



This Guide is written to cover the provisions in place from April 1, 2021. Major changes to the FFCRA rules for this purpose are in red throughout this Guide. For information on previous FFCRA rules, please contact UCON Labor & Member Services for a copy of the previous Guide.

FFCRA AT A GLANCE

EFFECTIVE DATE: The FFCRA was originally in effect from April 1, 2020 until December 31, 2020. It covered eligible leave (Emergency Paid Sick Leave or Emergency Family & Medical Leave) taken on or after April 1, 2020. *Any absences prior to April 1, 2020 were not eligible for this leave.*

COVERED EMPLOYERS: Applies to all employers with fewer than 500 employees – This is based on how many full-time and part-time employees within the United States the employer has at the time the employee takes leave; this includes temporary employees, common employees of joint employers, and any regular employees who are out on leave at the time. *There are no CBA waivers available.* If an employer has 500 or more employees, then they are not covered by the FFCRA.

VOLUNTARY EXTENSION THROUGH MARCH 31, 2021:

Employers who were covered by the FFCRA in 2020 were allowed to voluntarily provide the same types of leave to eligible employees who had not already exhausted that leave. All of the same rules for FFCRA leave applied in those cases. See Questions 104 & 105 in the U.S. Department of Labor's (DOL) FFCRA Q & A.

AMERICAN RESCUE PLAN ACT (ARPA)

VOLUNTARY EXTENSION FROM APRIL 1, 2021 THROUGH SEPTEMBER 30, 2021

ARPA has created a renewal of FFCRA leave for employers with fewer than 500 employees who would like to voluntarily provide it in 2021.

- **Employers who decide to voluntarily provide FFCRA leave from April 1, 2021 must provide this voluntary leave to employees on a non-discriminatory basis.**
- **Employers may decide to provide only EPSL or only EFMLEA, but must be consistent on what is offered to all eligible employees.**

Continue Reading for More:

- **Emergency Paid Sick Leave Act Overview**
- **Emergency Family & Medical Leave Extension Act Overview**
- **Requirements for Union Fringe Benefit Payments**
- **FFCRA Additional Q & A**

Sources: Sweeney Mason; Fisher Phillips; Littler; Sheppard Mullin; DOL; IRS

1. Emergency Paid Sick Leave (EPSL) Act

Immediate Employee Eligibility: EPSL does not accrue over time; it is available regardless of how long an employee has been employed.

Coverage & Amount of Leave:

- ARPA provides for EPSL to renew on April 1, 2020, meaning that the full leave amount starts over. Employees who already exhausted EPSL prior to that date will receive a new leave allotment. Employees who used some but not all of the previous amount do not carry over unused leave.
- Full-Time Employees – Must be provided with 80 hours of EPSL for covered reasons.
- Part-Time Employees – Must be provided with EPSL based on the hours worked during an average two-week period. For part-time employees with varying schedules, employers should base their calculation on the average hours the employee was scheduled per day over a six-month period; if the employee has not worked for six months, the employer should calculate based on a reasonable expectation of the average hours the employee will be scheduled to work.
- EPSL may be taken intermittently but only in certain situations, subject to agreement with the employer. *See Question #21 in the DOL [FFCRA Q & A](#).*
- EPSL is in addition to any existing paid leave (sick leave, PTO, vacation) already provided by the employer. However, an employer may not require an employee to use any other available paid leave before the employee has exhausted the EPSL leave.

Reasons for Leave: Employers must provide EPSL whenever an employee is unable to work because the employee is:

1. *Subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. Advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis, **which also includes:**
 - a) Seeking or awaiting results of a COVID-19 test following exposure to COVID-19 or an employer-requested test; and
 - b) Obtaining a COVID-19 vaccination or experiencing illness or other side effects of the vaccination;
4. Caring for an individual who is subject to a government quarantine or a self-quarantine as advised by a health care provider (reasons 1 and 2 above);
5. Caring for their child if the child's school or place of care has been closed, or the child-care provider is unavailable due to COVID-19 precautions; or
6. Experiencing any other "substantially similar condition" specified by the Secretary of Health and Human Services. (Guidance will be issued from DOL if any such condition is specified.)

**The DOL has clarified that job shutdown or company closure due to Shelter in Place Orders in and of itself is not a reason for EPSL. See Questions #23 through #28 and #60 in the DOL [FFCRA Q & A](#).*

Emergency Paid Sick Leave Rate of Pay:

- If on leave for reasons 1 - 3, employees must be paid at the highest applicable rate**, subject to normal payroll taxes. Pay is capped at \$511 per day for up to a total cap of \$5,110.
- If on leave for reasons 4 - 6, employees must be paid, at minimum, two-thirds of the highest applicable rate**, capped at \$200 per day for a total cap of \$2,000.
- Both caps are based on gross wages.
- See the DOL [FFCRA Q & A](#) for more details and examples of calculations.
- Healthcare coverage must be continued on the same basis as if the employee was still working.

*** The employee's regular rate of pay, FLSA minimum wage, or state or municipal minimum wage – whichever is highest.*

Collective Bargaining Unit Employees: Absent any other specific directives, the hourly pay rate for these employees should be calculated to include the Vacation/Holiday/Sick Pay fringe benefit amount, all taxed and paid directly to the employee. UCON has received guidance from some but not all unions/trusts at this time. **See the table on pages 4 and 5 for details by union.** Generally, employers are recommended to 1) code any of these hours differently for clear documentation and 2) pay Health & Welfare **only** for those hours, in order to continue healthcare coverage as required by the law, unless the applicable Trust Funds provide different information and/or forms.

Documentation: Employees must provide documentation in support of their taking EPSL as specified in applicable forms from the IRS. See *Question #16 in the DOL [FFCRA Q & A](#)*.

2. Emergency Family & Medical Leave Expansion Act (EFMLEA)

Employee Eligibility: EFMLEA applies to any employee who has been employed for at least 30 days and who is on leave for specified reasons related to COVID-19.

Coverage & Amount of Leave:

- Full-Time Employees – Eligible for up to 12 weeks of leave at 40 hours a week
- Part-Time Employees – Eligible for leave for the number of hours that they are normally scheduled to work over that period.

Reasons for EFMLEA Leave:

All the same reasons as EPSL (see previous page).

EFMLEA Leave is Paid Leave:

- An employer must pay full-time employees at a rate of no less than two-thirds of their regular rate of pay for their normally scheduled hours. Part-time employees are entitled to an amount based on the average number of hours they worked over a six-month period. Employees within their first six months are entitled to paid time based on a reasonable expectation of the average hours the employee is expected or scheduled to work.
- **Employees are eligible for pay for the full 12 weeks – there is no longer an initial 10-day period of unpaid leave.**
- Paid EFMLEA leave under the new law is capped at \$200 per day and **\$12,000 total** per employee. Wages are subject to normal payroll taxes and caps are based on gross wages.
- See the DOL [FFCRA Q & A](#) for more details and examples of calculations.
- Healthcare coverage must be continued on the same basis as if they employee was still working.
- EFMLEA may be taken intermittently in certain situations, subject to agreement with the employer. See *Question #22 in the DOL [FFCRA Q & A](#)*.
- Employees who are also eligible for standard FMLA may take both FMLA and EFMLEA leave in a 12-month period, but only for a total of 12 workweeks. Requirement to provide paid leave only applies to EFMLEA. See *Questions #44 & #45 in the DOL [FFCRA Q & A](#)*. **NOTE:** Employers should ensure that they are in compliance with both the FMLA and CFRA as applicable.

Collective Bargaining Unit Employees: Absent any other specific directives, the hourly pay rate for these employees should be calculated to include the Vacation/Holiday/Sick Pay fringe benefit amount, all taxed and paid directly to the employee. UCON has received guidance from some but not all unions/trusts at this time. **See the table on pages 4 and 5 for details by union.** Generally, employers are recommended to contact the applicable trust(s) for instructions on making Health & Welfare payments for FMLA, as these are required in order to continue healthcare coverage in accordance with FMLA/EFMLEA.

Documentation: Employees must provide documentation in support of their taking EFMLEA, such as a notice of closure or unavailability from your child's school, place of care, or child care provider. See *Question #16 in the DOL [FFCRA Q & A](#)*.

APPLICABLE TO BOTH EPSL & EFMLEA

Right to Reinstatement:

EPSL & EFMLEA are protected leaves. An employee must be returned to the same, or an equivalent position. Employers with fewer than 25 employees are exempt if the position no longer exists due to economic conditions or other changes in operating conditions caused by the COVID-19 emergency. Exempt employers must make reasonable efforts to contact the employee if an equivalent position opens within a year. Employees are not protected, however, from employment actions such as layoffs that would have occurred whether or not the employee was on leave. See *Question #43 in the DOL [FFCRA Q & A](#) for more details.*

Tax Credits:

- Both EPSL & EFMLEA provide quarterly tax credits for employers against certain payroll taxes.
 - EPSL – Up to \$511 per day, or \$200 per day if the employee will be caring for a family member.
 - EFMLEA – Up to \$200 per day per employee and **\$12,000 per employee in the aggregate.**
- Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage.
- Tax credits are also available for Pension and Apprenticeship/Training contributions, although such contributions are not required.
- These credits are per employee who is provided with EPSL or EFMLEA.
- Refer to the [IRS guidance](#) for additional details on documentation requirements and [other tax credit procedures](#).
- CalChamber has created a [documentation checklist](#) along with an [employee leave notice/request form](#) to help employers with the necessary documentation for tax credits.

Requirements for Union Fringe Benefit Payments

NORTHERN CALIFORNIA

UNION	EPSL / EFMLEA
Carpenters/Pile Drivers	H&W, Vacation and Work Fee payments only – Contact the Contractors Work Preservation Committee to request a sub-account referencing CWPC Case No. 15703
Cement Masons	H&W, Vacation/Holiday, and Supp Dues payments only.
Iron Workers	<i>Not specified</i>
Laborers	H&W payments only – 141 hrs/month or 7 hrs/day
OE3	H&W payments only – 120 hrs/month or prorated for the period of time on leave (e.g., 30 hours if one week, 60 hours if two weeks)
Teamsters	H&W payments only, as required by law

SOUTHERN CALIFORNIA

UNION	EPSL / EFMLEA
Carpenters/Pile Drivers	H&W payments only
Cement Masons	H&W payments only
Iron Workers	<i>Not specified</i>
Laborers	<i>UCON is in active discussions with the Union.</i>
OE12	<i>UCON is in active discussions with the Union.</i>

ADDITIONAL FFCRA Q & A

The following Q & A are provided as general information, based on current laws and guidance, and are not intended to be legal advice or to cover all situations.

Q: How do we determine how many hours to pay field employees who are out on EPSL? They don't always work the same number of hours every week.

A: You will need to determine both the amount of wages and the number of hours to pay. In the [DOL FFCRA Q & A](#), #5 and #6 (and #80 for "irregular hours" as opposed to full-time with a varying schedule) tell you how to calculate the number of hours per week, and #82 tells you how to calculate the regular rate of pay. Remember that for union employees you should include the amounts for Vacation, Holiday, Sick Pay, and Supplemental Dues in the wage calculations (unless the union specifies that these are to be paid to the Trust Funds), as these are normally part of their taxable wage amount.

Q: If we are using PPP monies to pay employees who are out on one of the FFCRA-mandated leaves, does that change how we have to pay them?

A: Not necessarily. In general, the FFCRA only requires payment at the regular rate of pay (or proportion thereof) and continuation of healthcare benefits. If they are a union employee, check for any memos or MOUs clarifying payment of wages and fringes under both FFCRA and PPP. Always consult your tax professional regarding payments with PPP monies.