

# **Families First Coronavirus Response Act (FFCRA) and Paid Sick Leave**

## **UPDATED November 18, 2020**

### **New Information in Red**

FFCRA was signed by President Trump on March 18, 2020 and goes into effect on April 1, 2020 and will remain in effect until December 31, 2020. You can review the entire law [here](#). The FFCRA contains several parts, two of which are addressed here: the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA). The following contains a brief summary of each, a set of Questions and Answers, and links to additional resources.

#### **Emergency Family and Medical Leave Expansion Act (EFMLEA)**

The first section of the FFCRA expands the federal Family and Medical Leave Act (FMLA). Until the end of 2020, the VSC will provide eligible employees with up to 12 weeks of expanded FMLA leave. The first ten days of EFMLEA leave are unpaid (but are effectively covered by the EPSLA – see below). Employees will then be paid at two-thirds ( $\frac{2}{3}$ ) of their regular rate of pay for the remaining ten weeks.

##### ***Which employees are eligible?***

Paid EFMLEA leave will be available to any employee who has been employed for at least 30 days and who is caring for his or her child whose school or place of care is closed (or childcare provider is unavailable) due to COVID-19 related reasons. The eligible employee must be unable work, either in person or remotely, while on EFMLEA.

##### ***How are employees paid during this time?***

First, employers are required to offer employees unpaid leave (or the employee may choose to use accrued paid leave or EPSLA leave) for 10 days. After this, employees will be compensated at **two-thirds** of their regular rate (capped at a maximum of \$200/day).

#### **Emergency Paid Sick Leave Act (EPSLA)**

The second leave provision of the FFCRA provides eligible employees with two weeks of emergency paid sick leave due to COVID-19.

##### ***Which employees are eligible?***

The emergency FFCRA paid sick leave is available if an employee is unable to work (in-person or remotely) due to COVID-19 because the employee:

1. Is subject to federal, state, or local quarantine or isolation related to COVID-19;
2. Has been advised by their doctor to self-quarantine due to COVID-19;
3. Is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. Is caring for a family member subject to a quarantine order or self-quarantine;
5. Is caring for children if schools are closed or their caregiver is unavailable because of the COVID-19 health emergency; or
6. Is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.

##### ***How are employees paid during this time?***

Full-time employees can receive up to two weeks (80 hours) of paid sick leave, while part-time employees can receive paid sick leave based on the number of hours they would work during an average two-week period. If an employee qualifies based on reasons 1, 2, or 3 above, they receive sick leave at their regular rate of pay (capped at a maximum of \$511 per day and \$5,110 total for ten workdays). If an employee qualifies based on reasons 4, 5 or 6 above, they receive paid sick leave at two-thirds their regular rate of pay (capped at a maximum of \$200 per day and \$2,000 total for ten workdays).

***How does this impact sick leave already provided that by an employer?***

This emergency paid sick leave is offered in addition to any existing sick leave and/or paid time off provided by an employer.

**Questions and Answers related to FFCRA**

***1. How is the VSC responding to the Families First Corona Response Act?***

The VSC has created a leave bank titled “FFCRA” for employees to request approval from their supervisor to take EPSLA or EFMLEA leave. Eligible employees who are unable to work for COVID-19 related reasons, as set forth above, may use FFCRA leave – this is separate and apart from any current paid leave that the employee may have accrued. In other words, employees may use FFCRA leave without depleting their existing leave balances for up to two weeks under EPSLA and for up to twelve weeks under EFMLEA. FFCRA leave is not retroactive and, thus, employees who have already used existing accrued leave balances for COVID-19 related reasons cannot use FFCRA to restore previously used leave balances.

Although the law provides that an employee be paid at two-thirds of their regular rate of pay if taking EPSLA leave for reasons four through six (see above), the VSC will pay employees 100% of their regular rate of pay. However, employees using EFMLEA leave will be paid at two-thirds of their regular rate of pay, up to the daily cap, consistent with the law.

***2. How do I request emergency paid sick leave under EPSLA?***

You will need to submit a leave request through UltiPro using the “FFCRA” leave type. In addition, you will need to complete a FFCRA request form (a draft copy of which is attached). The request form will be available on the portal. You may also be asked by your Director of Human Resources to submit additional documentation to support your request in the future. The law requires that leave requests be suitably documented.

Note: You will need to check the reason you are seeking emergency paid sick leave (*i.e.* one of the qualifying reasons listed above) on the form. FFCRA leave may only be used for a qualifying COVID-19 related reason. In other words, you cannot use FFCRA leave if there is no work for you to perform at the present time.

Approval to take FFCRA leave isn’t final until the request form has been approved by HR, regardless of whether your supervisor has approved your leave request in UltiPro. If your request is denied, any FFCRA leave used will be deducted from your existing sick leave balance, or other accrued paid leave if you have no remaining sick leave (and your FFCRA leave balance will be restored for future use).

***3. How do I request extended leave under EFMLEA?***

You will need to submit a leave request through UltiPro using the “FFCRA” leave type. In addition, you will need to complete a FFCRA request form (a draft copy of which is attached). The request form will be available on the portal. You may also be asked by your Director of Human Resources to submit additional documentation to support your request in the future. The law requires that leave requests be suitably documented. As previously noted above, availability of EFMLEA leave is limited to those employees who have been employed for at least 30 days and who are caring for a child (or children) whose school or place of care is closed (or childcare provider is unavailable) due to COVID-19 related reasons.

Regular FMLA leave continues to be available to eligible employees to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. All existing certification requirements under the FMLA remain in effect if you take leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to provide medical certifications under the FMLA as needed. If you have questions about FMLA, please reach out to your Director of Human Resources. See generally <https://www.dol.gov/agencies/whd/fmla>.

**4. *When can I start to use FFCRA PTO? Do I have to use it all at once?***

This new law goes into effect April 1, 2020. You do not have to use it all at once but can, with permission, use it intermittently through December 31, 2020.

**5. *Can I use FFCRA PTO if I can work remotely (telecommute)?***

Yes, provided it is used for a FFCRA-qualifying reason, such as quarantine, self-isolation or have family care needs related to COVID-19 illness. (You may telework if approved to do so by the College. If you are teleworking you will be compensated as normal – this has nothing to do with the paid leave provisions of the FFCRA).

**6. *Can I use FFCRA PTO for a vacation day?***

No. The FFCRA PTO is specifically designed to support employees who are unable to work for qualifying COVID-19 reasons. If you wish to take a vacation day, you should follow the normal process for requesting vacation. Managers/supervisors have discretion to approve or deny requests to take accrued (non-sick) leave.

**7. *How much paid sick leave will I receive under EPSLA? If I work less than 80 hours in a two week period, how is the amount of paid sick leave I may take calculated?***

For FFCRA purposes, anyone working less than 80 hours every two weeks is considered part-time and a part-time employee is entitled to leave for his or her average number of work hours in a two-week period. This is calculated based on the number of hours the employee is normally scheduled to work. For example, for Staff Federation employees this is typically 75 hours and, thus, Staff Federation employees will be able to take up to 75 hours of EPSLA leave for a qualifying reason.

If the normal hours scheduled are unknown, or if the part-time employee’s schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period and may take expanded

family and medical leave for the same number of hours per day up to ten weeks after that. If the employee has not been employed for at least six months, the appropriate number of hours of leave may be based upon the average hours per day the employee has been scheduled to work over the entire term of their employment.

**8. *When calculating the amount of pay due to employees, must overtime hours be included?***

Yes. The EFMLEA requires an employee to be paid for the hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week. However, the EPSLA requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under EPSLA is capped at 80. If the employee's schedule varies from week to week, see the answer to No. 7 (*i.e.* the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee). However, the amount of pay does NOT include the shift differential for overtime hours under either EPSLA or EFMLEA.

**9. *May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under EPSLA?***

No. You 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 paid sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

Once you have exhausted your FFCRA leave, you will be required to use your accrued sick leave or other accrued leave balances. See Question 3 above for additional information on the Family and Medical Leave Act. If you have questions about your own serious health condition or that of an immediate family member and your options, please reach out to your Director of Human Resources.

**10. *May I donate my FFCRA leave to another employee?***

No. There is no such provision under FFCRA and this leave is not covered by the VSC's bargaining contracts or any provisions therein for donations of sick leave. However, employees may donate regular sick leave as provided for in a bargaining agreement or the VSC Personnel Handbook, whichever is applicable.

**11. *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. **Under a hybrid model which is common this fall, you may use the leave for those days when the school or provider is closed to your child.** EPSLA 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 EFMLEA unless you elect to use existing vacation, personal, or medical or sick leave. 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 EFMLEA.

**12. Do I qualify for leave for a COVID-19 related reason even if I have already used some or all available leave under the Family and Medical Leave Act (FMLA)?**

If you are an eligible employee, you are entitled to paid sick leave under EPSLA regardless of how much leave you have taken under the FMLA. However, your eligibility to take EFMLEA depends on how much leave you have already taken during the 12-month period that the VSC uses for calculating FMLA leave. Please contact your Director of Human Resources if you have already taken FMLA in the past twelve months and have questions as to whether you are eligible to take EFMLEA leave. Similarly, if you take EFMLEA between April 1, 2020 and December 31, 2020, this will count towards your entitlement to take 12 weeks of FMLA in a 12-month period.

**13. Am I entitled to take FFCRA leave because of Governor Scott's Stay Home/Stay Safe Order?**

As noted above, employees may take up to two weeks of paid sick leave under EPSLA if they are subject to federal, state, or local quarantine or isolation related to COVID-19. The regulations recently promulgated by the Department of Labor and the updated Q & A's (see links below under Resources) provide more explanation of when this reason applies. If you are unable to work (either on campus or remotely) because of Governor Scott's order, even though the Colleges have work that you could perform but for the order, then you may take FFCRA leave. If, however, the Colleges have no work for you to do, for example because the students are no longer on campus, then you are not eligible to take FFCRA leave. In other words, the employee would be unable to work even if he or she were not required to comply with Governor Scott's order.

**14. What documentation am I required to provide to receive FFCRA leave?**

The Department of Labor's regulations (see link below) state that to receive FFCRA leave, employees must provide a signed statement containing:

- The employee's name.
- The date(s) for which leave is requested.
- The coronavirus-qualifying reason for leave.
- A statement that the employee can't work or telework because of this reason.

In addition, employees must provide the name of the government entity that issued the quarantine or isolation order to which the employee is subject, if that is the reason for the request.

An employee seeking leave because he or she is self-quarantined must provide the name of the health care provider making the quarantine recommendation. Someone caring for a person who is quarantined must provide either the government entity that issued the quarantine or isolation order or the name of the health care provider who advised the individual to self-quarantine.

Employees requesting EFMLEA leave must provide:

- The name of the child being cared for.
- The name of the school, place of care or childcare provider that closed or became unavailable due to coronavirus reasons.

- A statement that no in-person school or care option was available for the child.
- A statement representing that no other suitable person is available to care for the child during the period of requested leave.

The normal FMLA certification rules apply to an employee's own serious health condition related to the coronavirus and to the employee's need to care for a spouse, son, daughter or parent with a serious health condition.

The IRS FAQs on FFCRA (see link below) require that when an employee is seeking EFMLEA leave to care for a child older than 14 during daylight hours, the employee needs to provide a statement that special circumstances exist requiring the employee to provide care.

15. If I am out of leave, is there a donated leave bank that I can access?

Although a new donated leave bank was discussed prior to the enactment of the FFCRA, no other donation structure was set up because of the availability of FFCRA leaves. If you have exhausted all of your leave balances, please contact your HR Director to determine your options.

#### **16.15 How do I enter COVID-19 and FFCRA leave in UltiPro?**

The following information was sent to employees on Friday, April 3, 2020 but is provided again here for ease of reference.

These are two new options in the drop down for time off requests (see below, figure 1) and are for tracking only. They are DIRECTLY linked to your existing sick and vacation banks.

- We ask that, if you are unable to work and it is related to COVID-19, you use these banks so that the VSC can track costs related to COVID-19 with the hopes we may be eligible in the future for federal or state relief. If you have already submitted time for this pay period as sick or vacation and it was related to COVID-19, please put in a ticket and we can make sure the time is tracked accordingly.
- Please note, use of these times will be reflected in your sick and vacation leave balance accruals
- The number of hours of leave requested can also be adjusted by using the advanced function option. (See below, figure 2)

If you have exhausted your sick and other leave balances, please contact your HR Director to determine your options which will include a plan which must be approved by the President or designee.

This time is requested just like any other time off through the time management time off request page

- The number of hours of leave requested can also be adjusted by using the advanced function option. (See below, figure 2)

If you have received authorization to use FFCRA leave (see FAQ No. 2), you should enter this using the FFCRA code.

New Request

Description

Type • Choose One

From •

To •

Total

Notes

- VACATION
- SICK LEAVE
- PERSONAL
- JURY DUTY
- BEREAVEMENT
- MILITARY TIME
- FLOAT HOLIDAY
- COVID19 VAC
- COVID19 SICK
- FFCRA

New Request

Description

Type • COVID19 VAC

From • 04/03/2020

To • 04/03/2020

Total 4

Notes

Advanced Options

|   | Date       | Day | Type        | Hours | Available Hours | Remaining Hours |
|---|------------|-----|-------------|-------|-----------------|-----------------|
| X | 04/03/2020 | FRI | COVID19 VAC | -4.00 | 0               | -4.00           |

**17. May I travel outside of Vermont for leisure?**

All employees are expected to be familiar with and abide by the State of Vermont Cross State Travel Requirements ( <https://accd.vermont.gov/covid-19/restart/cross-state-travel> ). If you must travel and will be required to quarantine upon your return, you are required to notify your supervisor as part of your request for time off. If the time off with travel is approved, upon your return, you may either work remotely for the quarantine period, if authorized by your supervisor, or you may use your available existing leave time.

**18. What type of leave would I use if I have symptoms listed on the self-attestation form or if I am diagnosed with COVID-19?**

To be present at the workplace, each employee must verify that he or she has no symptoms of COVID-19. All employees are expected to be familiar with and abide by the State of Vermont Mandatory Guidance for College and University Campus Learning: <https://accd.vermont.gov/content/restart-plan-college-and-university-campus-learning>

If you are not able to satisfy the State's requirements or you have been diagnosed with COVID-19, you may either work remotely if authorized by your supervisor, or you may use your available FFCRA leave or other existing leave.

**19. If my family member is required to quarantine, may I use FFCRA leave?**

Not under most circumstances. The State does not require that you quarantine if you are living with someone who is under quarantine, and FFCRA leave is not available for this purpose. You should wear a mask in common spaces in your residence, disinfect commonly touched surfaces, and perform symptom self-checks as described by the State, and report to work.

**FFCRA Resources**

State of Vermont Work Safe Guidance: <https://accd.vermont.gov/news/update-new-work-safe-additions-be-smart-stay-safe-order>

State of Vermont COVID FAQs: <https://apps.health.vermont.gov/COVID/faq/#how-to-protect-yourself>

State of Vermont College Re-start Plan: <https://accd.vermont.gov/content/restart-plan-college-and-university-campus-learning>

FFCRA Poster: [https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Federal.pdf)

Questions and Answers on FFCRA: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Temporary Regulations issued by the Secretary of Labor:  
<https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>

IRS FAQs on FFCRA: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>