



**CITY OF MILWAUKEE**  
**Department of Employee Relations**

**Families First Coronavirus Response Act FAQs**

April 1, 2020 (Revised 4/6/2020, 4/14/2020 and 5/1/2020)

The Families First Coronavirus Response Act (FFCRA) establishes, through December 31, 2020, additional leave benefits for public employees. These benefits are Emergency Paid Sick Leave (EPSL) as well as Expanded Family Medical Leave Act (EFMLA) benefits under the Family and Medical Leave Act. The following questions and answers are intended to provide guidance to employees and leave administrators.

**1. Who is covered by the FFCRA?**

The EPSL provisions of the Act apply to **all employees**, regardless of length of service.

EFMLA benefits are available to employees who have been on payroll for 30 days. Employees are considered to have been employed for at least 30 calendar days if the City had the employee on its payroll for the 30 calendar days immediately prior to the day the employee's leave would begin.

**2. Is the City of Milwaukee excluding emergency responders from the FFCRA?**

Sworn police officers have not been excluded from the provisions of the FFCRA. Employees represented by Lo. 215 should reach out to their union for information regarding their similar benefits.

**3. What are qualifying reasons for leave?**

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework for the following reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order;
2. The employee been advised by a health care provider to self-quarantine;
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. The employee is caring for an individual subject to, or advised to, quarantine or isolation;
5. The employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions; or
6. Is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.

EFMLA and EPSL for school closure are specifically for employees who are unable to work or telework as a result of providing care for their child due to school or childcare closure related to COVID-19. This leave is specifically for employees to care for their own children or for children to whom they have an *in loco parentis* relationship. **These provisions apply to children under the age of 18, or children over the age of 18 who are unable to care for themselves due to mental or physical disability.**

#### **4. What does “unable to telework” mean?**

An employee is unable to telework if the employer has deemed a position essential must report in person and does not provide the employee with the ability to telework.

Additionally, an employee is unable to work if the Department has work for the employee 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 the normal worksite or by means of telework.

If the employee and Department agree that the employee will work the normal number of hours, but outside of the 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.

#### **5. If an employee is unable or becomes unable to telework, is the employee entitled to EPSL or EFMLA?**

If the Department permits teleworking—for example, allows the 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 the employee is unable to perform those teleworking tasks or work the required teleworking hours because they need to care for their 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 EFMLA. To the extent the employee is able to telework while caring for the child, EPSL and EFMLA are not available.

#### **6. Who is a childcare provider?**

Childcare providers include facilities that receive compensation and are licensed or registered under state law as well as individuals who regularly care for the employee’s child, such as a friend or family member, who does not necessarily hold any licensure or receive compensation.

#### **7. How much leave is provided?**

EPSL constitutes a new benefit for employees of 80 hours of paid leave for full-time employees. Employees who are regularly scheduled to work at least 40 hours per week are considered full-time under the FFCRA. Part-time employees are entitled to EPSL in an amount equal to the average number of hours that they work over a two-week period. Employees eligible for EFMLA may take up to 12 weeks of protected leave under the law. Employees are allowed 12 weeks total per calendar year of FMLA and EFMLA combined; employees who have already taken federal FMLA leave in the calendar year will have that time deducted from their 12-week entitlement.

#### **8. What documentation is required?**

Employees will need to submit a signed form attesting to their need for leave under EPSL and EFMLA. This form includes fields for the employee to provide the names of applicable government health agencies, healthcare providers, schools, childcare providers and family members. Employees found to have fraudulently submitted information will be subject to discipline. In addition to the form, employees are required to provide documentation in support of the reason for the leave, such as a telehealth visit follow-up note or email from a school. Employees are instructed to work with their leave administrators if they are unsure as to what type of documentation will suffice.

#### **9. How much are employees paid while on leave?**

Employees using EPSL because they themselves are quarantined or experiencing COVID-19 symptoms (numbers 1-3 in question 3 above) will receive full pay, capped at \$511 a day.

Employee using EPSL to care for an individual subject to quarantine or experiencing symptoms, or to care for their child whose school is closed or for who childcare is unavailable due to COVID-19 receive pay at 2/3 **their primary rate**, capped at \$200 a day.

Under the EFMLA, the first two weeks of leave are unpaid, however, an employee may elect to substitute available paid leave for that time, including EPSL. Subsequent time taken under EFMLA is paid at 2/3 the employee's normal rate, capped at \$200 a day. **Sick leave cannot be used for substitution under the EFMLA because regular sick leave cannot be used for a school or childcare closing.**

**An employee cannot use accrued time balances to supplement the 2/3 pay except to supplement EPSL taken during the first two weeks of EFMLA leave.**

**10. How does pay under these provisions affect payroll taxes and pension benefits?**

Wages paid under both provisions are taxable and subject to pension contributions. Please note that employee pension contributions will continue to be based on a member's full base salary (as provided for in Chapter 36 of the Milwaukee City Charter) even though wages paid under certain provisions of the Emergency Paid Sick Leave or the Expanded FMLA may be paid at 2/3 of pay. Periods of paid leave under either provision will be counted as creditable service for pension purposes at the same rate as if the member was working their standard hours.

**11. Does EPSL deduct from sick leave or other balances?**

No. EPSL under the Emergency Paid Sick Leave Act is available in addition to other leave balances provided by the City.

**12. Are employees allowed to use EPSL if sent home from work because they are ill?**

Employees who would otherwise be eligible for EPSL because they are experiencing COVID-19 symptoms and are seeking medical diagnosis would qualify for that leave. Employees sent home sick with COVID-19 symptoms may use EPSL if they are seeking a medical diagnosis or meet any of the other reasons for eligibility. If the employee is simply sent home because they are sick and they do not qualify under any of the EPSL reasons, they must use their own sick time. Employees sent home sick with non COVID-19 symptoms would not qualify and would have to use normal accrued sick leave or other paid time off.

**13. Are employees ordered to self-quarantine eligible for leave beyond EPSL?**

Not necessarily. However, if they exhibit symptoms, they may qualify for traditional FMLA for their own serious health condition depending on the severity of the illness and their need for treatment. Employees may also qualify for traditional FMLA leave if they are advised to self-quarantine as a result of their own serious health condition.

**14. Are employees who are worried about potential exposure covered by either type of leave?**

No, employees must meet the specific criteria laid out to qualify for either leave. However, if a health care provider advises an employee to self-quarantine due to concerns related to COVID-19, they would qualify for EPSL. They may also qualify for traditional FMLA if they meet those eligibility requirements and should avoid contact with others to mitigate health risks. Documentation from the employee's treating healthcare provider may be requested to confirm that their leave qualifies under traditional FMLA.

**15. Can employees take EPSL or EFMLA intermittently while teleworking?**

Yes, if the employee is able to telework but is unable to telework the normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act, the employee is allowed to take intermittent leave.

Similarly, if the employee is prevented from teleworking the normal schedule of hours because of the need to care for a child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the employee can take EFMLA intermittently while teleworking.

**16. Can employees take EPSL intermittently while working at the usual worksite (as opposed to teleworking)?**

It depends on why the employee is taking EPSL. Unless teleworking, EPSL for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

- You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- You are 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
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless the employee is teleworking, once the employee begins taking EPSL for one or more of these qualifying reasons, they must continue to take EPSL each day until either they (1) use the full amount of EPSL or (2) no longer have 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 EPSL as necessary to keep the employee from spreading the virus to others.

If the employee no longer has a qualifying reason for taking EPSL before EPSL is exhausted, the employee may take any remaining EPSL at a later time, until December 31, 2020, if another qualifying reason occurs.

In contrast, an employee can take EPSL intermittently to care for a 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 the child, but work at the normal worksite on Tuesdays and Thursdays.

**17. Can employees take EFMLA intermittently while a 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, intermittent EFMLA is permitted. For example, an employee may take EFMLA on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while the 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, for the duration of the leave.

**18. How does EFMLA interact with traditional FMLA?**

While FMLA eligibility is expanded under the new law and employers are qualified to pay employees for leave to care for a child affected by COVID-19, no additional leave entitlement is created under this law. All time taken under the EFMLA is counted against an employee's 12-week annual leave entitlement of regular FMLA. Time taken under EFMLA does not decrease entitlement balances under the Wisconsin Family Medical Leave Act.

**19. Will employees be required to use EFMLA if they are unable to work due to a qualifying reason?**

Employees are not required to use EFMLA. However, departments are not required to approve vacation for time that would qualify for the EFMLA benefit.

**20. How does this impact time taken under Temporary Emergency Paid Leave?**

EPSL and EMLA are separate from the Temporary Emergency Paid Leave as created by Mayor Barrett's proclamation, which could only be used until 3/28/2020.

**21. What forms will the City be using? Will employees be issued Notices of Eligibility and Designation Notices for EFMLA?**

DER has created new forms to use for EFMLA. The Departments will be responsible for issuing notices of eligibility and designation notices for EFMLA. Johnnie Nelson will be providing leave administrators revised Notice of Eligibility and Designation Forms to use for EFMLA.

**22. What is the role of DER and departmental FMLA administrators in administering expanded FMLA?**

While DER and the Leave Administration Coordinator are happy to field questions regarding the expanded FMLA, individual departments will be tasked with providing employees notices of eligibility and designation notices for their employees. Departments are also responsible for setting up departmental protocol on who an employee should contact to request leave within the department. Departmental Leave Administrator's will be responsible for reviewing documentation supporting the need for leave. As with other FMLA, individual departments are responsible for tracking employee EFMLA usage.

**23. How are spouses employed by the City affected by the new leave?**

Spouses employed by the City will both be eligible for full EPSL and EFMLA benefits. Unlike FMLA leave taken for bonding with a new child or to care for an employee's parent, married employees are not capped at 12 weeks of leave combined for both employees.

**24. If an employee is being carried using C19 pay, will they need to use their FFCRA balances if they are eligible for FFCRA pay?**

No, if an employee is being directed not to work and being carried using C19 pay, the employee will not have to use an FFCRA balance even if they qualify for FFCRA.

**25. Are any of the FFCRA requirements retroactive?**

No.

**26. Can employees take 80 hours of EPSL for their own self-quarantine and then another amount of EPSL for another reason provided under the Emergency Paid Sick Leave Act?**

No. Employees 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 EPSL for any combination of qualifying reasons. However, the total number of hours for which the employee receives EPSL is capped at 80 hours under the Emergency Paid Sick Leave Act.

**27. Is all leave under the FMLA now paid leave?**

No. The only type of family and medical leave that is paid leave is EFMLA 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.

**28. Who is a son or daughter?**

Under the FFCRA, a “son or daughter” the employee’s own child, which includes 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.

**29. What pay codes should be used for EPSL and EFMLA?**

Separate payroll guidance will be provided to the departmental payroll clerks on the correct pay codes to use when accessing FFCRA benefits..

**30. Can an employee use EPSL when a healthcare provider has indicated that the employee should stay at home because they are high risk?**

Yes, an employee who is high risk for COVID-19 and the healthcare provider has indicated the employee should stay home is eligible under EPSL Reason 2: The employee been advised by a health care provider to self-quarantine.

**31. Can an employee use EPSL or EFMLA while receiving worker’s compensation or temporary disability benefits?**

Employees who have been off for worker’s compensation or on long term disability can only utilize these benefits if they had been cleared to return to work on light duty prior to taking leave under the FFCRA.

**32. For purposes of EPSLA, what does “caring for an individual” mean?**

For purposes of EPSLA, “caring for an individual” means an employee’s immediate family member, a person who regularly resides in the employee’s home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined.

An employee may take EPSLA leave to care for an individual if the employee is unable to perform work for his or her employer because the employee is providing care for the individual who depends upon the employee to care for him or her and is either under quarantine, has been advised to self-quarantine due to COVID-19 contact and/or symptoms or is vulnerable to COVID-19.

**33. Do state Governors’ Executive Orders qualify as being “subject to a Quarantine or Isolation Order”?**

Yes, “subject to a Quarantine or Isolation Order” includes quarantine, isolation, containment, 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 even though his or her employer has work that the employee could perform but for the order. This also includes when a Federal, State, or local government authority advises categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of employees to be unable to work even though their employers have work for them.

For EPSLA benefits, the employee is eligible if, but for being subject to the order, he or she would be able to perform work that is otherwise allowed or permitted by his or her employer. An employee subject to a Quarantine or Isolation Order may not take EPSLA leave where the employer does not have work for the employee as a result of the order or other circumstances.

**34. Can an employee use EPSL while waiting to get a COVID-19 test or waiting for test results?**

Employees are eligible for EPSL for the time spent making, waiting for, or attending an appointment for a COVID-19 test but may not take paid sick leave if they are choosing to self-quarantine without seeking a medical diagnosis. Eligibility for paid sick leave includes awaiting the results of the COVID-19 test.

**35. How is a rehired employee’s EFMLA eligibility calculated?**

If an employee is laid off or terminated on or after March 1, 2020 and is later rehired, that employee is considered to have been employed for at least thirty calendar days if the employee was on the employer’s payroll for thirty or more of the sixty calendar days prior to the date the employee was laid off or otherwise terminated. For example, an employee hired on January 15, 2020, laid off on March 14, 2020, and rehired on October 1, 2020 would immediately satisfy the thirty day requirement at the time of rehire.