Families First Coronavirus Response Act (FFCRA)

Frequently Asked Questions

Below are answers to frequently asked questions related to the implementation of these provisions of the FFCRA at Western Carolina University.

Emergency Paid Sick Leave Act (EPSLA)

1) Which employees are eligible for the paid sick leave provided by the EPSLA?

All University employees (all types, full-time, part-time, temporary) are entitled to the immediate use of the paid sick leave provided by the EPSLA regardless of how long they have been employed. There is no length of service requirement for this benefit. However, EPSLA paid sick leave is available only through December 31, 2020.

2) What are the qualifying needs for paid sick leave pursuant to the EPSLA?

An employee is entitled to paid sick leave under the EPSLA when the employee is unable to work because:

(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 due to concerns related to COVID-19. The advice to self-quarantine must be based on the health care provider’s belief that the employee has COVID-19, may have COVID-19, or is particularly vulnerable to COVID-19.

(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis. Symptoms that could trigger this are fever, dry cough, shortness of breath, and other COVID-19 symptoms identified by the Center for Disease Control. An employee experiencing COVID-19 symptoms may take paid sick leave for time spent making, waiting for, or attending an appointment to take a test; but not for self-quarantining without a medical diagnosis. An employee may continue to take leave while experiencing these symptoms, and after testing positive, if a health care provider advises self-quarantine.

(4) The employee is caring for an individual who is subject to an order as described in paragraph (1) or has been advised as described in paragraph (2). The employee must have a genuine need to care for the individual and must have a personal relationship with that individual. The individual being cared for must be an immediate family member, roommate, or other similar person with whom the employer has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined.

(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions. An employee may take paid sick leave to care for the
child only when the employee needs to, and actually is, caring for his or her child. Generally, an employee does not need to take such leave if another individual – such as a co-parent, co-guardian, or the usual child care provider – is available to provide the care the child needs.

(6) The 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. As of April 9, 2020, there were no other conditions specified by the Secretary of HHS, Treasury or Labor to qualify under this provision.

The Department of Labor has explained in its regulations that for these purposes, an employee is able to telework, and therefore may not take paid sick leave, if the employer has work for the employee to perform, the employer permits the employee to perform that work from the location where the employee is located, and there are no extenuating circumstances (such as serious COVID-19 symptoms) that prevent the employee from performing that work.

3) How does the University determine whether an employee has a “qualifying need”?

The Department of Labor has identified documentation that an employee is required to provide an employer prior to taking paid sick leave under the EPSLA, including the employee’s name, date for which leave is requested, qualifying reason for leave, and an oral or written statement that the employee is unable to work because of the qualified reason for leave. See 29 C.F.R. § 826.100.

To take paid sick leave for a qualifying reason related to a quarantine or isolation order, the employee must additionally provide the name of the governmental entity issuing that order. To take paid sick leave for a qualifying reason related to a recommendation to self-quarantine, the employee must additionally provide the name of the health care provider advising self-quarantine. To take paid sick leave for a qualifying reason related to childcare, the employee must additionally provide the name of the son or daughter being cared for, the name of the school, place of care or child care provider that has been closed or become unavailable, and a representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes paid sick leave.

4) How much leave is provided to employees under the EPSLA?

Full-time employees are entitled to 80 hours of paid sick leave under the EPSLA. For purposes of the EPSLA, a full-time employee is an employee who is normally scheduled to work at least 40 hours each workweek. An employee who does not have a normal weekly schedule may be considered a full-time employee if he or she is scheduled to work, on average, at least 40 hours each workweek (computed over the six months prior to the date on which leave is requested). If the employee has been employed for less than six months, the average hours per workweek is computed over the entire period of employment.

A part-time employee is an employee who is normally scheduled to work fewer than 40 hours each workweek or – if the employee lacks a normal weekly schedule – who is scheduled to work, on average, fewer than 40 hours each workweek. A part-time employee who works a normal schedule is entitled to paid sick leave equal to the number of hours he or she is normally scheduled to work over a two-workweek period.

A part-time employee whose weekly work schedule varies is entitled to paid sick leave equal to 14 times the average number of hours that the employee was scheduled to work per calendar day over the six-month period ending on the date on which the employee takes paid sick leave, including hours for which
the employee took leave of any type. For example:

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/1/2020</td>
<td>First day of EPSLA leave use</td>
</tr>
<tr>
<td>11/1/2019</td>
<td>Six months back</td>
</tr>
<tr>
<td>183</td>
<td>Total calendar days between dates</td>
</tr>
<tr>
<td>260</td>
<td>Hours worked (or paid leave) for 10-01-19 to 03-31-20</td>
</tr>
<tr>
<td>1.4</td>
<td>Average hours worked per calendar day (=260/183)</td>
</tr>
<tr>
<td>19.9</td>
<td>Average daily hours times 14 calendar days (=1.4*14)</td>
</tr>
</tbody>
</table>

Employee receives 19.9 hours emergency paid sick leave

A part-time employee with a varying work schedule who has been employed for fewer than six months is entitled to 14 times the expected number of hours the employer and employee agreed at the time of hiring that the employee would work, on average, each calendar day.

In the absence of such an agreement, a part-time employee with a varying schedule who has been employed for fewer than six months is entitled up to the number of hours of paid sick leave equal to 14 times the average number of hours per calendar day that the employee was scheduled to work over the entire period of employment, including hours for which the employee took leave of any type. The University may also use twice the number of hours that an employee was scheduled to work per workweek, on average, over the six-month period.

5) **How is the amount of the paid sick leave compensation determined?**

The amount of compensation provided under the EPSLA varies based on qualifying need:

1. If the employee takes paid sick leave because he or she is unable to work because he or she is subject to a Federal, State, or local COVID-19 quarantine or isolation order; has been advised by a health care provider to self-quarantine for COVID-related reasons; or is experiencing COVID-19 symptoms and seeking a medical diagnosis, the employee will receive his or her regular rate of pay (or the applicable minimum wage in effect, whichever is greater) for each hour of paid sick leave taken. However, the amount an employer is required to pay is capped at $511 per day of paid sick leave taken and $5,110 in total per covered employee for all paid sick leave pay.

2. If an employee takes paid sick leave because he or she is unable to work because of any other COVID-19 qualifying reason (i.e., to care for a qualifying individual with a COVID-19 infection that qualifies as a serious health condition and who is subject to a quarantine or isolation order, or to care for minor children because schools are closed and/or whose paid childcare providers are unavailable), the employee will receive two-thirds of the employee’s regular rate of pay. However, the amount an employer is required to pay is capped at $200 per day of paid sick leave and $2,000 in total per covered employee for all paid sick leave that is paid at two-thirds of pay.

6) **May employees use other existing leave to supplement their EPSLA paid sick leave?**

Yes. As explained above, paid sick leave taken for qualifying reasons #1-#3 is paid at an employee’s regular rate of pay, but capped at $511 per day and $5,110 in total. Paid sick leave taken for qualifying reasons #4-#5 is paid at two-thirds of an employee’s regular rate of pay, and capped at $200 per day and $,2000 in total. The EPSLA permits employers and employees to agree that an employee may use
other existing accrued leave to supplement (but not as a substitute for) these Paid Sick Leave benefits.

7) May EPSLA paid sick leave be taken intermittently?

Yes, the EPSLA allows paid sick leave to be taken intermittently. It is up to each institution to determine whether to allow intermittent use by its employees. Employees working at their usual University worksite (as opposed to teleworking) can use intermittent leave only for child-care purposes. Teleworking employees may use intermittent leave for any qualifying reason.

8) Are employees required to follow regular call-in/notice procedures?

Yes, employees should comply with regular sick leave reporting procedures as a condition of the continued receipt of emergency paid sick leave benefits.

9) Is this benefit retirement eligible?

Yes, this paid leave qualifies for regular retirement contributions, including deductions from the employee’s pay and employer related contributions.

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

1) Which employees are eligible for expanded family and medical leave provided by the EFMLEA?

All employees employed for at least 30 calendar days are eligible for expanded family and medical leave under the Act. An employee is considered to have been employed for at least 30 calendar days if the employee has been on the employer’s payroll for the 30 calendar days immediately prior to the day the employee’s leave would begin. It applies to full-time, part-time, temporary, SHRA, EHRA, and EHRA-Non Faculty position types.

However, please note that the Emergency FMLA expansion does not change the eligibility requirements for regular FMLA leave, which requires that employees have worked for their employer for twelve nonconsecutive calendar months and for a minimum of 1040 hours for permanent employees, or 1,250 hours for temporary employees, in the immediately preceding calendar year to be eligible. Additionally, regardless of whether using the traditional FMLA or the expanded Emergency FMLA, employees are still limited to a total of twelve weeks (12) of FMLA leave within a 12-month period for all reasons combined. Further, any employees who have already used their FMLA allotment for the year are not entitled to Emergency FMLA, as they have exhausted their FMLA leave allotment.

2) What are the qualifying needs under the EFMLEA?

An eligible employee may take expanded family and medical leave because he or she is unable to work due to a need to care for his or her son or daughter whose school or place of care has been closed, or whose child care provider is unavailable, for reasons related to COVID-19. Eligible employees have a need to take this leave for this purpose only if no suitable person is available to care for their son or daughter during the period of such leave. See the implementing regulation, 29 C.F.R. § 826.10, for definitions of “son or daughter,” “child care provider,” “school,” “place of care” and other terms.

An eligible employee may not take expanded family and medical leave to care of his or her son or
daughter unless, but for a need to care for the individual, the employee would be able to perform work for his or her employer, either at the eligible employee’s normal workplace or by telework.

3) How should the University determine whether an employee has a “qualifying need”?

In order to take leave under the EFMLEA, an employee is required, prior to taking the leave, to provide the University the following information: the employee’s name, date for which leave is requested, qualifying reason for leave, and an oral or written statement that the employee is unable to work because of the qualified reason for leave. The employee must also provide the name of the son or daughter being cared for, the name of the school, place of care, or child care provider that has been closed or has become unavailable, and a representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes paid sick leave. For leave requests due to a serious medical condition, existing medical certification requirements under FMLA remain in effect.

4) The first ten days of EFMLEA leave is unpaid. After that, the employee is entitled to receive a paid leave benefit at 2/3 the employee’s regular rate of pay, with a cap of $200 per day/$10,000 aggregate. May employees use other existing paid leave to supplement their benefits and receive full pay during this time?

Yes. Pursuant to the EFMLEA, the first 10 days of expanded family and medical leave is unpaid but employees may use the paid sick leave benefits available under the EPSLA and/or any other existing paid leave to receive full pay during the unpaid portion of EFMLEA leave.

5) May EFMLEA leave be taken intermittently?

Yes, the EFMLEA allows EFMLEA leave to be taken intermittently.

6) Does the EFMLEA include paid leave for other events?

No, the expansion of the FMLA does not contemplate paid leave for any other uses other than the qualifying need for leave to care for a child due to COVID-19 related closures. For a need related to individual sickness, the employee may qualify under the traditional provisions of the FMLA to seek care for their own personal serious medical condition and use other existing accrued leave as available and appropriate under policy. Additionally, and most importantly, the employee should obtain benefits under the EPSLA (approx. 80 hours of paid leave benefits for full-time employees), if they have a COVID-19 related qualifying event. If paid sick leave benefits are taken during the month of April, the employee will receive full pay as a result of the availability of special paid administrative leave provided by the March 26 memo.

7) Can EFMLEA be used for elder care due to an elder care facility closing?

No, elder care is not covered. Currently through April 30, the University is providing special paid administrative leave for elder care needs to employees who are eligible for it pursuant to the terms of the UNC System’s COVID-19 Special Faculty and Staff Work and Leave Provisions, issued March 26, 2020 (“the March 26 memo”).

8) Is this benefit retirement eligible?

Yes, this paid leave qualifies for regular retirement contributions, including deductions from the employee’s pay and employer related contributions.