

TYPE OF LEAVE	DAY 1-10	DAY 11-60	COVID-19 RELATED REASONS	FREQUENCY OF LEAVE
<i>Emergency Paid Sick Leave (EPSLA) In EmpCenter as COVID-19 Leave.</i>	Paid at 100% regular rate of pay*	Not Applicable	Any reason related to COVID-19	Continuous or Intermittent
<i>Expanded FMLA)**</i>	Unpaid***	Paid at 2/3 regular rate of pay***	Unable to work due to need to care for a child because school or daycare is closed or unavailable for reasons related to COVID-19.	<u>Continuous or Intermittent (effective 9/08/20)</u>
<i>OFLA COVID-19 expansion**</i>	Unpaid****	Unpaid****	Unable to work due to need to care for a child because of a COVID-19 related school/daycare closure	<u>Continuous or Intermittent</u>
<i>FMLA/OFLA**</i>	Unpaid****	Unpaid****	Family Member’s Serious Health Condition	Continuous or Intermittent based on Medical Certification

*Total amount will be pro-rated by FTE or average hours worked for part time employees

**Twelve week maximum FMLA/OFLA entitlement is not extended by the FFCRA or OFLA expansion

***EFMLA will not be paid until employee has exhausted their COVID-19 leave (EPSL) and all paid leave accruals (unless vacation has been requested to be retained in writing prior to leave). Classified employees may request to retain up to 40 hours of vacation for use after their protected leave ends and unclassified employees can request to retain their entire vacation balance. There is not an option to retain a partial vacation leave balance for unclassified employees. **Note:** As with all FMLA/OFLA, use of sick leave balances are required prior to the use of non-sick leave balances.

**** For Expanded COVID-19 OFLA and FMLA leaves relating to your own serious health condition or care of a family member with a serious health condition, please use your COVID-19 leave, then accrued sick leave and then your other accrued leave prior to going into LWOP just as you would for any other protected leave under FMLA/OFLA.

Families First Coronavirus Response Act (FFCRA):

The FFCRA implemented two new types of leave:

1. Emergency Paid Sick Leave (“EPSLA”) ; and
2. Expanded Family Medical Leave (“EFMLA”)

EPSLA provides two weeks (up to 80 hours) of paid sick leave when an employee meets one of the following:

- is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- has been advised by a health care provider to self-quarantine related to COVID-19;

- is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
- is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

NOTE: OSU provided coverage more generous than that required by the EPSLA.

EFMLA provides up to an additional 10 weeks, on top of EPSLA leave, where an employee is unable to work because they must care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Limitations: Please note that the original 12 week FMLA maximum leave is not extended by the EFMLA and paid FMLA is only available for leave taken for reasons dictated by the FFCRA after the employee has exhausted their COVID-19 leave (EPSL) and paid leave accruals unless vacation has been requested to be retained in writing prior to leave beginning. As with all protected leaves, Classified employees may request to retain up to 40 hours of vacation for use after their protected leave ends and unclassified employees can request to retain their entire vacation balance. There is not an option to retain a partial vacation leave balance for unclassified employees. **Note:** As with all FMLA/OFLA, use of sick leave balances are required prior to the use of non-sick leave balances.

When intermittent leave is not required for medical reasons, leave obligations under FFCRA, like EFMLA, should balance the employee's need for leave with the employer's interest in avoiding disruptions.

Eligibility: This expanded FMLA benefit applies to all employees who have been employed at OSU for at least 30 days prior to their leave request. Eligible employees may include:

- Full and Part-time Professional Faculty
- Full and Part-time Faculty (Tenured & Non-Tenured)
- Full and Part-time Classified staff
- Employees on Academic Wage Agreements and Temporary Employees
- Graduate Assistants
- Student Employees

How to Apply: <https://hr.oregonstate.edu/sites/hr.oregonstate.edu/files/benefits/fmla/fmla-ofla-quick-facts-how-to-request-leave.pdf>

Documentation required:

- The COVID-19 related reason for the leave
- A statement why the employee is unable to work or telework due to childcare needs
- The name(s) of the employee's child or children requiring care
- The child/children's ages
- The name of the school or daycare that closed and the notice of school or daycare closure that was posted on a website or provided through the mail.
- A statement that no co-parent, co-guardian or your usual child care provider is available to provide the care your child/children require.
- If the child or children are over age 14, the special reason they need care.
- If requesting intermittent leave, please indicate the schedule you have approved with your supervisor for your leave, include the number of hours per day that you will not be working and the days of the week that you anticipate this happening. Example: will need to be away 1 hour per day, Monday-Friday
- Child does not have the option to attend in person classes every day.
- Child's school is operating on a hybrid schedule.

The required information and documentation must be provided "as soon as practicable," which is not necessarily prior to and as a condition to taking leave.

Upon approval, University Human Resources will populate the timesheet based on the employee's leave/agreed upon schedule. The employee must exhaust their paid leave accruals (unless vacation has been requested to be retained in writing prior to leave), before the 2/3rds paid FMLA will begin. Classified employees may request to retain up to 40 hours of vacation for use after their protected leave ends and unclassified employees can request to retain their entire vacation balance. There is not an option to retain a partial vacation leave balance for unclassified employees. **Note:** As with all FMLA/OFLA, use of sick leave balances are required prior to the use of non-sick leave balances.

OFLA COVID-19 Expansion:

Purpose: OFLA was expanded under [BLI 7-2020 as a temporary order in April of 2020](#). It temporarily extended the definition of "sick child" leave under the Oregon Family Leave Act (OFLA) to cover certain global pandemic mitigation measures. The order adds OFLA coverage for Oregonians caring for children whose school or place of care is closed in response to the statewide public health emergency declared in an effort to limit the spread of COVID-19. Oregon employers were already required to allow employees up to 40 hours of Oregon Sick Time for sick child leave. The expansion to the definition of "sick child" leave under OFLA now allows eligible employees to use any accrued leave, in addition to their Oregon Sick Time, to care for a child during a COVID-19-related school or daycare closure. OFLA leave **is not employer paid**. OFLA leave can be taken intermittently.

On September 14, 2020, the Bureau of Labor and Industries (BOLI) issued a new permanent rule and new temporary rules for the Oregon Family Leave Act (OFLA). The new rules expand the use of OFLA sick child leave to address the ongoing closure of schools and child care providers. The new permanent rule allows eligible employees to take OFLA sick child leave to care for an employee's child whose school or child care provider has been closed due to a statewide public health emergency. (Note, this was previously a temporary rule through September 13, 2020.)

The temporary rule defines important terms used in the new rule. These terms include "closure," "child care provider," and "intermittent leave." "Closure" means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child's school or child care provider. "Child care provider" is defined as a place of care or person who cares for a child and can include an unpaid family member. Lastly, the definition of "intermittent leave" now encompasses leave taken because of the "intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency."

Pay Status: The addition to the definition of "sick child" leave under OFLA now allows eligible employees to use any accrued leave, in addition to accrued sick leave, to care for a child during a COVID-19-related school or daycare closure. OFLA leave **is not employer paid**.

Limitations: Please note that the original 12 week OFLA maximum leave is not extended by this expansion (BLI 7-2020).

Eligibility: To be eligible for the OFLA expansion, an employee must have been employed by OSU for at least 180 days immediately preceding the leave and have worked an average of at least 25 hours per week during those 180 days.

How to Apply: <https://hr.oregonstate.edu/sites/hr.oregonstate.edu/files/benefits/fmla/fmla-ofla-quick-facts-how-to-request-leave.pdf>

Documentation required:

- The COVID-19 related reason for the leave
- A statement why the employee is unable to work or telework due to childcare needs
- The name(s) of the employee's child or children requiring care

- The child/children's ages
- The name of the school or daycare that closed and the notice of school or daycare closure that was posted on a website or provided through the mail.
- A statement that no co-parent, co-guardian or your usual child care provider is available to provide the care your child/children require.
- If the child or children are over age 14, the special reason they need care.

Oregon's COVID-19 Temporary Paid Leave Program

The Oregon Legislature's Emergency Board established the COVID-19 Temporary Paid Leave Program in July 2020 to help bridge the gap left by the Families First Coronavirus Relief Act. It began September 16, 2020. The program is for people who need to quarantine/isolate because of potential exposure to COVID-19, or who are experiencing related symptoms and are seeking medical diagnosis, and meet at least one of the following requirements:

- Do not receive COVID-19-related time off through their employer
- Their employer is exempted from the Families First Coronavirus Response Act's emergency paid sick leave requirement
- They have exhausted available COVID-19-related paid sick leave

The program provides a \$120 per-day payment to workers who are required to quarantine due to COVID-19 exposure, but do not qualify for COVID-19-related paid sick leave or do not have access to paid sick leave.

Online application form: <http://oregon.gov/covidpaidleave>

Phone: **503-947-0131**.

Employees can find more information here:

<https://www.oregon.gov/dcbs/covid-pl/Pages/faq.aspx>

Frequently Asked Questions for FMLA & OFLA COVID-19 expansions:

➤ **Does this expansion of FMLA provide for additional weeks of FMLA leave?**

The expansion has not created a new 12-week bucket of FMLA leave. An employee is eligible for a **total** of 12 workweeks for standard FMLA, Expanded FMLA, or some combination of the two. FMLA leave is still defined at OSU as a total of 12 weeks in the prior 12-month period. OSU has designated the "rolling backward" method to determine the leave year. This means that OSU will look backward on the calendar for one year from the first day of your requested leave to determine if you are eligible under FMLA and how much leave you have available to use. You are entitled to use any balance (or number of hours) of the 12-workweek FMLA leave period that has not been used during the preceding 12 months, whether for standard FMLA leave or Expanded FMLA leave.

➤ **What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Family and Medical Leave Expansion Act (EFMLA)?**

The FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

➤ **Is the expanded FMLA leave created under EFMLA paid leave?**

Yes, Expanded FMLA leave is partially paid according to specific rules under the EFMLA.

The first two weeks of Expanded FMLA leave are unpaid. However, eligible employees may take paid sick leave, COVID-19 leave, any accrued vacation leave or personal leave to cover this two-week period.

Following the first two weeks of Expanded FMLA leave, OSU requires that employees use all remaining accrued paid leave before qualifying for employer paid EFMLA leave. Certain minimum leave balances can be maintained for

classified and unclassified employees consistent with other protected leave reasons. Employees taking leave are entitled to be paid for hours they were scheduled to work at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$10,000 in the aggregate (over a 10-week period). Further information can be found at the Department of Labor's website [here](#).

➤ **Is all leave under the FMLA now paid leave?**

No. The only type of FMLA leave that is paid leave is Expanded FMLA leave under the Emergency Family and Medical Leave Expansion Act (EFMLA) when such leave exceeds two weeks. This includes only leave taken by an employee who is unable to fulfil the obligations of their work because the employee must care for their child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

➤ **What employee groups does Expanded FMLA leave apply to?**

EFMLA is available to all OSU employees who meet the eligibility criteria, including part-time and temporary employees and student employees, at a prorated amount.

➤ **How do I know whether I meet the eligibility requirement of having “been employed for at least 30 calendar days by the employer” for purposes of Expanded FMLA?**

If it has been at least 30 calendar days from your first day of assigned work and pay at OSU, you meet this requirement.

➤ **Who is a child, son or daughter under FFCRA?**

Under the FFCRA, a “son or daughter” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are responsible for their care and well-being—someone with day-to-day responsibilities to care for or financially support a child. For additional information about in loco parentis see the Department of Labor Website [here](#).

In light of Congressional direction to interpret definitions consistently, the Department Of Labor guidance clarifies that under the FFCRA a “son or daughter” is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability.

➤ **Can more than one guardian take paid COVID-19 leave or Expanded FMLA leave simultaneously to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons?**

You may take paid COVID-19 leave or Expanded FMLA to care for your child only when you need to, and actually are, caring for your child if you are unable to work or telework as a result of providing care. Generally, you do not need to take such leave if a co-parent, co-guardian, or your usual child care provider is available to provide the care your child/children needs.

➤ **May I take Expanded FMLA leave intermittently?**

Effective 09/08/20, OSU is allowing intermittent use of Expanded FMLA leave with supervisor approval of your reduced schedule.

➤ **My child's school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home. Is it “closed”?**

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.

- **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 08/27/2020) [Updated to reflect the Department’s revised regulations which are effective as of the date of publication in the Federal Register.]**

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. For purposes of the FFCRA and its implementing regulations, the school is effectively “closed” to your child on days that he or she cannot attend in person. You may take paid leave under the FFCRA on each of your child’s remote-learning days. [FAQs 20–22](#) further address this scenario.

- **My child’s school is giving me a choice between having my child attend in person or participate in a remote learning program for the fall. 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 08/27/2020) [Updated to reflect the Department’s revised regulations which are effective as of the date of publication in the Federal Register.]**

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 his or her 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 leave to care for him or her. See [FAQ 63](#).

Also, as explained more fully in [FAQ 98](#), 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 on those days. [FAQs 20–22](#) further address this scenario.

- **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 08/27/2020)**

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 98](#) and [99](#).

- **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 the Emergency Paid Sick Leave Act?**

No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

- **Are the paid sick leave and expanded family and medical leave requirements retroactive**

No.

➤ **May I take my paid sick leave* or expanded family and medical leave* intermittently while teleworking?**

Yes, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and your employer may agree that you may take paid sick leave intermittently while teleworking. Similarly, if you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your employer may agree that you can take expanded family medical leave intermittently while teleworking.

You may take intermittent leave in any increment, provided that you and your employer agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

➤ **May I take my expanded family and medical leave* intermittently while my child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking? *[Updated to reflect the Department's revised regulations which are effective as of the date of publication in the Federal Register.]***

Yes, but only with your employer's permission. Intermittent expanded family and medical leave should be permitted only when you and your employer agree upon such a schedule. For example, if your child's school or place of care is closed, or child care provider is unavailable, for an entire week due to COVID-19 related reasons and your employer and you agree, you may take expanded family and medical leave intermittently on Monday, Wednesday, and Friday, but work Tuesday and Thursday, while another family member watches your child.

The Department notes that if your child's school, place of care, or child care provider were closed or unavailable on only Monday, Wednesday, and Friday, as opposed to the entire week, then you would not need to take intermittent leave if working on the schedule in the example above. This is because each day of closure or unavailability is a separate reason for leave, and thus you would not need to take leave for a single reason intermittently. As such, you would not need employer permission to take paid leave on just the days of closure or unavailability. See FAQ 98 and 99. However, you would still need to provide your employer with notice and documentation as soon as practicable. See [FAQ 16](#). The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements

➤ **Do I have a right to return to work if I am taking paid sick leave or Expanded FMLA under the Emergency Paid Sick Leave Act or the Families First Coronavirus Response Act?**

Generally, yes. In light of Congressional direction to interpret requirements among the acts consistently, Department of Labor guidance clarifies that the acts require employers to provide the same (or a nearly equivalent) job to an employee who returns to work following leave.

In most instances, you are entitled to be restored to the same or an equivalent position upon return from Expanded FMLA. However, you are not protected from employment actions that would have affected you regardless of whether you took leave.