



## **FAQ Sheet Concerning Emergency Family Medical Leave Expansion Act Under FFCRA – Updated as per USDOL Guidance Issued 8/27/2020**

### **Who is eligible to take EFMLEA?**

Employees are eligible to take leave under the EFMLEA Act if they have been employed at least 30 calendar days. This includes employees in non-FTE and non-leave accruing positions. Unlike the other provisions of the FMLA, there are no hours worked requirements for eligibility, and employees are not required to work the normal 12-month period for leave taken pursuant to the EFMLEA. If the employee worked as a temporary or seasonal employee and was then transitioned to an FTE position, the total time worked in both positions should be added to determine if the 30-day timeframe has been met.

### **Is EFMLEA paid or unpaid?**

The first 10 workdays of the 12 workweeks of leave provided under the EFMLEA are unpaid, but in accordance with standard FMLA administration, employees may use any personal paid leave available concurrently with EFMLEA during this 10-day period. After the first 10 workdays, paid leave must be provided for the remaining leave taken under the EFMLEA. This includes leave taken by employees who do not currently earn leave including temporary, temporary grant and time-limited employees. The Emergency Family and Medical Leave Expansion Act requires that employees be paid for hours he/she would have been normally scheduled to work even if that is more than 40 hours in a week.

### **Is the leave paid at the employee's regular rate of pay?**

No. The paid leave provided to eligible employees shall be calculated at two-thirds of an employee's regular rate of pay and should be based on the number of hours the employee would otherwise be normally scheduled to work. Paid leave under the EFMLEA is capped at \$200 per day and \$10,000 in the aggregate. Employees can use other accrued leave to augment leave taken pursuant to the EFMLEA.

### **Can EFMLEA be taken intermittently?**

Yes, leave under the EFMLA can be taken on an intermittent basis.

### **My child's school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. They are permitted to attend school only on their allotted in-person attendance days. May I take paid leave under the FFCRA in these circumstances?**

Yes, you are eligible to take EFMLEA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively "closed" to your child on days that he or she cannot attend in person. You may take EFMLEA under the FFCRA on each of your child's remote-learning days.

### **My child's school is giving me a choice between having my child attend in person or participate in a remote learning program for the fall. I signed up for the remote learning alternative because, for example, I worry that my child might contract COVID-19 and bring it home to the family. Since my child will be at home, may I take paid leave under the FFCRA in these circumstances?**

No, you are not eligible to take EFMLEA paid leave under the FFCRA because your child's school is not "closed" due to COVID-19 related reasons; it is open for your child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If your child is home not because his or her school is closed, but because you have chosen for the child to remain home, you are not entitled to FFCRA paid leave.

**Does EFMLEA carry-over to next year?**

No, leave may be used at any time from April 1, 2020 through December 31, 2020, but paid leave provided under the Act does not carry over from year to year.

**What notice must be given by employees taking EFMLEA?**

In any case where the necessity for leave under the EFMLEA is foreseeable, an employee shall provide the employer with as much notice as is practicable.

**What certification or documentation can the District require?**

The normal FMLA certification process is not required for leave taken under the EFMLEA. Agencies may request documentation of the school or childcare provider's closure but should be flexible in the documentation accepted. For example, a printout or screen shot from a school or provider's website indicating closure related to COVID-19 may be accepted.

**Do job restoration requirements apply to EFMLEA leave?**

Yes, the same FMLA restoration to position requirements apply to leave taken under the EFMLEA.

**Is Emergency Family and Medical Leave taken under FFCRA PSERS creditable?**

No.