

APWU POSITION: FFCRA EMERGENCY SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE ACT

Emergency Paid Sick Leave Act Questions and Answers

1) What is the Family First Coronavirus Response Act (FFCRA)?

On March 18, 2020 the Family First Coronavirus Response Act (FFCRA) became law creating two new emergency paid leave requirements in response to the COVID-19 global pandemic. Division E of the FFCRA, “The Emergency Paid Sick Leave Act” (EPSLA), entitles certain employees including postal employees to take up to 80 hours of paid sick leave, for specified reasons related to COVID-19. Division C of the FFCRA, “The Emergency Family and Medical Leave Expansion Act” (EFMLEA), permits certain employees to take up to twelve weeks of expanded family and medical leave, ten of which are paid, 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.

2) What is The Emergency Paid Sick Leave Act (EPSLA)?

The Emergency Paid Sick Leave Act (EPSLA) requires employers including the Postal Service to provide paid sick leave to employees who are unable to work for six reasons having to do with COVID-19 where the employee

- (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 is seeking a medical diagnosis;
- (4) is caring for an individual who is subject to an order as described in (1), or who has been advised as described in (2);
- (5) is caring for his or her son or daughter whose school or place of care has been closed or whose child care provider is unavailable due to COVID-19 related reasons; or
- (6) 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.

3) How much Emergency Paid Sick Leave does EPSLA provide?

Effective April 1, 2020 and through December 31, 2020, the EPSLA provides full-time employees up to 80 hours of paid sick leave, and generally entitles part-time employees up to the number of hours that they work on average over a two-week period.

4) What is the rate of pay for Emergency Paid Sick Leave under EPSLA?

For an employee using this emergency paid sick leave because of one of the circumstances in items (1) through (3) above, the emergency paid sick leave is paid at the employee's regular rate of pay. The maximum pay is \$511 per day and \$5,110 in the aggregate for the 80 hours. APWU bargaining unit employees are not expected to reach those maximums.

For an employee using emergency paid sick leave for any other qualifying reason, items (4) through (6), the emergency paid sick leave will be paid at two-thirds of the employee's regular rate of pay. The maximum pay is \$200 per day and \$2,000 in the aggregate. APWU bargaining unit employees, especially near the top of our pay schedules could reach those maximums.

5) Is this Emergency Sick Leave in addition to my normal accrued sick leave and annual leave?

Yes.

6) With other paid leave, an employee must work a while before leave can be used and must accrue the leave over time. Is there a minimum amount of time I must be employed to be entitled to use this leave?

No. Emergency Sick Leave is immediately available to all employees regardless of length of service.

7) Do I have to exhaust other paid leave before using Emergency Sick Leave?

No. When leave is needed for one of the qualifying reasons above, Emergency Sick Leave can be use first – before any other paid leave.

8) Will my paid leave balances be offset by any Emergency Sick Leave I might use?

No. This is additional paid leave; but only for the circumstances listed above.

9) I missed work during March for one of the listed circumstances, can I go back and change it to Emergency Sick Leave?

No. This leave is only available as of April 1, 2020.

10) I missed work on April 1 for a qualifying condition and unaware of this Emergency Sick Leave requested another type of leave. Can I go back and change it to Emergency Sick Leave?

Yes.

11) How do I request Emergency Sick Leave?

Make the request in the usual manner of requesting leave and indicating that you are requesting Emergency Sick Leave for one of the qualifying reasons.

12) How do I complete my 3971 Leave Request with this new leave type?

For qualifying reasons 1 – 3, for “*Type of Absence*” select the “*Other*” box and write in code 077-19; for remarks you will write “*Emergency Sick Leave – Self.*”

For qualifying reasons 4 – 6, for “*Type of Absence*” select the “*Other*” box and write in code 081-19; for remarks you will write “*Emergency Sick Leave – Other.*”

13) When I need to be absent for a qualifying condition, can my supervisor insist I use some other type of leave first?

No. As long as you have not exhausted this bank of Emergency Sick Leave and are unable to work due to a qualifying condition, you are entitled to use Emergency Sick Leave.

14) I am a PSE who used sick leave under the APWU/USPS negotiated MOU prior to April 1, 2020, can I still use up to the 80 hours of paid emergency sick leave?

Yes. For a qualifying condition, Emergency Sick Leave up to 80 hours [for part-time employees, generally the two-week average hours] would be available. Emergency Sick Leave is in addition to other paid leave.

15) I am a part-time employee averaging 30 hours per week, will I get 8 hours per day and 40 hours in a week?

No. You will get the average number of hours you are scheduled to work. If you have a variable schedule you will get the average hours worked over the last 6 months. If you have not worked six months a shorter period of time will be used.

16) If I can telework, could I ever use Emergency Paid Sick Leave for qualifying reason 1?

If you are well enough to work and you are teleworking from home, qualifying reason one shouldn't prevent you from working. One of the other qualifying conditions could entitle you to use Emergency Sick Leave.

17) If a non-career/PSE is scheduled for a 5-day break in service while on Emergency Sick Leave will the PSE continue to be paid Emergency Sick during the break in service?

No, but assuming the employee still has a qualifying reason, Emergency Sick Leave would resume following that break in service.

18) If a non-career/PSE uses some Emergency Sick Leave before a 5-day break; does the employee get another two weeks of Emergency Sick Leave after the break?

No. The aggregate amount of Emergency Sick Leave is available from April 1, 2020 to December 31, 2020. It doesn't increase or diminish because of a five-day break.

19) Is the Postal Service still using Administrative Leave in certain COVID-19 situations, and if so, what are those?

Yes, in certain circumstances the Postal Service may still authorize use of Administrative Leave, but it is expected that Emergency Sick Leave would be used before COVID-19 Administrative Leave would be authorized.

20) Will the Postal Service require documentation to establish that an employee meets one of the qualifying conditions for Emergency Sick Leave? It may be difficult to do so, since contacts with health and medical personnel during this pandemic is often by phone.

As with other absences including for the use of sick leave, the Postal Service can accept the employee's report, but Emergency Paid Sick Leave may require the employee to provide specific additional information within the employee's knowledge. If warranted, the Postal Service could request additional documentation that may be submitted at a later time.

21) Under qualifying circumstance Number 4 of the FFCRA, if an employee is high risk and their doctor advises them to stay home/self-quarantine to avoid exposure to COVID19, are they entitled to the 80 hours of Emergency Sick Leave?

Yes, if their health care provider directs the employee to do so.

Emergency Family and Medical Leave Expansion Act Questions and Answers

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2) What is The Emergency Family and Medical Leave Expansion Act (EFMLEA)?

The Emergency Family and Medical Leave Expansion Act (EFMLEA) requires the Postal Service to provide expanded paid family and medical leave to eligible employees who are unable to work because the employee is caring for his or her son or daughter whose school or place of care is closed or whose child care provider is unavailable due to a public health emergency, defined as an emergency with respect to COVID-19, declared by a Federal, State, or local authority.

3) How does Emergency Family and Medical Leave Expansion Act differ from FMLA?

There is no change in current rules when requesting FMLA for any reason other than an employee's inability to work because the employee is caring for his or her son or daughter whose school or place of care is closed or whose child care provider is unavailable due to a public health emergency, defined as an emergency with respect to COVID-19, declared by a Federal, State, or local authority.

There is no change in the twelve-week length of FMLA regardless of the reasons for using FMLA.

However, when an employee meets this special condition several things change. Key among those changes:

- An employee can qualify for the Family Leave Expansion after only 30 days of employment.

- The first two weeks (usually ten workdays) of this leave are unpaid, though an employee may substitute paid sick leave under the EPSLA or paid leave under the employer's preexisting policies for these two weeks of unpaid leave. Unlike FMLA leave taken for other reasons, the following period of up to ten weeks of expanded family and medical leave must be paid. This expanded FMLA leave may be called "Public Health Emergency Leave."

4) Does FMLA leave for this new qualifying reason include paid leave?

Yes. The first two weeks (usually 10 workdays) of FMLA leave for this new qualifying reason will be unpaid. You have the option to use your own accrued leave or use Emergency Paid Sick Leave to cover these two weeks. The remaining 10 weeks of FMLA leave for this qualifying reason is to be paid out at not less than 2/3 of your regular rate of pay, but is capped at \$200 a day, or \$10,000 in the aggregate. Higher paid APWU bargaining unit employees may hit these caps. **However, please note that if you use Emergency Sick Leave for the first two weeks (usually 10 workdays) because of the qualifying reason that your child's school or place of care is closed, the Emergency Sick Leave would also be paid at 2/3rd of your regular pay rate and capped at \$200/day. Such use would raise the aggregate cap for the twelve weeks to \$12,000.**

5) How do I qualify for the expanded FMLA paid leave benefits?

To qualify for this new qualifying reason under the FMLA, you must be unable to work or telework because you are taking care of a child under 18 years of age (or 18 years of age or older who is incapable of self-care because of a mental or physical disability) whose school or place of care is closed due to the pandemic or whose normal care provider is unavailable as a result of COVID-19.

6) Does this new qualifying reason entitle me to a new 12-week period under the FMLA?

No, each employee is still only entitled to 12 weeks of FMLA leave, regardless of reason. If you have already exhausted your FMLA leave for this year, you are not entitled to take FMLA leave for this new qualifying reason. If you have exhausted part of your FMLA leave entitlement, you can take any remaining FMLA leave for this new qualifying reason.

7) If I am not a full-time employee, how many hours of this type of leave am I entitled to?

A part-time employee should receive the number of leave hours that he or she would otherwise normally be scheduled to work, or if your schedule varies, the number of hours equal to the average you were scheduled to work over the preceding six-month period. If you have not worked six months, a shorter period of time will be used.

8) Is all leave under the FMLA now paid leave?

No, only FMLA leave associated with caring for a child whose school or child care provider is closed due to COVID-19 is considered a qualifying reason for this new type of paid FMLA leave.

9) Can I use this Public Health Emergency Leave for this new qualifying reason intermittently?

Intermittent use of the Public Health Emergency Leave requires mutual agreement. If you and your manager can agree on a schedule in which you are able to perform the functions of your position while taking this type of leave intermittently, you may do so. If you and your manager cannot agree on such a schedule, you are still permitted to take Public Health Emergency Leave for this new qualifying reason; you just will not be permitted to take it intermittently.

10) I noticed that the closure of a child's school or place of care is closed is a qualifying reason for both types of new leave. Can I use Emergency Paid Sick Leave in conjunction with Public Health Emergency Leave for this new qualifying reason to ensure that all twelve weeks of leave are paid?

Yes, you may use Emergency Paid Sick Leave for the first two weeks of unpaid FMLA leave for this new qualifying reason, then transition to Public Health Emergency Leave, which is also paid. **However, please note that both types of leave for the qualifying reason that your child's school or place of care is closed are paid at 2/3rd of your regular pay rate and capped at \$200/day.**

11) Do I have to be employed for one year to qualify like FMLA for the Expanded Family Leave?

No. Qualifying employment is reduced to 30 days; but only for the FMLA leave expansion. The rules for use of FMLA for other circumstances have not changed.

12) Does the use of 80 hours of Emergency Sick Leave count against any available Public Health Emergency Leave?

No. However, if you also qualify for Emergency Sick Leave based on your own circumstance and you qualify as taking care of your child while school is closed related to COVID-19, you must choose. You can't simultaneously use both the Emergency Sick Leave and paid FMLA Public Health Emergency Leave.

13) Is the 80 hours of Emergency Sick Leave available even if an employee has already exhausted his or her FMLA leave for the year?

Unless you use Emergency Sick Leave to cover the first two weeks of otherwise unpaid leave under the Expanded FMLA, Emergency Sick Leave is independent of FMLA. Whatever Emergency Sick Leave has not been used to cover absences for qualifying conditions remains available through December 31, 2020 despite exhaustion of FMLA.

14) Can employees still send their requests for FMLA under the expanded rules to the HRSSC FMLA unit?

The Postal Service is handling requests for FMLA leave for this new qualifying reason locally at this time. However, questions regarding specific requests for FMLA leave, whether for this new qualifying reason or otherwise, can still be directed to HRSSC.

15) How does an employee submit requests for FMLA Leave Expansion if not going to the office? Should an employee call the IVR leave line and request “other” leave?

An employee would request this leave through normal leave request procedures by either calling the normal phone number or submitting a PS Form 3971 directly to the employee’s supervisor or manager.

16) Is there a Postal Service contact for questions regarding these benefits?

HR Shared Service Center at 1-877-477-3273 and select Option 5.

17) Under the Expanded Family and Medical Leave Act provisions, do employees receive 8 hours of leave at 2/3 pay or 5.34 of leave (2/3 of 8 hours)?

The employees are run 8 hours of leave but receive 2/3 of their pay.