

## INTRODUCTION

The federal Families First Coronavirus Response Act (FFCRA) was enacted in March of 2020 to address the impact of the Coronavirus pandemic on the U.S. community. It includes two Acts (effective April 1, 2020) that apply to the University and provide paid leave benefits to University employees:

### **I. The Emergency Paid Sick Leave Act (EPSLA)**

The EPSLA provides up to 80 hours (pro-rated for part-time employees) of paid sick leave for all eligible employees who are unable to work (or telework) for any of the following reasons:

- (1) They are subject to a Federal, State, or local quarantine or isolation order relating to COVID-19;
- (2) They have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (3) They are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- (4) They are caring for an individual who is subject to a COVID-19 quarantine or isolation order or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (5) They are caring for a child because the child's school or place of care has been closed, or the child's regular child care provider is unavailable, due to COVID-19; or
- (6) They are experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services (currently, none have been specified).

If the employee is unable to work for reasons (1) through (3) above, the EPSLA provides paid sick leave at the employee's regular rate (or the applicable minimum wage, whichever is greater), up to \$511 per day or \$5,110 in total. If the employee is unable to work for reasons (4) or (5), the EPSLA provides paid sick leave of two-thirds of that amount, up to \$200 per day or \$2,000 in total. Employers may allow employees to supplement these paid sick leave benefits with any existing leave available to them under employer policies.

### **II. Emergency Family and Medical Leave Act Expansion Act (EFMLEA)**

The EFMLEA provides up to 12 weeks of family and medical leave to eligible employees who are unable to work (or telework) because they are caring for a son or daughter under 18 years (or children over 18 years who are incapable of self-care due to a mental or physical disability) whose school or place of care has been closed, or whose child care provider is unavailable, for COVID-19 related reasons.

The first two weeks of this leave is unpaid, but employees may use the paid sick leave available to them under the EPSLA or any other existing leave to receive pay for that period. The remaining 10 available weeks are paid at two-thirds of the eligible employee's regular rate of pay, up to \$200 per day or \$10,000 total. Employers may allow employees to supplement with any existing leave available to them under employer policies.

Employers are permitted to exclude health care providers and emergency responders from eligibility to receive benefits under either Act.

**Summary of FFCRA Leave Provisions**

<b>QUALIFYING EVENT</b> Leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:	<b>EMERGENCY PAID SICK LEAVE</b> Up to two weeks of paid leave (80 hrs, pro-rated for part-time)	<b>EXPANDED FAMILY &amp; MEDICAL LEAVE</b> Up to 12 weeks of FML (pro-rated for part-time)
1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19	100% of regular pay, up to \$511 daily and \$5,110 total	
2. has been advised by a health care provider to self-quarantine related to COVID-19	100% of regular pay, up to \$511 daily and \$5,110 total	
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis	100% of regular pay, up to \$511 daily and \$5,110 total	
4. is caring for an individual subject to an order described in #1 or #2 above	Two-thirds of regular pay, up to \$200 daily and \$2,000 total	
5. is caring for his or her child whose school or place of care is closed ( <i>or child care provider is unavailable</i> ) due to COVID-19 related reasons	Two-thirds of regular pay, up to \$200 daily and \$2,000 total	First 2 weeks of leave are unpaid ( <i>employee may use other eligible paid leave</i> )  Up to 10 additional weeks paid at two-thirds of regular pay, up to \$200 daily and \$10,000 total
6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services ( <i>none has been declared</i> )	Two-thirds of regular pay, up to \$200 daily and \$2,000 total	

**Implementation**

On April 21, 2020, Interim President Roper issued a Regulation (Section 300.2.15[R] of the UNC Policy Manual) that addresses the implementation and applicability of the leave provisions of the FFCRA to eligible University employees. Please note that the effective date of both the FFCRA and the Regulation are April 1, 2020. We ask that your institution implement the Regulation by no later than May 1, 2020. Please also communicate these leave provisions to your campus community no later than May 1.

While you may implement the Regulation at any time between April 1 and May 1, please note that requests by eligible employees to use FFCRA leave for any qualifying time between April 1 and the date you implement the Regulation on your campus must be retroactively approved.

## FREQUENTLY ASKED QUESTIONS

Below are answers to frequently asked questions related to the implementation of these provisions of the FFCRA at UNC institutions.

### **Emergency Paid Sick Leave Act (EPSLA)**

#### **1) Which employees are eligible for the paid sick leave provided by the EPSLA?**

All University employees (all types, full-time, part-time, temporary) are entitled to the immediate use of the paid sick leave provided by the EPSLA regardless of how long they have been employed. There is no length of service requirement for this benefit. However, EPSLA paid sick leave is available only through December 31, 2020.

#### **2) Are there any exemptions or exclusions from coverage by the EPSLA?**

Yes, an institution may elect to exempt health care providers and emergency responders from the receipt of paid sick leave benefits provided by the EPSLA. See the discussion in the EFMLEA section below for more information about the definitions of these terms. Each institution has the discretion to determine whether and how to apply these exemptions to its employees. For example, in order to reduce concerns about mandatory employee staffing shortages, institutions with clinical operations may wish to exclude health care providers from receiving paid sick leave under the EPSLA for childcare-related needs but permit those employees to receive paid sick leave for reasons unrelated to childcare needs.

#### **3) What are the qualifying needs for paid sick leave pursuant to the EPSLA?**

An employee is entitled to paid sick leave under the EPSLA when the employee is unable to work because:

- (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. The advice to self-quarantine must be based on the health care provider's belief that the employee has COVID-19, may have COVID-19, or is particularly vulnerable to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis. Symptoms that could trigger this are fever, dry cough, shortness of breath, and other COVID-19 symptoms identified by the Center for Disease Control. An employee experiencing COVID-19 symptoms may take paid sick leave for time spent making, waiting for, or attending an appointment to take a test; but not for self-quarantining without a medical diagnosis. An employee may continue to take leave while experiencing these symptoms, and after testing positive, if a health care provider advises self-quarantine.
- (4) The employee is caring for an individual who is subject to an order as described in paragraph (1) or has been advised as described in paragraph (2). The employee must have a genuine need to care for the individual and must have a personal relationship with that individual. The individual being cared for must be an immediate family member, roommate, or other similar person with whom the employer has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined.

- (5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions. An employee may take paid sick leave to care for the child only when the employee needs to, and actually is, caring for his or her child. Generally, an employee does not need to take such leave if another individual – such as a co-parent, co-guardian, or the usual child care provider – is available to provide the care the child needs.
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor. As of April 21, 2020, there were no other conditions specified by the Secretary of HHS, Treasury or Labor to qualify under this provision.

The Department of Labor has explained in its regulations that for these purposes, an employee is able to telework, and therefore may not take paid sick leave, if the employer has work for the employee to perform, the employer permits the employee to perform that work from the location where the employee is located, and there are no extenuating circumstances (such as serious COVID-19 symptoms) that prevent the employee from performing that work.

#### **4) How should institutions determine whether an employee has a “qualifying need”?**

The Department of Labor has identified documentation that an employee is required to provide an employer prior to taking paid sick leave under the EPSLA, including the employee’s name, date for which leave is requested, qualifying reason for leave, and an oral or written statement that the employee is unable to work because of the qualified reason for leave. See 29 C.F.R. § 826.100.

To take paid sick leave for a qualifying reason related to a quarantine or isolation order, the employee must additionally provide the name of the governmental entity issuing that order. To take paid sick leave for a qualifying reason related to a recommendation to self-quarantine, the employee must additionally provide the name of the health care provider advising self-quarantine. To take paid sick leave for a qualifying reason related to childcare, the employee must additionally provide the name of the son or daughter being cared for, the name of the school, place of care or child care provider that has been closed or become unavailable, and a representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes paid sick leave.

#### **5) How much leave is provided to employees under the EPSLA?**

Full-time employees are entitled to 80 hours of paid sick leave under the EPSLA. For purposes of the EPSLA, a full-time employee is an employee who is normally scheduled to work at least 40 hours each workweek. An employee who does not have a normal weekly schedule may be considered a full-time employee if he or she is scheduled to work, on average, at least 40 hours each workweek (computed over the six months prior to the date on which leave is requested). If the employee has been employed for less than six months, the average hours per workweek is computed over the entire period of employment.

A part-time employee is an employee who is normally scheduled to work fewer than 40 hours each workweek or – if the employee lacks a normal weekly schedule – who is scheduled to work, on average, fewer than 40 hours each workweek. A part-time employee who works a normal schedule is entitled to paid sick leave equal to the number of hours he or she is normally scheduled to work over a two-workweek period.

A part-time employee whose weekly work schedule varies is entitled to paid sick leave equal to 14 times the average number of hours that the employee was scheduled to work per calendar day over the six-month period ending on the date on which the employee takes paid sick leave, including hours for which the employee took leave of any type. For example:

<b>4/1/2020</b>	First day of EPSLA leave use
<b>10/1/2019</b>	Six months back
<b>183</b>	Total calendar days between dates
<b>260</b>	Hours worked (or paid leave) for 10-01-19 to 03-31-20
<b>1.4</b>	Average hours worked per calendar day (=260/183)
<b>19.9</b>	Average daily hours times 14 calendar days (=1.4*14)
<b>Employee receives 19.9 hours emergency paid sick leave</b>	

A part-time employee with a varying work schedule who has been employed for fewer than six months is entitled to 14 times the expected number of hours the employer and employee agreed at the time of hiring that the employee would work, on average, each calendar day.

In the absence of such an agreement, a part-time employee with a varying schedule who has been employed for fewer than six months is entitled up to the number of hours of paid sick leave equal to 14 times the average number of hours per calendar day that the employee was scheduled to work over the entire period of employment, including hours for which the employee took leave of any type. An employer may also use twice the number of hours that an employee was scheduled to work per workweek, on average, over the six-month period. [See DOL FAQ #80-81.](#)

## 6) How should institutions determine the amount of the paid sick leave compensation?

The amount of compensation provided under the EPSLA varies based on qualifying need:

- (1) If the employee takes paid sick leave because he or she is unable to work because he or she is subject to a Federal, State, or local COVID-19 quarantine or isolation order; has been advised by a health care provider to self-quarantine for COVID-related reasons; or is experiencing COVID-19 symptoms and seeking a medical diagnosis, the employee will receive his or her regular rate of pay (or the applicable minimum wage in effect, whichever is greater) for each hour of paid sick leave taken. However, the amount an employer is required to pay is capped at \$511 per day of paid sick leave taken and \$5,110 in total per covered employee for all paid sick leave pay.
- (2) If an employee takes paid sick leave because he or she is unable to work because of any other COVID-19 qualifying reason (i.e., to care for a qualifying individual with a COVID-19 infection that qualifies as a serious health condition and who is subject to a quarantine or isolation order, or to care for minor children because schools are closed and/or whose paid childcare providers are unavailable), the employee will receive two-thirds of the employee's regular rate of pay. However, the amount an employer is required to pay is capped at \$200 per day of paid sick leave and \$2,000 in total per covered employee for all paid sick leave that is paid at two-thirds of pay.

## 7) How is the regular rate of pay calculated?

The EPSLA provides that for each hour of paid sick leave taken by an employee for a qualifying reason, the employer shall pay the higher of (1) the employee's regular rate or (2) the applicable federal, state or local minimum wage (subject to the caps described above).

The Department of Labor has explained that the regular rate used to determine the amount of pay under the EPSLA (and the EFMLEA) is the average of the employee's regular rate (all non-overtime remuneration for employment paid to the employee divided by the number of hours worked in that workweek) over a six-month period ending on the date on which the employee first takes paid sick leave or expanded family medical leave. If that is not possible because the employee has not been employed for six months, the average regular rate should be computed over the entire term of employment. [See DOL FAQ #82.](#)

The Act does not address how to calculate the rate of pay for salaried (FLSA exempt) employees. However, it is recommended to calculate the paid leave rate for exempt employees by calculating a pro-rata hourly rate from the employee's salary (to determine a "regular rate of pay").

#### **8) May employees use other existing leave to supplement their EPSLA paid sick leave?**

Yes. As explained above, paid sick leave taken for qualifying reasons #1-3 is paid at an employee's regular rate of pay, but capped at \$511 per day and \$5,110 in total. Paid sick leave taken for qualifying reasons #4-5 is paid at two-thirds of an employee's regular rate of pay, and capped at \$200 per day and \$2,000 in total. The EPSLA permits employers and employees to agree that an employee may use other existing accrued leave to supplement (but not as a substitute for) these Paid Sick Leave benefits.

*Currently through April 30, the University is providing special paid administrative leave to employees who are eligible for it pursuant to the terms of the UNC System's COVID-19 Special Faculty and Staff Work and Leave Provisions, issued March 26, 2020 ("the March 26 memo"). During the period while the March 26 memo is in effect, where applicable, the University will supplement the pay of employees receiving paid sick leave under the EPSLA with special administrative pay so that they receive full pay without drawing on other available accrued leave balances. After the expiration of the provisions of the March 26 memo (unless further extended by the UNC System), employees may use their accrued leave (vacation, sick, bonus) as applicable under those policies to supplement the pay provided under the EPSLA.*

#### **9) May EPSLA paid sick leave be taken intermittently?**

Yes, the EPSLA allows paid sick leave to be taken intermittently if the employer and employee agree. It is up to each institution to determine whether to allow intermittent use by its employees. If an institution agrees to the use of intermittent leave, employees working at their usual University worksite (as opposed to teleworking) can use intermittent leave only for child-care purposes. Teleworking employees may use intermittent leave for any qualifying reason.

#### **10) Are employees required to follow regular call-in/notice procedures?**

Yes, institutions are permitted to require employees comply with regular sick leave reporting procedures a condition of the continued receipt of emergency paid sick leave benefits.

#### **11) Is this benefit retirement eligible?**

Yes, this paid leave qualifies for regular retirement contributions, including deductions from the employee's pay and employer related contributions.

**Emergency Family and Medical Leave Expansion Act (EFMLEA)****1) Which employees are eligible for expanded family and medical leave provided by the EFMLEA?**

All employees employed for at least 30 calendar days are eligible for expanded family and medical leave under the Act. An employee is considered to have been employed for at least 30 calendar days if the employee has been on the employer's payroll for the 30 calendar days immediately prior to the day the employee's leave would begin. It applies to full-time, part-time, temporary, SHRA, EHRA, and EHRA-Non Faculty position types.

However, please note that the Emergency FMLA expansion does not change the eligibility requirements for regular FMLA leave, which requires that employees have worked for their employer for twelve nonconsecutive calendar months and for a minimum of 1040 hours for permanent employees, or 1,250 hours for temporary employees, in the immediately preceding calendar year to be eligible. Additionally, regardless of whether using the traditional FMLA or the expanded Emergency FMLA, employees are still limited to a total of twelve weeks (12) of FMLA leave within a 12-month period for all reasons combined. Further, any employees who have already used their FMLA allotment for the year are not entitled to Emergency FMLA, as they have exhausted their FMLA leave allotment.

**2) Are there any exemptions or exclusions from coverage under the EFMLEA?**

Yes, the Department of Labor allows employers to except health care providers and emergency responders from the benefits of the EFMLEA. The term "health care provider" can include anyone employed at any doctors' office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, nursing home, home health facility, or any facility that performs laboratory or medical testing, pharmacy, or any similar entity. Health care provider also includes anyone employed to provide medical services, produce medical products, or otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. The Department of Labor has also provided that the term also includes any individual that the highest official of a State determines is a health care provider necessary for that State's response to COVID-19.

Employers can define "emergency responders" to include employees that are necessary for the provision of transport, care, healthcare, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes, for example, law enforcement officers, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. As with the definition of health care provider, the Department of Labor has provided that the term emergency responder also includes any individual that the highest official of a State determines is an emergency responder necessary for that State's response to COVID-19.

The Department of Labor encourages employers to be judicious when using these definitions. University institutions have discretion in determining who may be excluded from the EFMLEA. Additionally, EFMLEA is time-limited and only available through December 31, 2020, and as long as a federal, state or local COVID-19 state of emergency is in effect.

### 3) What are the qualifying needs under the EFMLEA?

An eligible employee may take expanded family and medical leave because he or she is unable to work due to a need to care for his or her son or daughter whose school or place of care has been closed, or whose child care provider is unavailable, for reasons related to COVID-19. Eligible employees have a need to take this leave for this purpose only if no suitable person is available to care for their son or daughter during the period of such leave. See the implementing regulation, [29 C.F.R. § 826.10](#), for definitions of “son or daughter,” “child care provider,” “school,” “place of care” and other terms.

An eligible employee may not take expanded family and medical leave to care of his or her son or daughter unless, but for a need to care for the individual, the employee would be able to perform work for his or her employer, either at the eligible employee’s normal workplace or by telework.

### 4) How should institutions determine whether an employee has a “qualifying need”?

In order to take leave under the EFMLEA, an employee is required, prior to taking the leave, to provide an employer: the employee’s name, date for which leave is requested, qualifying reason for leave, and an oral or written statement that the employee is unable to work because of the qualified reason for leave. The employee must also provide the name of the son or daughter being cared for, the name of the school, place of care, or child care provider that has been closed or has become unavailable, and a representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes paid sick leave. For leave requests due to a serious medical condition, existing medical certification requirements under FMLA remain in effect.

Additionally, institutions should note that the leave is provided for time when the employee is unable to work or telework, so it is best practice to ask the employee for an estimate/accounting of time that employee is unavailable, even with teleworking and other flexible scheduling options, in order to reduce the need for leave and encourage productive work where possible. In other words, institutions should explore with their employees any options for flexible schedules and/or reduced hours (only need for partial leave) to maximize productive work and reduce the need for paid leave benefits.

### 5) The first ten days of EMFLEA leave is unpaid. After that, the employee is entitled to receive a paid leave benefit at 2/3 the employee’s regular rate of pay, with a cap of \$200 per day/\$10,000 aggregate. May employees use other existing paid leave to supplement their benefits and receive full pay during this time?

Yes. Pursuant to the EMFLEA, the first 10 days of expanded family and medical leave is unpaid but employees may use the paid sick leave benefits available under the EPSLA and/or any other existing paid leave to receive full pay during the unpaid portion of EMFLEA leave.

*Currently through April 30, the University is providing special paid administrative leave to employees who are eligible for it pursuant to the terms of the UNC System’s COVID-19 Special Faculty and Staff Work and Leave Provisions, issued March 26, 2020 (“the March 26 memo”). During the period while the March 26 memo is in effect, where applicable, the University will supplement the pay of employees receiving expanded FMLA leave with special administrative pay so that they receive full pay without drawing on other available accrued leave balances. After the expiration of the provisions of the March 26 memo (unless further extended by the UNC System), employees may use their accrued leave (vacation, sick, bonus) as applicable under those policies to supplement the benefits provided under the EPSLA.*



**6) How should institutions calculate the regular rate of pay?**

The FMLEA provides that after the initial two unpaid weeks of expanded family and medical leave, the employer shall provide the eligible employee two-thirds of the eligible employee's average regular rate (subject to the caps described above). Refer to question #7 in the EPSLA section above, for a description of how to calculate the average regular rate. [See DOL FAQ #82.](#)

For FLSA exempt employees, it is recommended to calculate the paid leave rate for exempt employees by calculating a pro-rata hourly rate from the employee's salary (to determine a "regular rate of pay"). Then determine the value of two-thirds this value and multiply that amount by the number of hours in their stated schedule for a "normal" workweek.

**7) May EFMLEA leave be taken intermittently?**

Yes, the EFMLEA allows EFMLEA leave to be taken intermittently if the employer and employee agree. It is up to each institution to determine whether to allow intermittent use by its employees.

**8) Does the EFMLEA include paid leave for other events?**

No, the expansion of the FMLA does not contemplate paid leave for any other uses other than the qualifying need for leave to care for a child due to COVID-19 related closures. For a need related to individual sickness, the employee may qualify under the traditional provisions of the FMLA to seek care for their own personal serious medical condition and use other existing accrued leave as available and appropriate under policy. Additionally, and most importantly, the employee should obtain benefits under the EPSLA (approx. 80 hours of paid leave benefits for full-time employees), if they have a COVID-19 related qualifying event. If paid sick leave benefits are taken during the month of April, the employee will receive full pay as a result of the availability of special paid administrative leave provided by the March 26 memo.

**9) Can EFMLEA be used for elder care due to an elder care facility closing?**

No, elder care is not covered. Currently through April 30, the University is providing special paid administrative leave for elder care needs to employees who are eligible for it pursuant to the terms of the UNC System's COVID-19 Special Faculty and Staff Work and Leave Provisions, issued March 26, 2020 ("the March 26 memo").

**10) Is this benefit retirement eligible?**

Yes, this paid leave qualifies for regular retirement contributions, including deductions from the employee's pay and employer related contributions.

**Interaction and Application of Various Leave Types Provided by the University****1) How will the provisions of the EFMLEA and EPSLA be applied in light of the special paid administrative leave provided by the March 26 memo?**

The special paid administrative leave provided in the March 26 memo is currently available from April 1 – April 30, 2020.

*During the period while the March 26 memo is in effect, where applicable, the University will supplement the pay of employees receiving FFCRA benefits with special administrative pay so that they receive full pay without drawing on other available accrued leave balances. After the expiration of the provisions of the March 26 memo (unless further extended by the UNC System), employees may use their accrued leave (vacation, sick, bonus) as applicable under those policies to supplement the pay provided under the FFCRA.*

**2) How will the various leave provisions be applied when a COVID-19-related need for leave is personal to the employee?**

When the need for leave is for the employee's use (because the employee is subject to quarantine or isolation, is experiencing symptoms, or seeking a diagnosis), leave should be administered as follows:

- (1) First, designate leave as FMLA for a serious health condition (if qualifying) and start paid leave under the EPSLA. The employee should be paid for the approximate 2-week period (80 hours for FT; and adjusted hours for PT employees) of paid sick leave under EPSLA, with statutory caps. If during this time, the employee is also eligible for special paid administrative leave under the March 26 memo, the employee should receive full pay without regard to the statutory caps and without drawing on any available accrued leave balances. If it is after the expiration of the March 26 memo, the employee may (but is not required to) choose to supplement EPSLA paid sick leave with any available accrued leave.
- (2) After exhaustion of EPSLA benefits and the expiration of special paid administrative leave (assuming the employee cannot return to work), the institution should allow the employee to use his or her balance of FMLA leave available pursuant to regular FMLA policies for an employee's own serious health condition, if the employee qualifies for such leave. Institutions may continue to require employees who are on FMLA leave for a serious health condition related to COVID-19 to use their accrued leave, including accrued compensatory time off ("comp time"), at the same time.
- (3) If the employee exhausts all accrued leave before the conclusion of the allotted 12 weeks of FMLA, then the employee would move to unpaid leave status for the remainder of FMLA.
- (4) If the employee cannot return after lapse of 12 weeks of FMLA, then consider next steps in consultation with HR and Legal Office.

If employee has exhausted all FMLA leave (used allotted 12 weeks prior to the COVID-19 situation):

- (1) First, provide paid leave under EPSLA for the approximate 2-week period (80 hours for FT; and adjusted hours for PT employees) of paid sick leave under EPSLA, with statutory caps. If during this time, the employee is also eligible for special paid administrative leave under the March 26 memo, the employee should receive full pay without regard to the statutory caps and without drawing on any available accrued leave balances.
- (2) In addition, review the employee's FMLA eligibility and provide notice in conformance with standard FMLA procedures and [29 C.F.R. § 825.300](#). After the expiration of the March 26 memo, the employee may (but is not required to) choose to supplement EPSLA paid sick leave with any available accrued leave.
- (3) After exhaustion of EPSLA benefits (assuming the employee cannot return to work), the institution may allow the employee to use accrued leave, as allowed by University policy. Once accrued leave is exhausted, then the employee should be placed on unpaid leave status and next steps determined in consultation with the institution's HR and Legal Office.

### **3) How will the various leave provisions be applied when the need for leave is for care of others?**

When the need for leave is to care for others, the leave should be administered as follows:

- (1) First, provide paid leave under EPSLA for a two-week period (80 hours for FT; and adjusted hours for PT employees) of paid sick leave under EPSLA, with statutory caps. If during this time, the employee is also eligible for special paid administrative leave under the March 26 memo, the employee should receive full pay without regard to the statutory caps and without drawing on any available accrued leave balances. If it is after the expiration of the March 26 memo, the employee may (but is not required to) choose to supplement EPSLA paid sick leave with any available accrued leave.
- (2) After exhaustion of EPSLA benefits (assuming employee cannot return to work), if the need for leave is for childcare purposes,<sup>1</sup> institution should provide notification of designation of Emergency FMLA. Notify employee of 10-day waiting period under EFMLEA and allow employee to use paid administrative leave (if available under March 26 memo) and/or any accrued leave available, as allowed by University policy, to cover any period needed during waiting period.
- (3) After 10-day waiting period, convert employee to Emergency FMLA leave use (2/3 regular rate of pay) with statutory caps. Allow employee to use paid administrative leave (if available) and/or any accrued leave available to supplement these benefits and receive full pay.
- (4) If employee has exhausted 12-week FMLA allotment (after exhaustion of EPSLA benefits) the institution may allow the employee to use accrued leave, as allowed by University policy. Once accrued leave is exhausted, then the employee should be placed on unpaid leave status and next steps determined in consultation with the institution's HR and Legal Office.

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<sup>1</sup> If not for childcare, review whether employee's need for leave qualifies for traditional FMLA and follow those procedures accordingly.

If employee has exhausted all FMLA leave (used allotted 12 weeks prior to the COVID-19 situation):

- (1) First, provide paid leave under EPSLA for a two-week period (80 hours for FT; and adjusted hours for PT employees) of paid sick leave under EPSLA, with statutory caps. If during this time, the employee is also eligible for special paid administrative leave under the March 26 memo, the employee should receive full pay without regard to the statutory caps and without drawing on any available accrued leave balances. In addition, review employee's FMLA eligibility and provide notice in conformance with standard FMLA procedures and 29 CFR § 825.300. If it is after the expiration of the March 26 memo, the employee may (but is not required to) choose to supplement EPSLA paid sick leave with any available accrued leave.
- (2) After exhaustion of EPSLA benefits (assuming the employee cannot return to work), the institution may allow the employee to use accrued leave, as allowed by University policy. Once accrued leave is exhausted, then the employee should be placed on unpaid leave status and next steps determined in consultation with the institution's HR and Legal Office.

### **FFCRA Prohibitions, Penalties, and Enforcement**

#### **1) May employers take disciplinary action against employees who use sick leave or expanded FMLA under the FFCRA?**

No. Employers may not discharge, discipline, or otherwise discriminate against any employee who takes leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

#### **2) When will enforcement of the FFCRA begin?**

The Department of Labor will observe a temporary period of non-enforcement for the first 30 days after the FFCRA takes effect, so long as the employer has acted reasonably and in good faith to comply. For these purposes, "good faith" exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.

#### **3) How will the FFCRA be enforced?**

Employers in violation of the paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act., 29 U.S.C. §§ 216; 217. Employers in violation of the EFMLEA are subject to the enforcement provisions of the Family and Medical Leave Act.