

## **Families First Coronavirus Response Act New Federal Paid Covid-Related Leaves Q&A**

### **GENERAL Q & A**

**Q1: What are these new paid leaves?**

**A:** When the President signed the Families First Coronavirus Response Act into law, two new Covid-related paid leaves became mandated. The federal Emergency Paid Sick Leave Act (“EPSLA”) requires districts to provide all employees with up to 80 hours of paid or partially paid sick leave for certain reasons related to COVID-19, such as when the employee is subject to a quarantine order, experiencing symptoms and seeking medical diagnosis, and caring for others – including children whose schools or daycares have closed. The federal Emergency Family and Medical Leave Expansion Act (“EFMLA”) mandates that districts provide eligible employees whose children’s schools or daycares have closed up to 12 weeks of job-protected leave, the first 10 days of which is unpaid (although the employee may substitute accrued paid leave or EPSLA leave) and the remainder of which is paid at two-thirds of their regular rate.

**Q2: Who can take these leaves?**

**A:** These new leaves are available when you are unable to perform your job duties either on-site (if essential) or remotely because of a Covid-related reason listed below and you would otherwise be required to take leave in order to be paid for that time. **You do not need to take this leave if you are performing your job duties, either on-site or remotely, or if you have been provided alternate duties for which you are being compensated your normal pay.** Examples include, but are not limited to, the following:

1. you are assisting with food service delivery in lieu of your typical job duties, and are getting paid for your normal work hours, you do not need to take any leave;
2. you are a member of a high-risk group and are working remotely (including online PD) as an alternative to essential on-site work, and you are getting paid for your normal work hours, you do not need to take any leave;
3. you are prevented from performing any work, either on site or remotely, because of one of the listed reasons under the EPSLA questions and answers below, and would either be required to take paid or unpaid leave; if you qualify, you could take one of these new leaves;
4. you are directed to perform essential work, but you do not fall into one of the categories below, and you do not want to perform the on-site work being asked of you; you cannot take one of these new leaves, and must either utilize a different accrued leave or take unpaid leave.

**Q3: When can I start accessing these leaves?**

**A:** These leaves are effective on April 1, 2020.

**Q4: Can I convert other leave I have taken prior to April 1st to one of these paid leaves?**

**A:** No. These leaves cannot be applied to leave taken prior to April 1.

**Q5: How do I apply for these leaves?**

**A:** If eligible, please complete the “Families First Coronavirus Response Act Leave Request Form” and submit it to Michelle Weils ([mweils@asd.wednet.edu](mailto:mweils@asd.wednet.edu)) in the HR department.

**Emergency Paid Sick Leave Act Q &A**

**Q6: Who qualifies for EPSLA?**

**A:** All Washington school district employees who are unable to work (including working remotely) for COVID-19-related reasons. Full-time employees will receive 80 hours of paid sick leave, 10 days for an eight-hour employee, and part-time employees will receive leave equal to the number of hours that they work on average over a two-week period. Both salaried employees (e.g., teachers and principals) and hourly classified workers are eligible for this leave. You may use EPSLA leave only when one or more of five circumstances related to COVID-19 applies:

1. You are subject to a federal, state, or local quarantine/isolation order;
2. You have been advised by a healthcare provider to self-quarantine;
3. You are experiencing symptoms of COVID-19 and seeking medical diagnosis;
4. You are caring for an individual who is subject to a quarantine order or has been advised to self-quarantine;
5. You are caring for a son or daughter if the child’s school or place of care has been closed, or the care provider is unavailable, due to COVID-19 precautions. (For this purpose, “son or daughter” means a biological, adopted, or foster child; stepchild; legal ward; or child of a person standing in loco parentis who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability).

**Q7: Is there a waiting period for this leave?**

**A:** No. EPSLA leave is available for immediate use, regardless of how long you have worked for the employer.

**Q8: Must I exhaust my other available leave first?**

**A:** No. You are not required to use other paid leave before using EPSLA leave.

**Q9: Will I receive full compensation for this leave?**

**A:** You will be compensated for this leave at the greater of your regular rate of pay or the applicable minimum wage, subject to certain maximum limits. For EPSLA leave due to your own COVID-19 situation (the first three circumstances listed above), compensation is capped at \$511 per day and \$5,110 in aggregate. For EPSLA leave due to caring for other individuals, including sons or daughters (the last two circumstances listed above), compensation is capped at \$200 per day and \$2,000 in aggregate.

**Q10: How much leave can I receive?**

**A:** You will receive EPSLA leave for the total number of hours that you would have normally been scheduled to work during the period of the leave, up to the number of hours for which you qualify, i.e., 80 hours if full time or part time hours.

**Q11: Will I be penalized for taking this leave?**

**A:** No. Employers are prohibited from discharging, disciplining, or discriminating against any employee who uses EPSLA leave.

**Q12: Will I be taxed for this leave?**

**A:** Compensation paid for EPSLA leave is not considered “wages” for certain purposes under federal tax law, therefore school districts are not required to pay the employer’s typical share of payroll taxes for Social Security on such compensation (typically 6.2 percent of wages, up to an income limit). However, districts must still pay the employer’s share of Medicare taxes (1.45 percent of wages) and withhold the employee’s share of payroll taxes.

**Q13: How long do I have to take this leave?**

**A:** The entitlement to EPSLA leave is scheduled to expire on December 31, 2020.

**Q14: Is this leave additional to my other earned sick leave?**

**A:** Yes. If you eligible to take this leave, you need to complete the Families First Coronavirus Response Act Leave Request Form and submit it to Michelle Weils ([mweils@asd.wednet.edu](mailto:mweils@asd.wednet.edu)) in the HR department, and it will not be charged to your preexisting accrued sick or other paid leave.

**Q15: Can I use this leave to compensate for unpaid EFMLA leave?**

**A:** Yes, you may elect to use EPSLA leave during the first 10 days of EFMLA leave, which would typically be unpaid, as discussed below.

## **Emergency Family and Medical Leave Expansion Act Q&A**

**Q16: What is Emergency Family and Medical Leave Expansion Act (“EFMLA”) leave?**

**A:** The EFMLA expands traditional unpaid FMLA leave by granting eligible employees up to 12 weeks of job-protected leave to care for a son or daughter whose school or place of childcare is closed due to a declared public health emergency related to COVID-19. EFMLA leave applies to both salaried employees (e.g., teachers and principals) and hourly classified workers.

**Q17: How is EFMLA leave different from typical FMLA leave?**

**A:** EFMLA differs from FMLA in three key ways:

- **Employee eligibility:** An employee must have worked for the district for 30 calendar days (including as a temporary employee), as opposed to the traditional FMLA requirement that the employee worked at least 1,250 hours for that employer over the 12-month period prior to the leave.
- **Reason for leave:** An employee must be unable to work (or telework) because the employee needs to care for a son or daughter under the age of 18 whose elementary or secondary school or place of care has been closed, or whose childcare provider is unavailable, due to a public health emergency. A public health emergency means an emergency with respect to COVID-19 declared by a federal, state, or local authority. Traditional FMLA leave is available for an employee’s own “serious health condition,” to bond with a newborn or adopted child, or to care for family members with a “serious

health condition,” but it generally does not grant leave for care of older children without a medical condition.

- **Compensation:** EFMLA leave is unpaid for the first 10 days, although you are allowed to substitute “any accrued vacation leave, personal leave, or medical or sick leave” (including EPSLA leave, discussed above). For the remainder of the leave, the district must pay the employee at two-thirds of the employee’s regular rate, up to \$200 a day and \$10,000 in aggregate.

**Q18: How much EFMLA can I receive?**

**A:** You will receive EFMLA leave for the hours that you are normally scheduled to work. If the district cannot determine the number of hours that you would have worked during the EFMLA period because your hours have varied over time, you will be paid according to the average number of hours you were scheduled per day over the six-month period ending on the day that you begin the EFMLA leave. For purposes of this calculation, if you took any type of other leave during that six-month period, such leave counts as hours “worked.”

**Q19: Must I provide the district notice of my intent to take EFMLA?**

**A:** You must give the school district as much notice of the EFMLA leave as is practicable, if the need for leave is foreseeable.

**Q20: Will I be restored to my position when I return from EFMLA?**

**A:** As with traditional FMLA leave, you will be restored to the same or equivalent position upon your return to work.

**Q21: Will my leave payments be taxed?**

**A:** Compensation paid for EFMLA leave is not considered “wages” for certain purposes under federal tax law, therefore school districts are not required to pay the employer’s typical share of payroll taxes for Social Security on such compensation (typically 6.2 percent of wages, up to an income limit). However, districts must still pay the employer’s share of Medicare taxes (1.45 percent of wages) and withhold the employee’s share of payroll taxes.

**Q22: How long do I have to take this leave?**

**A:** EFMLA leave is scheduled to expire on December 31, 2020.

**Q23: If I take leave under EFMLA, will this affect any standard FMLA leave to which I may be entitled?**

**A:** Yes. Any leave you take under the EFMLA will count against your overall entitlement of up to 12 weeks of FMLA leave during a 12-month period. In other words, if you use 12 weeks of EFMLA leave to care for a child and then become ill, you would not be eligible for further FMLA leave based on your own serious health condition during the 12-month period. Likewise, if you have exhausted one or more weeks of FMLA leave during the current 12-month period, you do not qualify to use those weeks for childcare under the EFMLA.

**Q24: Is this leave different from Washington’s paid family medical leave?**

**A:** Yes. EFMLA leave is distinct from PFML under Washington law. If you believe you qualify for both, please contact Michelle Weils at [mweils@asd.wednet.edu](mailto:mweils@asd.wednet.edu) to discuss your leave options.