



## Families First Coronavirus Response Act (“FFCRA”)

Frequently Asked Questions

Updated - January 21, 2021

### 1. What is the FFCRA?

The Families First Coronavirus Response Act (FFCRA) includes the new federal Emergency Paid Sick Leave Act (EPSLA) and the new federal Emergency Family and Medical Leave Expansion Act (EFMLEA), which requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19.

The Department of Labor’s (Department) Wage and Hour Division (WHD) administers and enforces the new paid leave provisions, and the agency website remains the best source of information related to the FFCRA. For more information, please go to the agency’s website at <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>.

### 2. What is the effective date of the FFCRA?

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. The University has voluntarily extended the program through March 31, 2021, but does not include being unable to work or telework due to lack of child care.

### 3. Is the FFCRA benefit retroactive? For example, can an employee that was previously sick and used University provided paid time off then change their mind and request leave under the FFCRA?

Yes, but the benefit is only retroactive to April 1, 2020. Depending on the reason for the leave, the employee could owe money because they received full pay while using accruals but may only receive 2/3 pay if they use the benefits under the FFCRA.

### 4. Who is not eligible for leave under the FFCRA?

Employees who are out on an unpaid leave, such as a furlough, temporary layoff or permanent layoff are not eligible for leave under the FFCRA.

### 5. What does an employee need to submit in order to apply for benefits under the FFCRA?

The University may require the employee to submit appropriate documentation to verify their need for either type of leave. Such documentation includes quarantine or isolation orders, doctor’s recommendations, or a notice of a school or day care’s closure.

An employee who is eligible for benefits under the FFCRA should reach out to their campus human resources or benefits department.

6. Can an employee take paid leave under both the EPSLA and the EFMLEA?

Possibly. 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 paid sick leave and expanded family and medical leave 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. The EPSLA provides for an initial two weeks of paid leave, covering the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the EFMLEA. After the first ten workdays have elapsed, an employee will receive 2/3 of their regular rate of pay, up to \$200/day and \$10,000/total, for the hours they would have been scheduled to work in the subsequent ten weeks under the EFMLEA.

Please note that an employee can only receive the additional ten weeks of expanded family and medical leave under the EMLEA for leave to care for a child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons.

7. Is paid leave under both EPSLA and the EFMLEA taxable?

Yes, the paid leave is taxable.

8. How does an employee report their time when using EFMLEA and/or EPSLA and how will it appear on the pay advice?

Employees that are using EFMLEA and/or EPSLA will not be entering their own time. Time entry will be handled through their HR/Payroll department. Employees will see the following codes and descriptions on the pay advice.

EPS-Emergency Paid Sick Leave (Full)

EP2-Emergency Paid Sick Leave (Reduced)

PHE-Public Health Emergency Leave (Emergency Family Medical Leave Expansion Act)

9. Who is a “son or daughter” under FFCRA?

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, WHD 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.

10. What is the University’s notice requirement under the FFCRA?

The Act requires the University to post in a conspicuous place a [notice](#), approved by the Secretary of Labor. This requirement can be satisfied by emailing or mailing the notice to current employees. The notice has been emailed to all employees by each campus in order to meet this requirement.

## Emergency Paid Sick Leave Act (“EPSLA”)

### 1. Who is eligible for paid sick leave under the EPSLA?

All employees, regardless of how long they have been employed, are eligible for emergency paid sick leave. Employees will be eligible if they are unable to work (or telework) 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 is subject to paragraphs (1) or (2).
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
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.

### 2. How long is the leave under the EPSLA?

The leave under EPSLA provides for two weeks of paid sick leave: eighty (80) hours for full-time employees; and for part-time employees, the number of hours equal to the average that such employee works in a two-week period.

### 3. Can an employee take emergency paid sick leave intermittently?

Yes, for teleworking employees; but only in full-day increments and only if the employee is unable to telework their normal schedule of hours, due to one of the qualifying reasons in the EPSLA.

For employees still working at their usual worksite and not teleworking, this type of paid sick leave may NOT be taken intermittently, unless they need to take the paid sick leave to take care of a child because the child’s school or usual place of care is closed due to COVID-19 related reasons. Again, all intermittent use of time must be in full-day increments. Once an employee begins taking paid sick leave for one of the other qualifying reasons, the employee must continue to take paid sick leave each day until they either (1) use the full amount of paid sick leave; or (2) no longer have a qualifying reason for taking paid sick leave.

### 4. At what rate of pay must the University provide paid sick leave under the EPSLA?

Employees must be paid at their regular rate of pay or state/federal minimum wage, whichever is more, up to \$511/day and \$5110/total for first 3 reasons above; and 2/3 of their regular rate of pay up to \$200/day and \$2000/total for last 3 reasons.

### 5. Can an employee use accrued paid time off to supplement the daily rate?

No, an employee cannot use accrued paid time off to supplement the daily rate.

### 6. Can an employee use their sick time to get full pay instead of using paid leave under the EPSLA?

It depends. University provided sick time can be used if an employee is sick or to care for a sick family member. If an employee is caring for a child due to closure of school or day care, the employee could not use University provided sick time, but could instead use their vacation or personal time.

7. How much notice does an employee have to give to take emergency paid sick leave?

The employee must follow their department's notice provisions in order to receive such paid sick time.

8. Does any unused paid sick leave under the EPSLA carry over from one year to the next?

No, unused paid sick leave does not carry over.

9. Do employees have to use other forms of paid leave before using this type of leave?

No, the EPSLA leave benefits are in addition to whatever paid sick leave the University already provides under any state or local law, collective bargaining agreement, or policy.

10. How does the EPSLA work with regard to collective bargaining agreements, or other state or local requirements?

Nothing under the EPSLA shall diminish the rights or benefits otherwise provided under federal, state or local law; under any collective bargaining agreements; or any existing University policy.

11. If an employee leaves their employment, must the University pay them out for any unused sick time benefit under the EPSLA?

No. The EPSLA does not require any reimbursement to an employee for unused paid sick time upon the employee's termination, resignation, retirement, or other separation from employment.

12. Are there prohibited acts by an employer under the EPSLA?

Yes, it is unlawful for the University to discharge, discipline, or in any other manner discriminate against any employee who (i) takes leave in accordance with the EPSLA; and (ii) has filed a complaint or caused to be instituted any proceeding under, or related to EPSLA, or has testified or is about to testify in any proceeding.

Enforcement for failure to pay sick leave or unlawful termination will be pursuant to the Fair Labor Standards Act.

## Emergency Family and Medical Leave Expansion Act (“EFMLEA”)

### 1. Who is eligible for leave under the EFMLEA?

All employees (full- or part-time) who have been employed for 30 calendar days who have a “qualifying need related to a public health emergency” are eligible for leave under the EFMLEA. The Act defines “qualifying need related to a public health emergency” as “the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”

### 2. How many weeks of EFMLEA does an employee receive and is it paid?

Like FMLA, this leave allows for an employee to be out of work for up to twelve (12) weeks total in a year. The first 10 days are unpaid; however, the employee can substitute any accrued paid time off during the first 10 days of leave if they choose; the University cannot mandate that the employee use paid time.

The employee can utilize the federal paid sick leave at 2/3 of their regular rate of pay up to \$200/day and \$2000/total available under the EPSLA.

### 3. What if an employee has already taken FMLA; are they still eligible to take the expanded FMLA?

Employees may take a total of 12 weeks for FMLA or expanded FMLA in a 12-month period. If an employee has taken some, but not all 12 weeks of their leave under FMLA during the current 12-month period, the employee may take the remaining portion of leave available.

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

Yes, intermittent use of FMLA is permissible but not mandated by the FFCRA. The University will permit intermittent use of leave only when the employee is unable to telework their normal schedule of hours, upon approval of the manager of the schedule and in full day increments only.

### 5. How are employees paid under EFMLEA?

- The employee’s first 10 days (2 weeks) are unpaid. Employees may use either accrued paid time off or federal paid sick leave for this period of time, where the rate of pay would depend on the qualifying reason for the federal paid sick leave.
- Full time employees shall receive 2/3 of an employee's regular rate of pay at the employee's normal schedule, up to \$200/day and \$10,000/total.
- Part time employees shall receive 2/3 of the employee’s regular rate of pay, at the number equal to the average amount of hours that the employee was scheduled to work per day in the preceding six months, up to \$200/day and \$10,000/total.

### 6. How much notice does an employee have to give before taking leave under the EFMLEA?

Employees are to provide as much advance notice as practicable prior to taking this leave.

### 7. Are there prohibited acts by an employer under EFMLEA?

Employers should reinstate employees to their job following use of this type of leave; employers cannot discriminate or retaliate against employees for using this time of leave (just like FMLA protections).

Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act.

8. Where should an employee go to get additional information about the FFCRA?

- For more information about the FFCRA, please go to the Department of Labor's website at <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>.
- For additional information about how the FFCRA pertains to UMass employees please contact your campus human resources or benefits department.