee is taking EPSL and whether your Department agrees. EPSL cannot be taken intermittently if the leave is being taken because:

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 seeking a medical diagnosis;
4. The employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
5. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless the employee is teleworking, once he or she begins taking EPSL for one or more of these qualifying reasons, he or she must continue to take EPSL each day until he or she either (1) uses the full amount of EPSL or (2) no longer has a qualifying reason for taking EPSL. This limit is imposed because if the employee is sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep the employee from spreading the virus to others.

If an employee no longer has a qualifying reason for taking EPSL before he or she exhausts his or her EPSL hours, he or she may take any remaining EPSL at a later time, until December 31, 2020, if another qualifying reason occurs.

If an employee and Department agree, the employee may take EPSL intermittently in full-day increments if he or she is taking EPSL to care for his or her child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if the child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the employee may take EPSL on Mondays, Wednesdays, and Fridays to care for his or her child, but work his or her normal hours on Tuesdays and Thursdays.

17. May an employee take his or her “Expanded” FMLA intermittently while his or her child’s school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if the employee is not teleworking?

Yes, but only with the Department’s permission. Intermittent “Expanded” FMLA should be permitted only when the employee and Department agree upon such a schedule. For example, if the Department and employee agree, the employee may take “Expanded” FMLA leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while his or her child is at home because the child’s school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

18. Who is a son or daughter under the FFCRA?

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

19. Does an employee qualify for leave for a COVID-19 related reason even if he or she has already used some or all of his or her leave under the FMLA?

Eligible employees are entitled to EPSL regardless of how much leave has been taken under the FMLA.

However, employees may take a total of 12 workweeks for FMLA or “Expanded” FMLA leave during a 12-month period. If an employee has taken some but not all of the 12 workweeks of his or her leave under FMLA, the employee may only take the remaining portion of leave available. If the employee has already taken 12 workweeks of FMLA leave during the 12-month period, he or she may not take additional “Expanded” FMLA leave.

For example, if an employee had previously taken two weeks of FMLA leave in January 2020, the employee now has 10 weeks of FMLA leave remaining. “Expanded” FMLA is a type of FMLA leave, and now the employee is entitled to take up to 10 weeks of

“Expanded” FMLA leave, to total 12 weeks. Any “Expanded” FMLA leave the employee takes counts against his or her entitlement to preexisting FMLA leave.

20. Can an employee take leave under FMLA over the next 12 months if he or she used some or all of his or her “Expanded” FMLA leave?

Employees may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the Emergency Family and Medical Leave Expansion Act (“Expanded” FMLA). If you take some, but not all of the 12 workweeks of your “Expanded” FMLA leave by December 31, 2020, you may take the remaining portion of FMLA leave for a serious medical condition, if the total time taken does not exceed 12 workweeks in the 12-month period. Please note that “Expanded” FMLA leave is available only until December 31, 2020; after that, you may only take FMLA leave.

For example, if an employee takes four weeks of “Expanded” FMLA leave in April 2020 to care for his or her child whose school is closed due to a COVID-19 related reason, the four weeks count against the employee’s entitlement to 12 weeks of FMLA leave in a 12-month period. If the employee is eligible for preexisting FMLA leave and needs to take such leave in August 2020 because he or she requires surgery, the employee would be entitled to take up to eight weeks of FMLA leave at that time.

However, you are entitled to EPSL regardless of how much leave you have taken under the FMLA. EPSL is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap. But please note that if you take EPSL concurrently with the first two weeks of “Expanded” FMLA leave, which may otherwise be unpaid, then those two weeks will count towards the 12 workweeks in the 12-month period.

21. If I take EPSL, does that count against other types of paid sick leave to which I am entitled under State or local law?

No. EPSL is in addition to other leave provided under Federal, State, or local law, or an applicable collective bargaining agreement or County policy.

22. May I use EPSL and “Expanded” FMLA leave together for any COVID-19 related reasons?

No. The “Expanded” FMLA taken applies only when an employee is on leave to care for his/her child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons. However, employees can take EPSL under the Emergency Paid Sick Leave Act for numerous other reasons.

23. 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 EPSL?

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

24. How does an employee know if he or she can receive EPSL for a Federal, State, or local quarantine or isolation order related to COVID-19?

For purposes of the FFCRA, a Federal, State, or local quarantine or isolation order includes quarantine or isolation orders, as well as shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority that cause the employee to be unable to work (or to telework) even though his or her employer has work that he or she could perform but for the order. The Safer-at-Home Order issued by the Governor and the Department of Public Health meets this criteria.

25. When is an employee eligible for EPSL to self-quarantine?

An employee is eligible for EPSL if a health care provider directs or advises the employee to stay home or otherwise quarantine because the health care provider believes that the employee may have COVID-19 or is particularly vulnerable to COVID-19, and quarantining based upon that advice prevents the employee from working (or teleworking).

26. An employee becomes ill with COVID-19 symptoms, quarantines for two weeks, and then returns to work. If the employee does not seek a medical diagnosis or the advice of a health care provider can he or she be paid for those two weeks under the FFCRA?

If an employee becomes ill with COVID-19 symptoms, he or she may take EPSL under the FFCRA only to seek a medical diagnosis or if a health care provider otherwise advises the employee to self-quarantine. If the employee tests positive for the virus associated with COVID-19 or is advised by a health care provider to self-quarantine, he or she may continue to take EPSL.

The employee may not take EPSL under the FFCRA if he or she unilaterally decides to self-quarantine for an illness without medical advice, even if he or she has COVID-19 symptoms. An employee may not take EPSL under the FFCRA if he or she becomes ill with an illness not related to COVID-19.

27. When is an employee eligible for EPSL to care for someone who is subject to a quarantine or isolation order?

An employee may take EPSL to care for an individual who, as a result of being subject to a quarantine or isolation order, is unable to care for themselves and depends on the employee for care and providing care prevents the employee from working and from teleworking.

The employee may only take EPSL to care for an individual that is subject to a quarantine or isolation order who genuinely needs his or her care, such as an immediate family member or someone who regularly resides in his or her home. The employee may also take EPSL to care for someone if his or her relationship creates an expectation that he or she would care for the person in a quarantine or self-quarantine situation, and that individual depends on the employee for care during the quarantine or self-quarantine.

The employee may not take EPSL to care for someone with whom he or she has no relationship. An employee may not take EPSL to care for someone who does not expect or depend on the employee's care during his or her quarantine or self-quarantine.

28. When is an employee eligible for EPSL to care for someone who is self-quarantining?

The employee may take EPSL to care for a self-quarantining individual if a health care provider has advised the individual to stay home or otherwise quarantine themselves because he or she may have COVID-19 or are particularly vulnerable to COVID-19 and providing care prevents the employee from working (or teleworking).

29. May an employee take EPSL or "Expanded" FMLA to care for a child who is 18 years old or older?

If the employee's child is 18 years of age or older with a disability and cannot care for him/herself due to that disability, the employee may take EPSL and "Expanded" FMLA leave to care for the child if his or her school or place of care is closed or child care provider is unavailable, due to COVID-19 related reasons, and the employee is therefore unable to work or telework.

EPSL is also available to care for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. If the employee has a need to care for his or her child age 18 or older who needs care under these circumstances, the employee may take EPSL if he or she is unable to work or telework as a result of providing care. However, the employee's total EPSL may not exceed two weeks.

30. What is a "place of care"?

A "place of care" is a physical location in which care is provided for the employee's 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.

31. Who is a "child care provider"?

A "child care provider" is someone who cares for the employee's child. This includes individuals paid to provide child care, such as nannies, au pairs, and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis, such as grandparents, aunts, uncles, or neighbors.

32. Can more than one guardian take EPSL or "Expanded" FMLA leave simultaneously to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons?

An employee may take EPSL or "Expanded" FMLA leave to care for a child only when 1) the employee needs to provide the child care and is unable to do so while working or teleworking, and 2) is actually providing the child care. Generally, the employee does not need to take such leave if a co-parent, co-guardian, or his or her usual child care provider is available to provide the care that the employee's child needs.

33. The employee's child's school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home. Is it "closed"?

Yes. If the physical location where the employee's child received instruction or care is now closed, the school or place of care is "closed" for purposes of EPSL and "Expanded" FMLA leave. This is true even if some or all instruction is being provided online or whether, through another format such as "distance learning," the employee's child is still expected or required to complete assignments.

34. May an employee take EPSL leave to care for a child other than his or her child?

One of the qualifying reasons for EPSL is for the employee to care for one (or more) of the employee's children when his or her place of care is closed (or child care provider is unavailable), due to COVID-19 related reasons. For this eligibility reason, EPSL may only be taken to care for his or her own "son or daughter."

However, EPSL is also available to care for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. If the employee has a need to care for a child who meets these criteria, the employee may take EPSL if he or she is unable to work or telework as a result of providing care. But in no event may the employee's total EPSL exceed two weeks.

35. May an employee take "Expanded" FMLA leave to care for a child other than his or her child?

No. Expanded family and medical leave is only available to care for the employee's own "son or daughter."

36. When is an employee eligible for EPSL based on a "substantially similar condition" specified by the U.S. Department of Health and Human Services (HHS)?

The U.S. Department of Health and Human Services (HHS) has not yet identified any "substantially similar condition" that would allow an employee to take EPSL. If HHS does identify any such condition, the County will issue guidance explaining when employees may take EPSL on the basis of a "substantially similar condition."

37. When an employee uses EPSL, is he or she still eligible to participate in the County's Sick-Buyback Program?

Yes. Use of EPSL will not impact employees' eligibility to participate in the Sick-Buyback Program.

38. Can employees be disciplined or lose their jobs for using this leave?

Employees will not be disciplined, or terminated from County service for using approved leave regardless of whether they are protected or discretionary leaves.