



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)¹, 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). According to the Department of Labor (DOL) guidance, the legislation becomes effective April 1, 2020 and ceases to be effective December 31, 2020. ([Question #1](#)) To comply with the FFCRA, districts must post the worksite poster developed by the DOL, which is available in [English](#) and [Spanish](#). Notice of the FFCRA requirements must be in a conspicuous place on an employer's premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees or posting this notice on an employee information internal or external website.

FFCRA provides paid leave to school district employees impacted by COVID-19. The information in this memo is current as of the date of publication. Note that the DOL continues to issue guidance for the implementation of the EPSLA and the EFMLEA and TASB Legal Services will update this document as information is available.

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.

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, listed below, 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. If an employee is unable to perform teleworking tasks because the employee needs to care for a child whose school is closed or child care is unavailable because of COVID-19, the employee is entitled to EFML. However, if an employee is able to telework while caring for a child, leave under FFCRA is not available. ([Questions #18-19](#))

¹ Families First Coronavirus Relief Act, PL 116-127, March 18, 2020, 134 Stat 178.

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 due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
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 due to concerns related to COVID-19.
5. The employee is caring for his or her child whose school is closed or whose child care provider is unavailable because of COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

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 the other reasons (4-6, 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.

Employee Notice Provision

A school district may implement a reasonable procedure to require notice after the first workday an employee uses EPSL. According to the DOL guidance, required documentation in support of EPSL may include a copy of the quarantine or isolation order related to COVID-19 or written documentation by a health care provider advising a self-quarantine. Documentation for reasons related to leave taken to care for a child whose school or child care is closed is described below under Emergency Family and Medical Leave Expansion Act. ([Question #16](#))

Quarantine or Isolation Order

There is no definition of a quarantine or isolation order related to COVID-19 in the [FFCRA](#), however there is no guidance stating the drafters intended this to include shelter-at-home orders or stay-at-home orders that some Texas municipalities have in place.

Order of Leave

The FFCRA requires employers to allow an employee to use EPSL before accessing any state or locally provided leave and prohibits employers from requiring 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.

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 to care for a minor child if his or her school is closed or child care is unavailable due to a public health emergency. Under the new law, an employee is eligible if the employee has been on the employer's payroll for 30 calendar days.

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.

Because the EFMLEA is an amendment to the existing FMLA, the existing provisions from the FMLA will apply unless amended by the emergency provisions. 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. 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).

Employee Notice Provision

If the need to request leave under the EFMLEA is foreseeable, employees are required to provide the district notice of leave if practical. The law does not elaborate on what type of notice is acceptable, but the DOL guidance states that if an employee takes EFML to care for a child whose school is closed or child care provider is unavailable the employee may provide a notice of closure or unavailability of the school or child care. The DOL guidance indicates that such notice may include a notice of closure posted on a website, published in a newspaper, or emailed to the employee. 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 under the FMLA remain in effect. ([Question #16](#))

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.

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. ([Question #20](#))

However, 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 child whose school or child care is unavailable may take the leave intermittently if the employer agrees. ([Questions #20-21](#))

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.

Concurrent Use of FFCRA Leave and Local Leave

A district may, but is not required to, allow an employee to supplement the amount of pay an employee receives while on leave provided by the FFCRA. If a district disallows the concurrent use of leave, the employee must choose to take either the paid leave under the FFCRA or the leave provided by the district. If the district allows the concurrent use of leave, the employee may supplement the amount an employee receives under the FFCRA with preexisting leave, up to the amount the employee normally earns. The employee must request to use existing paid leave to supplement leave provided by the FFCRA before the employer can pay the employee the employee's normal earnings. ([Questions #31-33](#))

Keep Checking Back

Relief from the COVID-19 pandemic provided at a federal level is rapidly evolving. Prior to the April 1, 2020 effective date of the law, the DOL is expected to issue 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 March 27, 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.

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