

### COVID-19 Related Leaves and Job Protections Guidance for Policy-Covered and Represented Staff Employees

April 13, 2020: Original Issuance

April 27, 2020: Second Issuance

May 4, 2020: Third Issuance

#### A. Summary of COVID-19 Related Paid Leaves

The following table is a brief summary of the three COVID-19 related paid leave provisions applicable to policy-covered and represented staff employees. Additional guidance regarding the University’s obligations under the FFCRA:

<https://ucnet.universityofcalifornia.edu/news/2020/04/uc-leave-obligations-under-ffcra.pdf>

UC Expanded Paid Administrative Leave (PAL)	FFCRA Emergency Paid Sick Leave (EPSL)	FFCRA Expanded Family and Medical Leave (EFML)
<p>Maximum potential entitlement: FTE: Up to 128 hours Part-Time EE: Prorated by appointment percentage</p> <p>One-time allotment</p>	<p>Maximum potential entitlement: FTE: 80 hours Part-Time EE: Two-week equivalent</p>	<p>Maximum potential entitlement: Up to 12 workweeks for any eligible EE</p> <ul style="list-style-type: none"> <li>• First 2 weeks unpaid unless EE elects to use other available paid leave</li> </ul> <p>Health care workers and emergency responders are not eligible for EFML</p>
Mar 1, 2020 – Dec 31, 2020	Apr 1, 2020 – Dec 31, 2020	Apr 1, 2020 – Dec 31, 2020
No prior service requirements	No prior service requirements	On UC payroll for the 30 calendar days immediately prior to the leave
<p>Exempt EE: Must be taken in whole day increments but may be taken intermittently</p> <p>Non-Exempt EE: Can take in increments of less than a whole day and may be taken intermittently</p>	Must be taken in blocks <i>(Revised 5/4/20)</i>	Must be taken in blocks of a minimum of two weeks
<p>Used for the following purposes:</p> <ol style="list-style-type: none"> <li>1. EE unable to work due to own or family member’s COVID-19 related illness.</li> <li>2. EE unable to work because directed not to come to worksite for COVID-19 related reasons and/or worksite implemented COVID-19 related remote work or is under shelter in place order and it is not operationally feasible for employee to work remotely.</li> <li>3. EE unable to work due to COVID-19 related school or daycare closure which requires EE to be at home with a child or dependent and not operationally feasible for EE to work in conjunction with childcare commitment.</li> </ol> <p>The use of UC Expanded Paid Administrative Leave “shall not adversely affect the delivery of essential university services, including in particular, the clinical services delivered by UC Health.”</p>	<p>Used for the following qualifying reasons: EE unable to work or telework because of:</p> <ol style="list-style-type: none"> <li>1. Quarantine or isolation order</li> <li>2. Told by health care provider to self-quarantine</li> <li>3. Experiencing COVID-19 symptoms and seeking diagnosis</li> <li>4. Caring for individual subject to quarantine/isolation order or who was told by health care provider to self-quarantine*</li> <li>5. Caring for child whose school/place of care is closed or child care provider unavailable due to COVID-19*</li> <li>6. Other substantially similar condition specified by HHS Secretary</li> </ol> <p><i>* Health care workers and emergency responders are not eligible to take EPSL for reasons 4 or 5.</i></p>	<p>Used for the following qualifying reason: EE unable to work or telework because of caring for child whose school/place of care is closed or child care provider unavailable due to COVID-19 (same as reason #5 under EPSL)</p> <p>Any prior use of Family &amp; Medical Leave Act (FMLA) entitlement in 2020 reduces EE’s entitlement under EFML. Any use of EFML also reduces FMLA entitlement in 2020 assuming EE is eligible for FMLA. First two weeks of EFML are unpaid unless EE elects to use other available paid leave. An EE’s maximum potential paid entitlement under expanded family and medical leave is 10 workweeks.</p>

## B. Summary of COVID-19 Related Communication Pertaining to Policy-Covered and Represented Staff Employees<sup>1</sup>

- On [March 16, 2020](#), President Napolitano issued an executive order whereby eligible employees would receive a “one-time allotment of up to 128 hours of paid administrative leave,” subject to specific conditions.
- On [March 18, 2020](#), the Families First Coronavirus Response Act (FFCRA), which created two new emergency paid leave requirements – the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA) – was signed into law by President Trump.
- On [March 20, 2020](#), COVID-19 related leave guidance was issued to the Chief Human Resources Officers (CHROs)
- On [April 2, 2020](#), President Napolitano and the ten Chancellors issued a job protections letter indicating that there would “no COVID-19 related layoffs for all career employees through fiscal year ending on June 30, 2020.”
- On [April 17, 2020](#), the UC Employee Request for EPSL/EFML forms were issued.

## C. Frequently Asked Questions

### April 2, 2020 Job Protections Letter

#### 1. Does the April 2, 2020 letter from President Napolitano and the Chancellors regarding job protections apply to all UC staff, or are there exceptions?

This applies to all current career staff employees. Career staff employees are [defined](#) as working a fixed or variable percentage of time at 50 percent or more of full-time, and the position is expected to continue for a year or more. This does not apply to the following types of staff positions: Casual/Restricted, Contract, Floater, Limited, and Per Diem employees. Academic appointees should refer to the [APP Guidance Regarding COVID-19 Related Leaves and Job Protections](#).

#### 2. Does this letter apply to student employees in staff positions?

This applies to student employees in career staff positions. Students on work study will continue to receive financial aid during this time, and campuses will do all they can to find work study jobs for these students. Students employed in academic positions should refer to the [APP Guidance Regarding COVID-19 Related Leaves and Job Protections](#)

#### 3. What does this letter mean if employees are unable to work?

Employees are expected to work to the fullest extent they can, whether working on-site or remotely in healthcare or other critical and essential operations. If employees are unable to work remotely, they must talk to their supervisor to determine if they can be redeployed to another assignment they are capable of doing. If employees are unable to work, either because of illness or the need to care for others, they should talk with their supervisor for information regarding appropriate leave options. Employees can also be reassigned in accordance with applicable PPSM and CBAs. If an employee refuses to work when work is available, the supervisor should consult with their local Human Resources.

#### 4. Does this letter provide for pay continuation for staff employees through June 30, 2020? (Revised 5/4/20)

In some circumstances, yes. Under this letter, a staff employee may be eligible for pay continuation through June 30, 2020 if they satisfy all of the necessary requirements listed below.

- i. The employee must be a current career staff employee.
- ii. Because of facility closures, curtailed operations, or other University-related disruptions (e.g. cancellation of a series of concert events on a UC campus) due to COVID-19, the employee must not be able to work on site or remotely in any capacity.
- iii. The employee must have used all of the applicable COVID-19-related paid leave options that may have been available to the employee (i.e., UC Expanded Paid Administrative Leave, EPSL, and EFML).
- iv. After the employee satisfies the third requirement above, that employee must use 40 hours of their accrued vacation leave and/or similar leave accruals, such as PTO or CTO, but not accrued sick leave. If the employee has fewer than 40 hours remaining of such leave accruals, the employee must use their remaining leave accruals. If the employee has used all such leave accruals, the employee may be eligible for pay continuation.

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<sup>1</sup> This guidance does not apply to Lawrence Berkeley National Laboratory employees. Berkeley Lab employees with questions should refer to Berkeley Lab’s [COVID-19 website](#) or [status.lbl.gov](#)

Employees will not be eligible for pay continuation under this question 4 if they do not satisfy all of the necessary requirements above. (Please see question 5 for employees who have been advised to self-quarantine due to concerns related to COVID-19.)

In some situations, pay continuation may end sooner than June 30, 2020. These are generally situations related to the normal course of business. For example:

- Employees with appointments that expire before June 30 will be subject to the current terms and conditions of their appointments.
- Employees on research contracts or grants will be subject to the current terms and conditions of their appointments if the contract or grant funding expires or is depleted before June 30, 2020.
- There may be reductions in hours, and in some cases staff, as a part of the University's typical career employee summer staffing and clinical workforce adjustments. For example, if an employee's work hours or pay are typically seasonally adjusted before June 30, 2020, those adjustments will still occur.

**5. If an employee has been advised to self-quarantine by their health care provider due to concerns related to COVID-19, is the employee eligible for pay continuation? (Added 5/4/20)**

The University understands there may be situations where an employee's health care provider has advised the employee to self-quarantine because (a) the employee has COVID-19 or may have COVID-19; or (b) the employee is particularly vulnerable to COVID-19. If such employees cannot work remotely (either because it is not operationally feasible or because their health care provider has advised against it), the employee may be eligible for pay continuation if requirements i, iii, and iv in question 4 above are satisfied, even if requirement ii is not met. To request pay continuation in a situation like this, the employee should contact their supervisor. Locations should request that the employee provide documentation from their health care provider confirming that the health care provider has advised the employee to self-quarantine due to concerns related to COVID-19. If the health care provider has advised against working remotely, the documentation should state that.

### **General**

**6. Who is considered a health care worker? What leaves do health care workers have available? (Added 4/27/20)**

A "health care worker" is a "health care provider" as defined by the FCCRA implementing regulations: *"For the purposes of this definition Employees who may be exempted from Paid Sick Leave or Expanded Family and Medical Leave by their Employer under the FFCRA, a health care provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions."*

Although employers may exempt health care workers from taking both EPSL and EFML, following extensive consultation with UC health center and campus leadership, health care workers at UC are eligible to take EPSL for Reasons 1, 2, and 3. The following health care workers at UC are not eligible to take EPSL for Reasons 4 or 5 and are not eligible to take EFML: everyone employed at an entire medical center and the related health professional schools, student health centers, and counseling and psychological services. This includes schools of dentistry, pharmacy, nursing, and the UCLA school of public health.

Health care workers are still able to access other leaves that they may be eligible for including UC Expanded Paid Administrative Leave, vacation and sick leave, PTO, and CTO, and career health care workers are covered by the April 2, 2020 letter from President Napolitano and the Chancellors regarding job protections.

**7. Will UC health benefits continue for employees on any of these paid leaves?**

Yes, employees will continue to have any existing health benefits while on paid leave.

**8. If an employee is or gets sick, from COVID-19, will the employee be required to use their accrued sick or vacation leave, paid time off, or other paid medical leave? What if the employee doesn't have enough accrued sick or vacation leave — will they still receive their full pay?**

Employees who are unable to work due to their own illness or because they must care for an ill family member may have several different leave options available, including Family and Medical Leave (FMLA/CFRA), sick leave, vacation leave and PTO (paid time off).

Depending upon circumstances, an employee may qualify for EPSL or UC Expanded Paid Administrative Leave. If an employee does not have enough accrued sick or vacation leave available, they should work with their supervisor about the situation and to accurately record non-work time.

**9. Will employees on paid leave related to COVID-19 (i.e., UC Expanded Paid Administrative Leave, EPSL and/or EFML) continue to accrue service credit for purposes of UCRP and continue to accrue vacation and sick leave, if applicable?**

Yes, employees on paid leave will continue to accrue vacation and sick leave, as well as service credit for purposes of UCRP, as they normally would while on pay status.

**10. What are appropriate leave options?**

Standard leave options may include Family and Medical Leave (FMLA/CFRA), sick leave, vacation leave, and paid time off (PTO). Depending upon the circumstances, an employee may qualify for special COVID-19 leaves (see table above regarding COVID-19-related leave).

**11. Can a department or supervisor ask if an employee foresees COVID-19 related childcare issues that will preclude them from working?**

Yes, as a planning tool, departments or supervisors can inquire if leave for COVID-related childcare is anticipated. It is best if such inquiries be made of everyone in the department or team so as not to single out individuals.

**12. Will COVID-19 related leaves need to be tracked?**

Yes. The University is tracking and reporting the amount of COVID-19 leave taken and the associated payroll expense. The UCPath Center is working on mechanisms to track the type of leaves taken, including the Reason. Not all entry and calculations will be automated in UCPath or PPS – locations will need to process some manual entry and upload of leaves.

**13. Where can I find additional University resources/information regarding COVID-19?**

The University has developed a COVID-19 [website](#) with updates and information on all things COVID-19. The website also includes links to location's COVID-19 sites as well as to the CDC and WHO sites.

### **UC Expanded Paid Administrative Leave**

**14. Will an employee need to use UC's Expanded Paid Administrative Leave or the new federal COVID-19- related leaves during this time period if they are unable to work for COVID-19-related reasons?**

Employees can choose the order in which they use UC Expanded Paid Administrative Leave, EPSL, EFML, and any other paid leave accruals.

**15. An exempt employee who does not accrue vacation or sick leave has requested to take UC Paid Administrative Leave (PAL) because they are unable to work due to their own COVID-19 related illness (Criterion 1). Is the employee eligible to take PAL? (Added 4/27/20)**

All employees shall be eligible to receive a one-time allotment of up to 128 hours of paid administrative leave subject to the following conditions of the President's Executive Order

- All hours must be used by December 31, 2020, or the allotment shall expire;
- The hours may be used at any time during the period of the Executive Order, including intermittently in whole day increments, either before or after the use of any accrued leave or other paid leave, at the request of the employee, in consultation with the supervisor, provided that such use shall not adversely affect the delivery of essential university services, including in particular, the clinical services delivered by UC Health;
- The number of hours for employees who work less than full-time shall be prorated according to the percent of the appointment;

- Exempt employees who do not accrue sick or vacation leave are eligible for the onetime allotment of the paid administrative leave.

### **FFCRA Emergency Paid Sick Leave (EPSL) & Expanded Family and Medical Leave (EFML)**

#### **16. Who is eligible for leave under the EPSL and EFML?**

All employees are eligible for EPSL, regardless of their length of employment at the University or appointment type. However, health care workers and emergency responders are not eligible to take EPSL for Reasons 4 or 5 listed in the table above.

With the exception of health care workers and emergency responders, employees of any appointment type who have been on UC's payroll for the 30 calendar days immediately prior to the day their leave would begin are eligible for EFML.

#### **17. Does PSL/EFML need to be taken in one continuous block of time or can it be used intermittently?**

EPSL may only be taken in a block of two weeks. EFML may only be taken in blocks of a minimum of two weeks.

#### **18. Will employees be asked to complete a form to request EPSL or EFML provided under FFCRA? (Revised 4/27/20)**

Yes, employees will be asked to complete the [UC Employee Request for EPSL and/or EFML form](#) to provide pertinent information regarding eligibility for EPSL and/or EFML and to certify that the information provided is correct.

#### **19. Will an employee qualify for EPSL or EFML even if they have already used some or all of their leave entitlement under the Family and Medical Leave Act (FMLA) during 2020?**

An eligible employee is entitled to EPSL under the Emergency Paid Sick Leave Act regardless of how much leave they have taken under the FMLA.

However, the employee's eligibility for EFML depends on how much leave the employee has already taken during 2020 for FMLA leave. An employee may take a total of 12 workweeks for FMLA or EFML reasons during 2020. If the employee has taken some, but not all, of their 12 workweeks of leave under FMLA during 2020, the employee may take the remaining portion of leave available as EFML. If the employee has already taken 12 workweeks of FMLA leave during 2020, the employee may not take EFML.

For example, assume an employee was eligible for preexisting FMLA leave and took two workweeks of such leave in January 2020 to undergo and recover from a surgical procedure. The employee therefore has 10 workweeks of FMLA leave remaining. Because EFML is a type of FMLA leave, the employee would be entitled to take up to 10 workweeks of EFML, rather than 12 workweeks. And, any EFML the employee takes would count against their entitlement to preexisting FMLA leave, but not against their leave entitlement under the California Family Rights Act (CFRA).

#### **20. When can an employee who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (Reason 2) elect EPSL? (Added 4/27/20)**

The implementation guidelines issued by the U.S. Department of Labor provide that to be eligible for EPSL in this situation 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. And self-quarantining must prevent the employee from working. An employee who is self-quarantining is able to telework, and therefore may not take paid sick leave for this reason, if (a) his or her employer has work for the employee to perform; (b) the employer permits the employee to perform that work from the location where the employee is self-quarantining; and (c) there are no extenuating circumstances, such as serious COVID-19 symptoms, that prevent the employee from performing that work."*

#### **21. If an exempt employee is unable to work as they are caring for an individual subject to quarantine/isolation order (Reason 4), is the employee eligible for EPSL? (Added 4/27/20)**

Yes the employee would be eligible for EPSL. The implementation guidelines issued by the U.S. Department of Labor provide that this qualifying reason applies only if *"but for a need to care for an individual, the employee would be able to perform work for his or her employer.... Furthermore, the employee must have a genuine need to care for the individual."* Accordingly, the employee will need to identify the individual for whom care is being provided and their relationship to that individual.

**22. An employee has requested paid leave (i.e., UC Expanded Paid Administrative Leave, EPSL and/or EFML) because they are unable to telework due to a lack of childcare as a result of COVID-19. How can I determine whether the employee is eligible for paid leave and which leave they are eligible for? (Added 4/27/20)**

An employee who is unable to work or telework because they are caring for their child whose school or place of care has closed (or whose child care provider is unavailable) due to COVID-19 reasons is eligible to take UC Expanded Paid Administrative Leave, EPSL (Reason 5) and/or EFML (assuming they meet the 30 days' service requirement). To be eligible for EPSL and/or EFML for this purpose, the employee must confirm that there is no other suitable person to care for their child during the period for which the employee is requesting paid leave. If their child is older than 14 and the employee will be caring for the child during daylight hours, the employee will need to explain the special circumstances that make it necessary for the employee to provide care to that child during that period. If the child is 18 years or older, the child must be incapable of self-care due to a mental or physical disability. Health care workers and emergency responders are not eligible to take EPSL for this reason or to take EFML. The use of UC Expanded Paid Administrative Leave must not adversely affect the delivery of essential University services, which includes the clinical services delivered by UC Health.

An employee who has already utilized leave under the Family and Medical Leave Act (FMLA) this calendar year, will have their EFML entitlement reduced by their FMLA use.

Similarly, any EFML use will count against an appointee's total 2020 FMLA entitlement. The first two workweeks of EFML are unpaid. However, the employee may receive pay during these two workweeks by electing to use their EPSL entitlement for Reason 5 during this period. Alternatively, the employee may elect to use any other paid leave option available to the employee, such as UC Expanded Paid Administrative Leave or accrued paid leave (such as vacation or PTO) that an employee may use to take care of a child when the child's school is closed or their child care provider is unavailable. If an employee utilizes other paid leave accruals during the first two workweeks of EFML that would otherwise be unpaid, such use would run concurrently with the employee's EFML entitlement.

**23. Can an employee receive pay during the first two workweeks of EFML?**

The first two workweeks of EFML are unpaid, but the employee may receive pay during these two workweeks by electing to use their EPSL entitlement for Reason 5 during this period. Alternatively, the employee may elect to use any other paid leave options available to the employee, such as UC Expanded Paid Administrative Leave or accrued paid leave (such as vacation or PTO) that an employee may use to take care of a child when the child's school is closed or their child care provider is unavailable.

**24. Can an employee take 80 hours of EPSL for their own self-quarantine and then another amount of EPSL for another reason provided under the Emergency Paid Sick Leave Act?**

No. The total number of hours for which an employee can take EPSL is capped at 80 hours for full-time employees and the two-week equivalent for part-time employees.

**25. If an employee doesn't use all of their UC Expanded Paid Administrative Leave, EPSL and/or EFML entitlements in 2020, can they use those entitlements 2021?**

No. Those entitlements must be used by December 31, 2020.