

Families First Coronavirus Response Act: Questions and Answers

What is the Family First Coronavirus Response Act?

On March 18, 2020 the Families First Coronavirus Response Act was signed into law. This law, among other efforts to mitigate the impact of COVID-19, provides for an expansion of the Family Medical Leave Act as well as the creation of Emergency Paid Sick Leave. The FFCRA's paid leave provisions took effect on April 1, 2020, and may be used through December 31, 2020.

What is EPSLA and EFMLEA?

The **Emergency Paid Sick Leave Act (EPSLA)** provides up to 80 hours of paid sick leave for one of the below reasons. This leave is in addition to any accrued sick leave or benefit time. King County will be more generous than required under federal law and will pay full-time employees up to 80 hours of EPSLA in the same way that employees are paid when they use their sick leave. Part-time employees are eligible for a prorated amount based on their average hours worked over a two-week period. Employees may use EPSLA intermittently, if approved by their department, if they are either telecommuting, or if they need time off to care for a child.

The **Emergency Family Medical Leave Expansion Act (EFMLEA)** provides up to 12 weeks of emergency family and medical leave if they have worked for an employer for at least 30 calendar days, and are unable to work or telework because their minor child's school or daycare is closed due to a public health emergency. The first 2 weeks of EFMLEA are unpaid; however, employees may use accrued leave or benefit time, or EPSLA. The remaining 10 weeks are paid at two-thirds of the employee's regular rate of pay, up to a maximum of \$200/day. Where an employee has already taken FMLA leave in the current twelve-month rolling calendar leave year, the maximum twelve weeks of EFMLEA leave is reduced by the amount of the FMLA leave taken in that year.

Who is eligible for these new leaves?

The emergency paid sick leave (EPSLA) is available to all employees, regardless of the length of employment with King County. It is also available to regular career service, term-limited temporary and temporary employees. The expanded family and medical leave (EFMLEA) is available to employees who have been employed for at least 30 calendar days before the beginning of their leave.

How does the King County Family and Medical Leave law interact with EFMLEA and EPSLA?

An additional six weeks of unpaid KCFML may be available for the same qualifying reasons under EFMLEA as long as the employee is otherwise qualified (1,040 hours worked and been employed with King County at least 12 total months). Employees may choose to use their own available paid time off during this six week period and KCFML used under COVID-19 will run concurrently with EFMLEA.

Does EFMLEA reduce my overall FMLA and KCFML entitlements?

Yes.

How do I apply for this new leave?

A new FFCRA Form has been developed for employees to specifically request leave under the new law. Completed forms should be turned in to their agency human resource professional along with any

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required documentation (see below). Forms and information may be found on King County’s leave administration website at www.kingcounty.gov/audience/employees/benefits/leaves.

What documentation is required?

Emergency Paid Sick Leave Act (EPSLA)	Not Applicable: Employee is subject to a federal, state, or local quarantine or isolation order. The Governor’s Stay Home, Stay Healthy order qualifies as a quarantine. However, because the Governor’s order allows King County employees to perform work/telework, no King County employee qualifies for leave for this reason. Required Documentation: Not applicable
	<input type="checkbox"/> Employee is advised by a health care provider to self-quarantine. Required Documentation: I certify I am unable to work/telework for this qualifying reason: <input type="checkbox"/> Yes <input type="checkbox"/> No Name of healthcare provider making recommendation: _____
	<input type="checkbox"/> Employee is experiencing symptoms and is seeking a medical diagnosis. Required Documentation: I certify I am unable to work/telework for this qualifying reason: <input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Employee is caring for an “individual” (see definition section) who is self-isolating subject to a local quarantine or isolation order, or who has been advised to self-quarantine by a health care provider. Required Documentation: I certify I am unable to work/telework for this qualifying reason: <input type="checkbox"/> Yes <input type="checkbox"/> No Name of government entity issuing order or Name of health care provider who advised individual to self-quarantine: _____
	<input type="checkbox"/> Employee is caring for their child due to closure of the child’s school or place of care, or unavailability of the child’s childcare provider. This leave runs concurrently with available FMLA/KCFML entitlements. Required Documentation: I certify I am unable to work/telework for this qualifying reason: <input type="checkbox"/> Yes <input type="checkbox"/> No Name of child being cared for: _____ Name of school, place of care, or childcare provider that has closed or become unavailable due to COVID-19 reasons: _____ I certify no other suitable person is available to care for the child during the period for which I am taking this leave: <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> 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. Please describe: _____ Required Documentation: I certify I am unable to work/telework for this qualifying reason: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Emergency Family Medical Leave Act (EFMLEA)	<input type="checkbox"/> School closure <input type="checkbox"/> Child Care closure I certify I am unable to work/telework for this qualifying reason: <input type="checkbox"/> Yes <input type="checkbox"/> No Required Documentation: Name of child being cared for: _____ Name of school, place of care or childcare provider that has closed or become unavailable: _____ I certify no other suitable person is available to care for the child during the period for which I am taking this leave: <input type="checkbox"/> Yes <input type="checkbox"/> No

How does the payment part of EPSLA leave work?

The emergency paid sick leave portion of the law allows a full-time employee to be awarded up to a maximum of 80 hours of leave. Part-time employees are eligible for a prorated amount based on their average weekly hours. EPSLA hours awarded must be used for an eligible EPSLA reason. Although the new law does not require it, King County has made the decision to pay an employee their full hourly rate for any of the qualified reasons under EPSL. Employees will be paid in the same way that they are currently paid when they use their sick leave.



For what reasons can an employee use EPSLA sick leave?

There are six circumstances under which an employee may be approved to use this new sick leave, all of which are related to COVID-19. An employee is eligible for EPSLA if the employee is unable to work or telecommute, and:

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;
3. is experiencing symptoms of COVID-19 and are seeking medical diagnosis;
4. is 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;
5. is caring for their child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons; or
6. is experiencing any other substantially similar condition that may arise, as specified by the Secretary of Health and Human Services.

How much leave does an employee get under the Emergency Family Medical Leave Expansion Act (EFMLEA)?

EFMLEA provides up to 12 weeks of leave. The first two weeks are unpaid, but employees may use paid accruals or EPSLA for the first ten days of that leave period. For the following ten weeks, employee's 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. The regular rate of pay used to calculate this amount must be at or above the federal minimum wage, or the applicable state or local minimum wage.

However, employees will not receive more than \$200 per day or \$10,000 for the last ten weeks of expanded family and medical leave when the employee is on leave to care for his/her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. This leave provides additional qualifying reasons under FMLA and counts toward the 12 weeks of FMLA entitlement. Where an employee has already taken some FMLA leave in the current twelve-month leave year, the maximum twelve weeks of EFMLEA leave is reduced by the amount of the FMLA leave entitlement taken in that year. If an employee has exhausted his or her twelve workweeks of FMLA or EFMLEA leave, he or she may still take EPSLA leave for a COVID-19 qualifying reason. When choosing to receive pay under EFMLEA, an employee cannot supplement the partial EFMLEA pay (2/3rds) with other types of paid accruals to achieve 100% wage replacement.

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 and Family Medical Leave Expansion Act unless you elect to use existing vacation, personal,

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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. If you take paid sick leave concurrently with the first two weeks of expanded family and medical leave, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period. If an employee has exhausted his or her twelve workweeks of FMLA or EFMLEA leave, he or she may still take EPSLA leave for a COVID-19 qualifying reason.

Is all leave under the FMLA now paid leave?

No. The only type of family and medical leave 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 whose child care provider is unavailable, due to COVID-19 related reasons.

What are the impacts of choosing to receive pay through EFMLEA instead of using my own paid accruals?

Employees that elect to receive EFMLEA instead of using their own available accruals are impacted in a few significant ways. First, pay under EFMLEA is only two-thirds of your normal rate of pay up to a maximum of \$200 a day. Second, time coded as EFMLEA (the 2/3rds pay) is not reportable to the Department of Retirement Systems (DRS) and will not count toward retirement.

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

No.

Can an employee take EPSLA and EFMLEA intermittently?

Employees may use EPSLA intermittently, if approved by their department and if they are either telecommuting or if they need time off to care for a child under the age of 18 whose school has been closed, or whose childcare provider (or place of care) is unavailable due to a public health emergency related to COVID-19. Employees may use EFMLEA intermittently, if approved by their department.

If employees take paid sick leave under the Emergency Paid Sick Leave Act, does that count against other types of paid sick leave to which they are entitled under State or local law, or their employer's policy?

No. Paid sick leave under the Emergency Paid Sick Leave Act is in addition to other leave provided under Federal, State, or local law; an applicable collective bargaining agreement; or existing County policy.



Can employees use paid sick leave and expanded family and medical leave together for any COVID-19 related reasons?

The Emergency Family and Medical Leave Expansion Act applies only when employees are on leave to care for their child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons. However, they can take paid sick leave under the Emergency Paid Sick Leave Act for numerous other reasons.

An employee is using paid sick leave and is now taking expanded family and medical leave to care for his children whose school is closed for a COVID-19 related reason. After completing distance learning, the children’s school closed for summer vacation. May he take paid sick leave or expanded family and medical leave to care for his children because their school is closed for summer vacation?

No. Paid sick leave and emergency family and medical leave are not available for this qualifying reason if the school or child care provider is closed for summer vacation, or any other reason that is not related to COVID-19. However, the employee may be able to take leave if his or her child’s care provider during the summer—a camp or other programs in which the employee’s child is enrolled—is closed or unavailable for a COVID-19 related reason.

My child’s school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. They are permitted to attend school only on their allotted in-person attendance days. May I take paid leave under the FFCRA in these circumstances? (added 08/27/20)

Yes, you are eligible to take paid leave under the FFCRA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively “closed” to your child on days that he or she cannot attend in person. You may take paid leave under the FFCRA on each of your child’s remote-learning days.

My child’s school is giving me a choice between having my child attend in person or participate in a remote learning program for the fall. I signed up for the remote learning alternative because, for example, I worry that my child might contract COVID-19 and bring it home to the family. Since my child will be at home, may I take paid leave under the FFCRA in these circumstances? (added 08/27/20)

No, you are not eligible to take paid leave under the FFCRA because your child’s school is not “closed” due to COVID–19 related reasons; it is open for your child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If your child is home not because his or her school is closed, but because you have chosen for the child to remain home, you are not entitled to FFCRA paid leave. However, if, because of COVID-19, your child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, you may be eligible to take paid leave to care for him or her.

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If your child's school is operating on an alternate day (or other hybrid-attendance) basis, you may be eligible to take paid leave under the FFCRA on each of your child's remote-learning days because the school is effectively "closed" to your child on those days.

My child's school is beginning the school year under a remote learning program out of concern for COVID-19, but has announced it will continue to evaluate local circumstances and make a decision about reopening for in-person attendance later in the school year. May I take paid leave under the FFCRA in these circumstances? (added 08/27/20)

Yes, you are eligible to take paid leave under the FFCRA while your child's school remains closed. If your child's school reopens, the availability of paid leave under the FFCRA will depend on the particulars of the school's operations.

If I have used at least two weeks of FMLA previously and now want to take leave for the expanded FMLA reasons under EFMLEA, are the first two weeks of EFMLEA leave unpaid?

Yes. Regardless of how much FMLA you have at the start of EFMLEA leave, the first two weeks of EFMLEA leave is unpaid. As referenced previously in this FAQ document, EPSLA can be used if available or paid accruals can be used in lieu of unpaid leave during the first two weeks of EFMLEA leave.

For more information, visit <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

Definitions

Child: Is defined the same as under the FMLA; i.e., a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or is 18 years of age or older and "incapable of self-care because of a mental or physical disability" at the time leave is to commence.

Eligible Employees: All employees of covered employers are eligible for two weeks of paid sick time for specified reasons related to COVID-19. Employees employed for at least 30 days are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.

Full-time Employee: For purposes of the Emergency Paid Sick Leave Act, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week. In contrast, the Emergency Family and Medical Leave Expansion Act does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week will affect the amount of pay the employee is eligible to receive.

Health Care Provider: The term "health care provider," as used to determine 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, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

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Individual: Are caring for an individual who is self-isolating for one of the reasons described in (1) or (2) above. A qualifying “individual” is an employee’s immediate family member, a person who lives in the employee’s home, or a person with whom the employee has a relationship with that creates an expectation that the employee would care for that person while quarantined.

Paid Leave Requirements: The first 10 days of EFMLEA/FMLA may be unpaid, but employees must be allowed to use their accrued leave (vacation, personal, medical, or sick); the use of accrued leave is the employee’s choice.

- For leave beyond the first 10 days, the employer must pay the employee at least two-thirds of the employee’s regular pay.
- Pay is calculated based on the number of hours the employees would otherwise be scheduled to work. For employees whose schedule varies, the hours are determined based on the average number of hours scheduled over the 6-month period ending on the date on which leave starts, including any leave hours; or based on a reasonable expectation at the time of hiring.
- Paid leave shall not exceed \$200 per day and \$10,000 in the aggregate, per employee.

Part-time Employee: For purposes of the Emergency Paid Sick Leave Act, a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week. In contrast, the Emergency Family and Medical Leave Expansion Act does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week affects the amount of pay the employee is eligible to receive.

Place of Care: Means a physical location in which care is provided for the Employee’s child while the Employee works for the Employer. 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.

Public Health Emergency: An emergency with respect to COVID-19 declared by a federal, state, or local authority. This includes stay-at-home orders from Governor Inslee.

Intermittent Leave: Intermittent leave is permissible under certain circumstances. See the detailed table below.

Permissible Intermittent Leave		
FFCRA Leave Type	Employee is teleworking	Employee is not or cannot telework (must be in full-day increments)
EPSLA 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	With mutual agreement between employee and employer	No. ESPLA must be taken continuously until EPSLA is exhausted or a qualifying reason for the leave no longer exists.

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	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		
	To care for your child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons		With mutual agreement between employee and employer
EFMLEA		With mutual agreement between employee and employer	With mutual agreement between employee and employer