

# Determining Eligibility for Leave Under the Federal Families First Coronavirus Response Act

## EXPANDED FMLA (EFML)

Is our business covered?

Private-sector employers with 500 or fewer employees      Public agencies of any size

Do we qualify for an exemption?

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Is the employee requesting leave eligible?

Any full-time or part-time employee employed for at least 30 days prior to the request. Includes employees who were laid off or otherwise terminated on or after March 1, 2020, had worked for the employer for at least 30 of the prior 60 calendar days, and were subsequently rehired or otherwise reemployed by the same employer.

**Exemption:** Employers may elect to exclude employees who are health care providers or emergency responders from taking EFML.

Has the employee exhausted 12 weeks of FMLA leave?

No      Yes

The 12-week maximum allotment under traditional FMLA has not been extended under EFML. If an employee has already used part or all of FMLA's 12 week leave during their leave year, no additional leave is required.

Is there currently work available for the employee?

If the employee can telework, EFML isn't available. Employees who have been laid off (temporarily or permanently) or who have reduced schedules are not eligible to take EFML when no work is available. Alternatively, those employees should turn to Unemployment Insurance.

Has the employee given a qualifying reason for leave?

## EMERGENCY PAID SICK LEAVE (EPSL)

Is our business covered?

Private-sector employers with 500 or fewer employees      Public agencies of any size

Do we qualify for an exemption?

Employers with less than 50 employees may be exempt only from the child care / school closure provision of EPSL / EFML if they can prove complying with EPSL / EFML for that reason would jeopardize the viability of the business. Employers with less than 50 employees must still provide EPSL for the other five reasons.

**Exempt employers** may still be required to provide unpaid leave and/or paid leave under OSL and FMLA/OFLA.

Is the employee eligible based on length of employment?

Applies to all current employees regardless of length of employment.

**Exemption:** Employers may elect to exclude employees who are health care providers or emergency responders from taking EPSL.

Is there currently work available for that employee?

If the employee can telework, EPSL isn't available. Employees who have been laid off (temporarily or permanently) or who have reduced schedules are not eligible to take EPSL when no work is available. Alternatively, those employees should turn to Unemployment Insurance.

Has the employee given a qualifying reason for leave?

## CHILD CARE / SCHOOL CLOSURE

Leave available when employee is caring for child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

If an employee has used EPSL for reasons other than child care / school closure, they are entitled to 12 weeks of EFML. The first two weeks of EFML is unpaid, but employee may substitute accrued paid time off or Oregon Sick Leave.

### Paid Leave Amount

**For EPSL:** Up to two weeks (80 hours for full-time).

**For EFML:** The first two weeks are unpaid (can use EPSL). After the first two weeks of EFML, the remaining period of up to 10 weeks must be paid.

### Rate of Pay

EPSL and EFML are both paid at 2/3 of their regular rate. The total EFML payment per employee for the 10 week period is capped at \$200 per day and \$10,000 aggregate, for the total of no more than \$12,000 when combined with two weeks of paid leave under EPSL.

## CARE FOR OTHERS

Employee is caring for an individual who is subject to an isolation or quarantine order regarding COVID-19.

Employee is caring for an individual advised by their health care provider to self-quarantine regarding COVID-19.

### Paid Leave Amount

Full-time employees receive up to 80 hours of paid leave. Part-time employees receive a number of paid hours equal to how much that employee works on average over a two-week period.

### Rate of Pay

Employees receive 2/3 of their regular rate of pay, which is capped at \$200 per day and \$2,000 in aggregate for the two-week period.

## EMPLOYEE'S OWN CONDITION

Employee is subject to a local, state, or federal quarantine or isolation order regarding COVID-19.

Employee has been advised by a health care provider to self-quarantine regarding COVID-19.

Employee is seeking a medical diagnosis after experiencing COVID-19 symptoms.

### Paid Leave Amount

Full-time employees receive up to 80 hours of paid leave. Part-time employees receive a number of paid hours equal to how much that employee works on average over a two week period.

### Rate of Pay

Employees receive their regular rate of pay, which is capped at \$511 per day and \$5,110 in aggregate for the two weeks.

