



Texas Association of School Boards

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Personnel Provisions in the Families First Coronavirus Response Act

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On March 18, 2020, Congress passed the [Families First Coronavirus Response Act](#) (FFCRA), Public Law 116-127, 134 Stat 178, which includes paid leave for school district employees through the provisions in the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family Medical Leave Expansion Act (EFMLEA). This legislation is effective April 1, 2020 through December 31, 2020.

Federal relief from the COVID-19 pandemic is rapidly evolving. The United States Department of Labor (DOL) issued regulations, [29 C.F.R. part 826](#), to clarify the application of the leave provisions. DOL continues to issue guidance for the implementation of the EPSLA and the EFMLEA through its [Families First Coronavirus Response Act: Questions and Answers Website](#).

General Provisions

Applicability

Both the EPSLA and EFMLEA apply to public agencies, including school districts. 29 C.F.R. § 826.10(a); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 52-53.

Tax Credit Eligibility for FFCRA Leave

While most private employers will receive a tax credit to offset the cost of the leave provided in the FFCRA, the credit does not apply to agencies of the state, including school districts. Unless this language is amended, there is no mechanism to reimburse school districts for the cost of the additional paid leave required by the FFCRA.

Notice to Employees

To comply with the FFCRA, districts must post notice of the FFCRA requirements in a conspicuous place on the district's premises. To satisfy this requirement, the district may email or direct mail notice to employees or posting notice on an employee information internal or external website. The worksite poster developed by the DOL is available in [English](#) and [Spanish](#). Posting of the English version is required. 29 C.F.R. § 826.80(a)-(d); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act Notice - Questions and Answers](#).

Emergency Paid Sick Leave

Public agencies, including school districts, must provide up to two weeks (80 hours) of emergency paid sick leave (EPSL) to full-time employees who are unable to work or telework due to a need for leave because of one of the specified reasons. Part-time employees are entitled to compensation for the number of hours equal to the average of the number of hours worked over a two-week period. 29 C.F.R. § 826.21, .160(f); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 5-6, 9.

Employees are eligible for EPSL regardless of how long the employee has worked for the district. However, a district may exclude a health care provider or an emergency responder from leave protections. DOL encourages employers to be judicious in application of this exemption. 29 C.F.R. § 826.30(a), (c); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 52, 56-75.

Qualifying reasons for the use of EPSL:

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 because the employee has, may have, or is particularly vulnerable to COVID-19, and the employee cannot work or telework.
3. The employee is experiencing a fever, dry cough, shortness of breath, or other symptoms of COVID-19 identified by the CDC while the employee is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a COVID-19 test.
4. The employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID-19, or who has been advised by a health care provider to self-quarantine because the individual has, may have, or is particularly vulnerable to COVID-19, and, as a result, the employee cannot do the assigned work or telework.
5. The employee is caring for his or her son or daughter whose school facility is closed or whose child care provider is unavailable for reasons related to COVID-19 and no other suitable person is available to care for the child, and, as a result, the employee cannot do assigned work or telework.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

29 C.F.R. § 826.20(a)(1), (3)-(4), (6)-(9); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 7, 61-62, 65, 68-71.

Definitions

A *quarantine or isolation order* includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by federal, state, or local government authorities that cause the employee to be unable to work even though his or her employer has work that the employee could perform. EPSL based on an isolation or quarantine order is not available if an employee is able to telework. Therefore, if the district has work for the employee to perform and the district allows the employee to perform that work from the location where the employee is and no extenuating circumstances prevent the employee from working, leave for this reason is not available. 29 C.F.R. §§ 826.10(a), .20(a)(2); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Question 60.

An employee is considered *unable to work, including telework, for COVID-19 related reasons*, if the district has work for the employee and one of the reasons specified in the FFCRA, prevents the employee from being able to perform the work. If the district and employee agree to a schedule outside of normally scheduled work hours and the employee can perform the work without a COVID-19 reason preventing it, then leave is not necessary. U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 18-19.

Telework is work an employee is permitted to perform away for the employee's normal workplace, such as work performed at the employee's home. An employee is able to telework if there are no extenuating circumstances, such as serious COVID-19 symptoms, that prevent the employee from performing the work. An employee may telework during the employee's regular work hours, or at other times agreed to by the employer and employee. The employee must be paid for the hours actually worked. 29 C.F.R. § 826.10(a); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 17.

An employee's *son or daughter* for purposes of reason 5 includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*. The child must be under age 18 or incapable of self-care because of a mental or physical disability. 29 C.F.R. § 826.10(a); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Question 66.

For purposes of reason 4, *individual*, means a member of the employee's immediate family, a person who regularly lives at the employee's home, or a similar person with whom the employee has a relationship that creates an expectation of care by the employee if the person is quarantined or self-quarantined. To qualify, the person must have a personal relationship with the employee and must expect or depend on the employee's care. 29 C.F.R. § 826.20(a)(5); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 63-64.

Eligibility and Rate of Pay

An employee is eligible for EPSL regardless of how long he or she has worked for the district. The rate of pay for EPSL depends on the reason the employee requests leave. If the employee requests leave for one of the first three reasons, the leave is provided at full pay, capped at a \$511 a day, or \$5,110 for ten days. Leave for reasons 4 through 6, above, is provided at two-thirds of an employee's regular pay, with a \$200 a day maximum, or a total of \$2000 over 10 days. 29 C.F.R. §§ 826.22, .25; U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 7-8.

Order of Leave

Districts must allow an employee to use EPSL before accessing any leave provided by law, with the exception of leave under the EFMLEA, or local policy, and may not require the employee to use other accrued leave before accessing EPSL. Any paid leave the school district provides through local policy or emergency resolution will not be credited against the employee's paid leave entitlement under the EPSLA. 29 C.F.R. § 826.160(b).

Emergency Family and Medical Leave Expansion Act

The FFCRA amends the 1993 Family and Medical Leave Act (FMLA) by adding an additional reason for leave through the EFMLEA, which applies to all public agencies including school districts. Under the EFMLEA, eligible employees can access up to 12 weeks of leave if the employee is unable to work or telework due to the need to care for the employee's minor son or daughter if his or her school facility is closed or child care is unavailable due to a public health emergency. To qualify, there must be no other suitable person available to care for the child. 29 C.F.R. §§ 826.20(b), .23; U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 7, 68-70, 71. An employee's *son or daughter* includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*. The child must be under age 18 or incapable of self-care because of a mental or physical disability. 29 C.F.R. § 826.10(a); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Question 66.

Eligibility and Rate of Pay

Under the EFMLEA, an employee is eligible if the employee has been on the employer's payroll for 30 calendar days. However, an employer may exclude a health care provider or an emergency responder, including law enforcement and other personnel necessary to respond to COVID-19, from the leave protections. The DOL encourages employers to be judicious in the application of these exemptions. 29 C.F.R. § 826.30(b)-(c); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 14, 53, 56-57.

The first two weeks of leave under the EFMLEA is unpaid, but an employee has the option to request available personal leave, vacation, or sick leave, including the EPSL described above, to run concurrently. The remaining 10 weeks of available leave will be paid at two-thirds of the employee's regular rate, up to a maximum of \$200 a day, or \$10,000 total. 29 C.F.R. §§ 826.24-.25, .60, .160(c); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 7-8.

Leave Interaction and Supplemental Pay

EFMLEA and FMLA

Because the EFMLEA is an amendment to the existing FMLA, the existing provisions from the FMLA will apply unless amended by the emergency provisions. For example, as required under the FMLA, an employee taking paid leave under the EFMLEA is entitled to job restoration to the same or equivalent position upon return to work, with certain limitations. 29 C.F.R. § 826.130. Additionally, the total leave available under the FMLA is still a total of 12 weeks combined for all FMLA reasons in the 12-month period a school district established in TASB Policy DEC(LOCAL). 29 C.F.R. § 826.70(e).

Intermittent Use of FFCRA Leave

The district may allow an employee to use EPSL and EFML intermittently if an employee is unable to telework during his or her normal schedule because of a qualifying reason. According to the DOL, the district may agree to allow an employee to use intermittent leave in any increment. 29 C.F.R. §§ 826.50(a), (c); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Question 20.

If an employee is working on site rather than teleworking, the ability to take intermittent leave depends on the reason for leave. Employees working on site must take EPSL in full-day increments if leave is taken for reasons 1-4 or 6, above. Additionally, once an employee who is on site begins taking leave for such reasons, the employee must continue to use the leave until exhausted or there is no longer a qualifying reason for the EPSL. These restrictions are intended to help prevent the spread of the COVID-19 virus. Employees working on site requesting leave under FFCRA to care for a son or daughter whose school or child care is unavailable may take the leave intermittently if the employer agrees. 29 C.F.R. §§ 826.50(b); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 21-22.

The DOL encourages collaboration with employees to create arrangements that combines onsite work or telework and intermittently leave to meet the needs of the district and employees. U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 20-22.

Interaction of FFCRA Leave and Local Leave

Since an employee's pay received while on emergency paid sick leave or EFML may not be equivalent to the employee's normal earnings a district may, but is not required to, allow an employee to supplement the employee's pay by applying leave the employee has accrued under the district's paid leave policy. As described above, the first two weeks of EFML is unpaid. During this time, to the extent an eligible employee has EPSL available, the leave runs concurrently with EFML. The employee and the district may agree to supplement the EPSL with local paid leave. 29 C.F.R. § 826.60; U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 31-32.

During the remaining EFML period, a district may permit or require the employee to take available local paid leave, consistent with the existing FMLA rules on concurrent use of leave. After the local paid leave is exhausted, the employee must be paid for EFML consistent with the EFML provisions. 29 C.F.R. § 826.23(c); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 31, 33.

Notice and Documentation of Leave

Employee Notice of Need for Leave

A district may implement a reasonable procedure to require notice after the first workday and employee uses EPSL or EMFL for a reason other than child care, described above. If an employee requires emergency paid sick leave or EFMLA for child care and that leave was foreseeable, the employee must provide notice as soon as practicable. According to the rules, requiring an employee to comply with the district's notice and procedural requirements for requesting leave is reasonable. 29 C.F.R. § 826.90(a)-(b), (d); U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Question 16.

Documentation Requirement

An employee must provide the district certain basic documentation of the need for taking leave prior to taking EPSL or EFML. 29 C.F.R. § 826.100. In addition to basic information, such as the reason for leave and a statement that the employee is unable to work for that reason, the employee must provide documentation relating to the reason for leave. For example, an employee taking leave based on the quarantine or isolation order must provide the name of the entity that issued the order. An employee taking leave to self-quarantine must provide the name of the health care provider advising the self-quarantine. An employee taking leave for child care purposes must provide the child's name, the name of the school or child care provider that is no longer available, and a representation that no other suitable person will be caring for the child during the period of leave. Additionally, the district may require notice of school closure posted on a website, published in a newspaper, or emailed to the employee for documentation of need for leave for child care purposes. 29 C.F.R. §§ 826.100(a)-(e); U.S. Dep't

of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Questions 15-16; U.S. Internal Revenue Service, [COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs](#), Question 44.

If an employee uses non-emergency FMLA leave for a serious health condition related to COVID-19, the district may continue to require medical certification under the existing certification requirements. U.S. Dep't of Labor, Wage and Hour Div., [Families First Coronavirus Response Act: Questions and Answers](#), Question 16.

Keep Checking Back

Relief from the COVID-19 pandemic provided at a federal level is rapidly evolving. The DOL continues guidance to clarify the application of the leave provisions. Your local counsel is in the best position to advise you about choices with respect to the interplay between the state and local leave available at your district and additional leave provided in the FFCRA.

Updated May 20, 2020

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-esource/personnel/documents/personnel-provisions-in-the-families-first-coronavirus-response-act.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.