



Frequently Asked Questions (FAQs)

Families First Coronavirus Response Act (FFCRA) Leaves

Definitions

FFCRA: Families First Coronavirus Response Act

EPSL: Emergency Paid Sick Leave paid under the Emergency Paid Sick Leave Act

EFMLA: Emergency Family and Medical Leave Act paid leave under the Emergency Family and Medical Leave Expansion Act

What is the Families First Coronavirus Response Act (FFCRA)?

The FFCRA created the Emergency Paid Sick Leave Act **and** the Emergency Family and Medical Leave Expansion Act. The FFCRA provides employees with paid sick leave and expanded family and medical leave for reasons related to COVID-19. **This leave may be taken between April 1, 2020 and December 31, 2020.**

► PAID LEAVE ENTITLEMENTS

The following benefits are provided to eligible employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- 2/3 for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to \$200 daily and \$12,000 total.
(Must be employed for at least 30 days prior to the leave)

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

► QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

<ol style="list-style-type: none">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 related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);	<ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.
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Q1: What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act (EPSL) and the Emergency Family and Medical Leave Expansion Act (EFMLA)?

A: 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.

► PAY

Q2: May I use my preexisting leave accruals and my FFCRA EPSL and EFMLA concurrently for the same hours?

A: No. If you are eligible to take EPSL or EFMLA under the FFCRA, you must choose one type of leave to be paid.

Q3: How much will I be paid while taking paid sick leave (EPSL) or expanded family and medical leave (EFMLA) under the FFCRA?

A: It depends on your normal schedule as well as why you are taking leave.

If you are taking EPSL because you are unable to work or telework because you (1) are subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) have been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) are experiencing symptoms of COVID-19 and are seeking medical diagnosis, you will receive for each applicable hour the greater of:

- your regular rate of pay,
- the federal minimum wage in effect under the FLSA, or
- the applicable State or local minimum wage.

In these circumstances, you are entitled to a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period.

If you are taking EPSL because you are: (1) 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; (2) caring for your child whose

school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or (3) experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, you are entitled to compensation at 2/3 of the greater of the amounts above.

Under these circumstances, you are subject to a maximum of \$200 per day, or \$2,000 over the entire two-week period.

If you are taking EFMLA, you may take EPSL for the first ten days of that leave period, or you may substitute any accrued annual leave, sick leave, faculty care or other leave you have under NMSU ARP. For the following ten weeks, you will be paid for your leave at 2/3 of your regular rate of pay for the hours you would normally be 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, you will not receive more than \$200 per day or \$12,000 for the twelve weeks that include both EPSL and EFMLA when you are on 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.

Q4: I am faculty or exempt staff and noticed my pay is less than usual . Why?

A: There are limits to paid EPSL and EFMLA leaves, refer to Q3. The difference between your regular rate of pay and the maximum amount payable for FFCRA leaves will be adjusted on a pay period lag. Refer to the Paid Leave Entitlement section of this document (pg. 1).

➤ EMERGENCY PAID SICK LEAVE

Q5: May I take 80 hours of EPSL for my self-quarantine and then another amount of EPSL for another reason provided under the Emergency Paid Sick Leave Act?

A: 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.

Q6: Can my EPSL be denied if I took paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?

A: No. The Emergency Paid Sick Leave Act imposes a new leave benefit that is effective beginning April 1, 2020.

Q7: If I take EPSL, does that count against other types of accrued paid leave?

A: No. EPSL is in addition to other accrued leave types.

Q8: I've elected to take EPSL and I am currently in a waiting period for my NMSU health coverage. If I am absent from work on EPSL during the waiting period, will my health coverage still take effect after I complete the waiting period on the same day that the coverage would otherwise take effect?

A: Yes.

➤ STAYING HOME WITH MY CHILD

Q9: Who is considered a son or daughter?

A: 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 have day-to-day responsibilities to care for or financially support.

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.

Q10: Can I use EPSL or EFMLA to take care of my grandchildren if their school is closed and my son or daughter, their parent, is working?

A: No, please refer to Q9.

Q11: 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 EPSL, EFMLA, or both—how do they interact?

A. You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both EPSL and EFMLA 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 EFMLA, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless you elect to use existing accrued annual leave, sick leave, faculty care or other leave you have under NMSU ARP. 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.

➤ APPLICATION AND DOCUMENTATION

Q12: What is the process for requesting EPSL and/or EFMLA?

A: Discuss your need for leave with your supervisor and submit an FFCRA EPSL and/or FFCRA EFMLA form(s) and supporting documentation to fmla@nmsu.edu. Electronic signatures are accepted. Benefit Services will review the form and documentation, and determine the applicable leave hours and rate of pay. Benefit Services will email eligibility and designation notices to the employee and supervisor.

Q13: What documents do I need to give NMSU HR to get paid sick leave or expanded family and medical leave?

A: You must provide to NMSU documentation in support of your EPSL.

NMSU may also require you to provide additional documentation in support of your EFMLA taken 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. For example, this may include a notice of closure or unavailability from your child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider. NMSU must retain this notice or documentation in support of EFMLA,

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave 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.

➤ TELEWORK

Q14: When am I able to telework under the FFCRA?

A: Please visit the [Temporary Telework Guidelines](#), the [Telework Checklist](#), and the [Frequently Asked Questions](#) on the HRS website. If your supervisor allows you to perform work while you are at home or at a location other than your normal workplace, that is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.

Q15: What does it mean to be unable to work, including telework, for COVID-19 related reasons?

A: You are unable to work if your supervisor has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of telework.

If you and your supervisor agree that you will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

Q16: If I am or become unable to telework, am I entitled to EPSL or EFMLA?

A: If your supervisor permits teleworking—for example, allows you to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then you are entitled to take paid sick leave.

Similarly, if you are unable to perform those teleworking tasks or work the required teleworking hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave. To the extent you are able to telework while caring for your child, EPSL and EFMLA is not available.

Q17: May I take my EPSL or EFMLA intermittently while teleworking?

A: Yes, if your supervisor allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and your

supervisor may agree that you may take EPSL intermittently while teleworking. Similarly, if you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your supervisor may agree that you can take EFMLA intermittently while teleworking.

Q18: May I take my EPSL intermittently while working at my usual worksite as opposed to teleworking)?

It depends on why you are taking EPSL and whether your supervisor agrees. Unless you are teleworking, EPSL for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

- 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;
- 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; or
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless you are teleworking, once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either (1) use the full amount of EPSL or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

If you no longer have a qualifying reason for taking EPSL before you exhaust your EPSL, you may take any remaining EPSL at a later time, until December 31, 2020, if another qualifying reason occurs.

In contrast, if you and your supervisor agree, you may take EPSL intermittently if you are taking EPSL 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. For example, if your child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you may take EPSL on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite or telework on Tuesdays and Thursdays.

➤ EXTENDED FAMILY MEDICAL LEAVE ACT (EFMLA)

Q19: May I take my EFMLA intermittently while my child’s school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?

A: Yes, but only with your supervisor’s permission. Intermittent EFMLA should be permitted only when you and your supervisor agree upon such a schedule. For example, if your supervisor and you agree, you may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while your child is at home because your child’s school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of your leave.

Q20: Do I qualify for leave for a COVID-19 related reason even if I have already used some or all of my leave under the Family and Medical Leave Act (FMLA)?

A: If you are an eligible employee, you are entitled to EPSL under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA.

However, your eligibility for EFMLA depends on how much leave you have already taken during the 12-month period that NMSU uses for FMLA leave. You may take a total of 12 workweeks for FMLA or EFMLA reasons during a 12-month period. If you have taken some, but not all, 12 workweeks of your leave under FMLA during the current 12-month period, you may take the remaining portion of leave available. If you have already taken 12 workweeks of FMLA leave during this 12-month period, you may not take additional EFMLA.

For example, assume you are eligible for preexisting FMLA leave and took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. You therefore have 10 weeks of FMLA leave remaining. Because EFMLA is a type of FMLA leave, you would be entitled to take up to 10 weeks of EFMLA, rather than 12 weeks. And any EFMLA you take would count toward your entitlement to preexisting FMLA leave.

Q21: May I use EPSL and EFMLA together for any COVID-19 related reasons?

A: No. EFMLA applies only when you are on leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons. However, you can take EPSL for numerous other reasons.

Q22: May I take leave under the Family and Medical Leave Act over the next 12 months if I used some or all of my expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act?

A: It depends. You may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the Emergency Family and Medical Leave Expansion Act. If you take some, but not all 12, workweeks of your EFMLA by December 31, 2020, you may take the remaining portion of FMLA leave for a serious medical condition, as long as the total time taken does not exceed 12 workweeks in the 12-month period. Please note that EFMLA is available only until December 31, 2020; after that, you may only take FMLA leave.

For example, assume you take four weeks of EFMLA in April 2020 to care for your child whose school is closed due to a COVID-19 related reason. These four weeks count toward your entitlement to 12 weeks of FMLA leave in a 12-month period. If you are eligible for preexisting FMLA leave and need to take such leave in August 2020 because you need surgery, you would be entitled to take up to eight weeks of FMLA leave.

However, you are entitled to EPSL under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA. EPSL is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap. But please note that if you take EPSL concurrently with the first two weeks of EFMLA, which may otherwise be unpaid, then those two weeks do count toward the 12 workweeks in the 12-month period.

➤ HOW TO REPORT LEAVE

Q23: I've been approved for FFCRA leave, how do I report my leave?

A: Non-exempt (hourly) Employees: Non-exempt employees will not be able to access their timesheet through my.nmsu.edu while they are approved for FFCRA leave. A special paper timesheet will be provided to them with their designation notice. They will need to submit the paper timesheet to fmla@nmsu.edu within 2 business days of the close of the pay period. If the timesheet is not received timely, it may result in a delay in receiving pay until the following pay day after receipt. Electronic signatures for the employee and supervisor will be accepted.

Exempt Employees: Exempt employees will continue to submit a monthly leave report for annual, sick and other leave taken through my.nmsu.edu by the 10th of the following month. They will also be provided a manual leave report for reporting EPSL and/or EFMLA leave taken each pay period. The leave report will need to be submitted to fmla@nmsu.edu, with the supervisor copied on the email, within 2 business days of the close of the pay period. Adjustments to pay will be processed on a pay period lag.

For example, an employee uses 10 hours of EPSL between 4/1/2020 and 4/15/2020 to care for their child whose school is closed. The leave report is due by 4/17/2020. The employee will see a reduction of pay for the 10 hours of leave on their 4/30/2020 pay. The reduction will be the difference between their regular rate of pay and 2/3 of their pay up to the maximum allowed.

Q24: I'm faculty or exempt staff approved for FFCRA leave, do I have to submit a leave report every pay period?

A: Yes. To allow Benefit Services to keep accurate records of leave taken, we will track each pay period that an employee is eligible to use FFCRA leave. If a leave report is not submitted, it is unclear whether it is an oversight or no hours have been taken.

Q25: I already submit an intermittent FMLA leave report monthly; do I need to submit an additional timesheet or leave report?

A: Yes. FMLA entitlement is being tracked separately and in combination with EFMLA. We are tracking all FFCRA leaves on the paper timesheet for nonexempt employees and on the manual leave report for faculty and exempt staff.

Q26: Why can't I access my timesheet through my.nmsu.edu?

Non-exempt employees who have been approved for FFCRA EPSL and/or EFMLA leave will not be able to access their timesheet until they no longer have available FFCRA leave. Timesheets must be submitted via email to fmla@nmsu.edu within 2 business days of the close of the pay period.

➤ EXCLUSIONS

Q27: Who is a “health care provider” who may be excluded by their employer from EPSL and/or EFMLA?

A: For the purposes of employees who may be exempted from EPSL or EFMLA by their employer under the FFCRA, a health care provider is anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

Q28: Who is an emergency responder?

For the purposes of employees who may be excluded from EPSL or EFMLA under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

➤ OTHER QUESTIONS

Q29: Is all leave under the FMLA now paid leave?

A: 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 child care provider is unavailable, due to COVID-19 related reasons.

Q30: Are the paid sick leave and expanded family and medical leave requirements retroactive?

A: No.

Q31: How do I know whether I have “been employed for at least 30 calendar days by the employer” for purposes of expanded family and medical leave?

A: You are considered to have been employed by NMSU for at least 30 calendar days if you were on payroll for the 30 calendar days immediately prior to the day your leave would begin.

Q32: If my supervisor reduces my scheduled work hours, can I use paid sick leave or expanded family and medical leave for the hours that I am no longer scheduled to work?

A: No. If your supervisor reduces your work hours because he/she does not have work for you to perform, you may not use EPSL or EFMLA for the hours that you are no longer scheduled to work. This is because you are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19.

You may, however, take EPSL or EFMLA if a COVID-19 qualifying reason prevents you from working your full schedule.

Q33: If I elect to take EPSL or EFMLA, will my health coverage continue? If I remain on leave beyond the maximum period of EFMLA, do I have a right to keep my health coverage?

A: If you are covered by NMSU group health coverage, you are entitled to continue group health coverage during your EFMLA on the same terms as if you continued to work. You must continue to make any normal contributions to the cost of your health coverage.

If you do not return to work at the end of your expanded family and medical leave, you may be able to continue your coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA allows you and your family to continue the same group health coverage at group rates. Your share of that cost may be higher than what you were paying before but may be lower than what you would pay for private individual health insurance coverage.

Q34: Do I have a right to return to work if I am taking EPSL or EFMLA under the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act?

A: Generally, yes. In most instances, you are entitled to be restored to the same or an equivalent position upon return from EPSL or EFMLA. NMSU is prohibited from firing, disciplining, or otherwise discriminating against you because you take paid sick leave or expanded family and medical leave. Nor can NMSU fire, discipline, or otherwise discriminate against you because you filed any type of complaint or proceeding relating to these Acts, or have or intend to testify in any such proceeding.

However, you are not protected from employment actions, such as layoffs or reductions, that would have affected you regardless of whether you took leave. This means NMSU can lay you off or reduce your hours for legitimate business reasons, such as the closure of your worksite.

Q35: Who do I call if I have questions on the FFCRA?

A: You may email FMLA@nmsu.edu.