



# FFCRA Emergency Paid Sick Leave and Expanded FMLA Frequently Asked Questions

The information contained in this document is based on the current understanding of the FFCRA and is subject to change.

**UPDATE Effective January 1, 2021:** While an extension of FFCRA paid leave benefits was not included in the Consolidated Appropriations Act, 2021, signed by President Trump on December 27, 2020, the City is voluntarily extending FFCRA-like paid leave protections and benefits from January 1, 2021 thru February 28, 2021.

The City's voluntary extended paid leave benefits are being provided in line with provisions of the established FFCRA requirements. This voluntary extension does not afford City employees with a new amount of leave, but rather allows employees to carryover any unused paid leave entitlement from 2020, which can be used during the 2021 extended period of time when leave is taken for a FFCRA qualifying reason(s).

Please see added FAQ's #22 - #33 regarding the City's voluntary extension of FFCRA-like paid leave benefits, as well as any related updates to FAQ's #1 thru #21 (noted in "red").

## 1. What is the Families First Coronavirus Response Act (FFCRA)?

The FFCRA is a federal Act that requires certain employers, including the City of Portland, to provide their employees with paid sick leave and expanded family and medical leave (FMLA) for specified reasons related to COVID-19, except that employers may exclude employees who are healthcare providers or emergency responders. These provisions will apply from April 1, 2020 through December 31, 2020.

Paid sick leave and expanded family and medical leave (FMLA) are not retroactive prior to April 1, 2020.

**UPDATE Effective 01/01/21:** The federal requirement that employers provide paid sick leave and expanded family and medical leave under the FFCRA expired on December 31, 2020. Per City Ordinance #1009-2 adopted by City Council in December, however, the City is voluntarily extending FFCRA-like paid leave provisions from January 1 through February 28, 2021.

## 2. Am I eligible to receive paid leave under the FFCRA?

All employees of a covered employer can be eligible for FFCRA paid leave entitlements. For Emergency Paid Sick Leave, the employee must still be on the payroll.

For Expanded FMLA, in addition to the above, the employee must have been employed for at least 30 calendar days as of when the day that leave starts, provided it is on or after April 1, 2020.

## 3. What type of paid leave entitlements are available?

The FFCRA affords two types of paid leave entitlements – Emergency Paid Sick Leave and Expanded FMLA.

Emergency Paid Sick Leave provides up to 2 workweeks of paid sick leave for certain qualifying reasons. The maximum number of paid hours is equivalent to the number of hours the employee works on average over a two-week period.

The FMLA allows employees to take up to 12 workweeks of protected leave for qualifying reasons. The new law expands the FMLA for one additional qualifying reason for the employee to care for their child when their school or childcare is closed due to COVID-19. The first 2 weeks of leave under the qualifying reason for Expanded FMLA are unpaid, but an employee may use Emergency Paid Sick Leave (if not already used for a different qualifying reason) or their paid leave accruals to be paid. The remaining 10 workweeks of Expanded FMLA are partially paid or employees may choose to use their existing paid leave accruals.

**UPDATE Effective 01/01/21: The above information remains unchanged. Employees cannot receive an amount of leave in excess of the FFCRA's statutory limits during the period of April 1, 2020 through the City's voluntary extended end date of February 28, 2021.**

#### **4. What are the “qualifying reasons” that I can take leave for?**

An employee is able to take Emergency Paid Sick Leave if the employee is unable to work, including unable to telework, because:

- the employee or an individual the employee is caring for is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- the employee or an individual the employee is caring for has been advised by a health care provider to self-quarantine related to COVID-19;
- the employee is experiencing COVID-19 symptoms and is seeking medical attention;
- the employee is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
- 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.

An employee is able to take Expanded FMLA leave if the employee is unable to work, including unable to telework, because the employee is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 symptoms.

For FFCRA purposes, an “individual” is an immediate family member, roommate, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person in a quarantine or self-quarantine situation, and that individual depends on you for care during the quarantine or self-quarantine.

#### **5. What documents do I need to provide to get paid sick leave or expanded FMLA leave?**

Employees will need to complete and have their Supervisor sign a FFCRA Emergency Paid Sick Leave & Expanded FMLA Application to request paid leave entitlements. A link to the Application form can be found at: <https://www.portlandoregon.gov/bhr/article/758618>.

Completed applications should be submitted to the employee's bureau FMLA Coordinator. A list of FMLA Coordinators by bureau, can be found at: <https://www.portlandoregon.gov/bhr/article/423838>.

Depending on the reason for leave, employees may be asked to provide supporting documentation, such as a note or letter from a health care provider or a statement from the employee caring for a child whose school or place of care is closed.

**6. Oregon Governor Kate Brown has issued a stay-at-home order (Stay Home, Save Lives). Does this qualify as a Federal, State, or local quarantine or isolation order?**

No, unless complying with the Governor's stay-at-home order prevents the employee from working, including teleworking. See discussion under #14.

**7. What is the amount of leave entitlement that I can be paid?**

While the amount of Emergency Paid Sick Leave shown on the FFCRA poster indicates varying percentages of pay with daily caps, the City has elected to pay 100% of an employee's regular rate of pay for this leave, up to two weeks (capped at 80 hours).

During weeks 3 through 12 of Expanded FMLA leave, an employee will be paid at 2/3 of their regular rate of pay, up to \$200 daily, or employees can choose to use their own paid leave accruals and receive their full pay.

**UPDATE Effective 01/01/21: The above information remains unchanged. For the purposes of the FFCRA, the "regular rate of pay" used to calculate paid leave benefits is the average of an employee's FLSA rate of pay over a lookback period of six months prior to the date on which the employee first takes leave.**

**8. Is the paid leave entitlement under the FFCRA deducted from my Sick Leave or other paid leave accruals?**

No. Paid leave under the FFCRA is in addition to your earned paid leave accruals. Employees may choose to use Emergency Paid Sick Leave and/or Expanded FMLA paid leave entitlements prior to using their own paid leave accruals, or they can choose to use their own paid leave accruals.

**9. Can I use my paid leave accruals to supplement or "top off" the amount of pay I receive while on approved Expanded FMLA leave?**

No. However, in order to receive 100% of their pay, employees may choose to use their own paid leave accruals instead of receiving 2/3 of their regular rate of pay (up to \$200 daily) under the Expanded FMLA paid leave.

**10. May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under Emergency Paid Sick Leave?**

No. You may take up to two weeks, capped at 80 hours, of paid sick leave for any combination of qualifying reasons.

For the Emergency Paid Sick Leave, the maximum number of hours you may take is based on the equivalent number of hours that you work on average over a two-week period, but not more than 80 hours.

**UPDATE Effective 01/01/21:** Employees will not receive a new two-week period with the City's voluntary extension of FFCRA-like paid leave benefits. Only unused hours from 2020 may carryover to be used from January 1 through February 28, 2021.

**11. May I take my paid sick leave or expanded FMLA leave intermittently?**

Yes. Before taking leave intermittently, though, this must be scheduled and requires your Supervisor's written approval.

If you are not teleworking, intermittent leave may not be taken if you or someone you are caring for is subject to a government quarantine order or has been advised by a health care provider to self-quarantine, or you or someone you are caring for is experiencing COVID-19 symptoms and is seeking a medical diagnosis. This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

**12. I have already taken some FMLA leave this year for a different qualifying reason. Does Expanded FMLA provide me with an additional 12 weeks of leave entitlement?**

No. The FFCRA only expands FMLA to include the one additional qualifying reason (for care of an employee's child whose school or place of care is closed) and its related eligibility requirement (30 days of employment) for that one leave reason only, but no other changes were made to the existing FMLA administrative rules.

For example, if an employee has taken 6 weeks of FMLA leave due to a surgery and recovery this calendar year, then the employee would only have 6 weeks of FMLA entitlement remaining for paid leave benefits under Expanded FMLA leave.

**UPDATE Effective 01/01/21:** Employees will not receive a new 12-week period with the City's voluntary extension of FFCRA-like paid leave benefits. Only unused FMLA leave entitlement hours from 2020 may carryover to be used for Expanded FMLA from January 1 through February 28, 2021.

**13. Is all leave under the FMLA now paid leave?**

No. The only type of family and medical leave that is paid is Expanded FMLA when such leave exceeds ten days. Expanded FMLA is limited to leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

**UPDATE Effective 01/01/21:** The above information remains unchanged. As noted in FAQ's #10 and #12 above, employees will not receive a new two-week period of Emergency Paid Sick Leave, nor a new 12-week period of Expanded FMLA with the City's voluntary extension of FFCRA-like

paid leave benefits. Only unused hours from 2020 may carryover to be used for FFCRA-like paid leave benefits from January 1 through February 28, 2021.

#### **14. What does it mean to be unable to work, including telework, for COVID-19 related reasons?**

You are unable to work if the City has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either at a City worksite or by means of telework.

If you and your Supervisor have agreed that you will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

If you are, or become, unable to perform your work, and you are unable to perform your work during the required hours because of one of the qualifying reasons, then you are entitled to take paid sick leave and/or expanded FMLA (as applicable). To the extent you are able to work or telework, paid sick leave and expanded FMLA is not available.

#### **15. What is a “place of care”?** (added October 15, 2020)

A “place of care” is a physical location in which care is provided for your child. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

#### **16. Who is my “child care provider”?** (added October 15, 2020)

Yes. A “child care provider” is someone who cares for your child. This includes individuals paid to provide child care, like nannies, au pairs, and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.

#### **17. My child’s school or place of care has moved to online instructions or to another model in which children are expected or required to complete assignments at home. Is it “closed”?** (added October 15, 2020)

Yes. If the physical location where your child received instruction or care is now closed, the school or place of care is “closed” for purposes of paid sick leave and expanded family and medical leave. This is true even if some or all instruction is being provided online or whether, through another format such as “distance learning,” your child is still expected or required to complete assignments.

#### **18. When my child’s school is closed for summer vacation, winter break, holidays, or school “in-service” days, may I take paid sick leave or expanded family and medical leave to care for my child because their school is closed?** (added October 15, 2020)

No. Paid sick leave and expanded family and medical leave are not available if your child’s school or child care provider is closed for any reason that is not related to COVID-19. However, you may be able to take paid leave if your child’s care provider during these school closures – a camp or other programs in which your child is enrolled (or would have been enrolled if it were available) – is closed or unavailable for a COVID-19 related reason.

**19. My child’s school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. They are permitted to attend school only on their allotted in-person attendance days. May I take paid leave under the FFCRA in these circumstances? (added October 15, 2020)**

Yes, you are eligible to take paid leave under the FFCRA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so.

**20. My child’s school is giving me a choice between having my child attend in person or participate in a remote learning program. I signed up for the remote learning alternative because, for example, I worry that my child might contract COVID-19 and bring it home to the family. Since my child will be at home, may I take paid leave under the FFCRA in these circumstances? (added October 15, 2020)**

No. You are not eligible to take paid leave under the FFCRA because your child’s school is not “closed” due to COVID-19 related reasons; it is open for your child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If your child is home not because their school is closed, but because you have chosen for the child to remain home, you are not entitled to FFCRA paid leave.

However, if because of COVID-19, your child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, you may be eligible to take paid sick leave to care for them.

Also, as explained in FAQ #19 above, if your child’s school is operating on an alternate day (or other hybrid-attendance) basis, you may be eligible to take paid leave under the FFCRA on each of your child’s remote-learning days because the school is effectively “closed” to your child to attend in-person on those days.

**21. My child’s school is beginning the school year under a remote learning program out of concern for COVID-19, but has announced it will continue to evaluate local circumstances and make a decision about reopening for in-person attendance later in the school year. May I take paid leave under the FFCRA in these circumstances? (added October 15, 2020)**

Yes. You are eligible to take paid leave under the FFCRA while your child’s school remains closed. If your child’s school reopens, the availability of paid leave under the FFCRA will depend on the particulars of the school’s operations (see FAQ’s #19 and #20).

**The following FAQ's have been added effective January 1, 2021, regarding the City's voluntary extension of FFCRA-like paid leave benefits. This information is being provided based on currently available guidance and may be subject to change as new information is released by the U.S. Department of Labor or Internal Revenue Service (IRS).**

**22. Are the City's voluntary extended FFCRA-like paid leave benefits still in addition to my own leave accruals? Or will I need to use my own leave accruals for a qualifying reason for leave starting January 1, 2021?**

Yes, the FFCRA-like paid leave benefits that the City is voluntarily providing are still in addition to an employee's own leave accruals. As in 2020, an employee may still elect to, but will not need to first use their own leave accruals before using FFCRA-like paid leave benefits for a FFCRA qualifying reason between January 1 through February 28, 2021.

**23. Are casual, seasonal and temporary employees included in the City's voluntary extension of FFCRA-like paid leave benefits?**

Yes, this remains unchanged from 2020 (see FAQ #2).

**24. I thought I heard that the House Bill signed by President Trump did include an extension of FFCRA paid leave benefits through March 31, 2021. Is that not correct?**

No. The Consolidated Appropriations Act, 2021, only extended employer "tax credits" for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021. However, this Act did not extend an eligible employee's entitlement to FFCRA paid leave beyond December 31, 2020. While the City is voluntarily providing FFCRA-like paid leave benefits to employees from January 1 through February 28, 2021, public employers (like the City) are not eligible for the same tax credits which are available to private employers with less than 500 employees.

**25. If I have already used my 2 weeks of Emergency Paid Sick Leave (E-PSL), will I receive a new up to 2-week period with the City's extension of FFCRA-like paid leave benefits?**

No. Only unused hours from 2020 may carryover to be used for FFCRA-like paid leave benefits from January 1 through February 28, 2021.

**26. If I have already used 12 weeks of FMLA leave entitlement in 2020, am I eligible for any additional FFCRA-like paid leave for childcare with this extension?**

No. Only unused hours from 2020 may carryover to be used for FFCRA-like paid leave benefits from January 1 through February 28, 2021.

**27. I was eligible but did not use any FFCRA paid leave in 2020. Am I eligible for any FFCRA-like paid leave benefits in 2021?**

Yes. If you did not use any FFCRA paid leave in 2020, then you can receive up to 2 weeks of Emergency Paid Sick Leave if you become unable to work because of any of the FFCRA qualifying reasons during the voluntary extended period of January 1 through February 28, 2021. If you become

unable to work because you need to care for your child whose school or place of care is closed (or child care is unavailable) due to COVID-19 related reasons, you can also be eligible to receive up to a full 12 weeks of partially paid Expanded FMLA leave during the same voluntary extended period.

**28. I have already used all of my available FFCRA paid leave entitlement in 2020. I still need to take time off to care for my child whose school or place of care is closed due to COVID-19 related reasons. What other leave options do I have?**

You may be eligible for up to 12 weeks of protected, but unpaid leave in 2021, under Oregon’s Family and Medical Leave Act (OFLA). In 2020, the Bureau of Labor and Industries expanded OFLA Sick Child Leave by adding a permanent qualifying reason for care of a child whose school is closed or place of care is unavailable due to a statewide declared public health emergency. While OFLA is unpaid leave, employees may use their own leave accruals, in the order of their choice, to be paid while using OFLA Sick Child Leave for childcare due to COVID-19 related reasons.

**29. I heard that City Council also adopted an Ordinance that will waive the “lookback” requirement for FMLA (federal) and OFLA (state) protected leave. Will I still need to meet any eligibility requirements in order to use the expanded OFLA Sick Child Leave indicated above?**

Normally an employee must meet length of service and “actual hours worked” requirements before being eligible for protected FMLA and OFLA leave. City Ordinance #1009-1 allowed the Chief Human Resources Officer to create a one-year change exception to HRAR 6.05 Family Medical Leave.

For the calendar year 2021, employees will still need to meet the length of service requirements to be eligible for FMLA and/or OFLA protected leave, but the City is waiving the “actual hours worked” lookback requirement for all City employees (including casual, seasonal, and temporary employees). To be eligible for an OFLA qualifying reasons, an employee will only need to have been employed with the City for at least 180 consecutive calendar days immediately preceding the start of their leave. For FMLA qualifying reasons (not including FFCRA Expanded FMLA), an employee must only have been employed with the City for 12 months preceding the start of their leave.

**30. Can my manager or supervisor deny my request to use the City’s voluntary FFCRA-like paid leave benefits in January and/or February?**

No, your manager or supervisor cannot deny your request. The City is voluntarily extending FFCRA-like protections and benefits in line with provisions of the established federal FFCRA requirements, which included required paid leave entitlements for specified reasons related to COVID-19.

If you should experience any concerns or issues with your manager or supervisor regarding your request for eligible FFCRA-like paid leave, please notify your bureau’s HR Business Partner.

**31. If I use the City’s voluntary provided FFCRA-like paid leave benefits for the reason of Expanded FMLA leave, will this count towards my FMLA and/or OFLA leave entitlement for 2021?**

Yes, this will reduce your FMLA leave entitlement available for 2021. If you have at least 180 consecutive calendar days of employment immediately preceding your leave in 2021, this will also reduce your OFLA leave entitlement available for 2021.



Note: While using the City's voluntary extended FFCRA-like leave, an employee can still elect to use their own leave accruals for full pay instead of using the 2/3's regular rate of pay, capped at \$200 daily.

**32. How do I know if I have any Emergency Paid Sick Leave or Expanded FMLA entitlement remaining to use?**

If you were approved for Emergency Paid Sick Leave in 2020, your bureau Timekeeper should be able to tell you how many hours of your up to 2 weeks of paid leave you have remaining to use.

For remaining weeks (or hours) of Expanded FMLA, please contact your bureau's FMLA Coordinator.

**33. If I need to use the City's voluntary extended FFCRA-like paid leave benefits for a qualifying reason in January or February, will I need to submit a new Application form?**

Yes, you will need to fill out a new Application form, have your supervisor sign the form in acknowledgement, and then return the completed form to your bureau FMLA Coordinator (see FAQ #5).

If you had been using FFCRA paid leave for care of a child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons, your Expanded FMLA Request number will no longer work after December 31, 2020. A new Application form needs to be submitted in order for your bureau FMLA Coordinator to create a new Expanded FMLA Request number for you to use in 2021.

While other FFCRA qualifying reasons do not require a FMLA Request number, your reason for leave may have changed since previously using some of your Emergency Paid Sick Leave, or the approved dates of your leave have expired. As such, a new Application form should be completed and submitted to your bureau's FMLA Coordinator so an updated Designation Notice can be provided to you, your supervisor, and your bureau's Timekeeper for time entry purposes.