

**University Human Resources – Quick Facts: Families First Coronavirus Response Act (EFMLA) & OFLA Expansion for COVID-19**

TYPE OF LEAVE	DAY 1-10	DAY 11-60	COVID-19 RELATED REASONS	FREQUENCY OF LEAVE
<i>Emergency Paid Sick Leave (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>Families First Coronavirus Response Act (expanded FMLA)**</i>	Unpaid***	Paid at ⅔ regular rate of pay***	Unable to work due to need to care for a child because of a COVID-19 related school/daycare closure	<b><u>Continuous leave only</u></b>
<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	<b><u>Continuous or Intermittent</u></b>
<i>FMLA/OFLA**</i>	Unpaid****	Unpaid****	Serious Health Condition  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

\*\*\*FFCRA 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/OFLA 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 (Expanded FMLA):**

**Purpose:** Under the FFCRA, employees who are unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19 will have access to 12 weeks of expanded FMLA leave.

**Pay Status:** The first two of these weeks are unpaid, although an employee may use the Emergency Paid Sick Leave (in EmpCenter as COVID19 Leave) described above (or other accrued leave if COVID-19 leave is exhausted) to be paid during the first two weeks. Once paid leave accruals are exhausted, remaining weeks are paid at two-thirds of the employee’s regular rate of pay up to \$200/day to a maximum of \$10,000.

**Limitations:** Please note that the original 12 week FMLA maximum leave is not extended by the FFCRA and paid FMLA is only available for leave taken for reasons dictated by the FFCRA after the employee has exhausted their COVID19 leave 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.

**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.

**OFLA COVID-19 Expansion:**

**Purpose:** OFLA was expanded under [BLI 4-2020](#). This order 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. As with all other "sick child" leaves under OFLA, the leave may be taken as a continuous block or intermittently. The temporary measure is currently effective March 18, 2020 through September 13, 2020.

**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 4-2020).

**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.

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

➤ **What impact does The Families First Coronavirus Response Act (FFCRA) have on The Family Medical Leave Act (FMLA)?**

The FFCRA temporarily expands FMLA. It creates a new type of protected leave (Expanded FMLA or EFMLA) that is part of and runs concurrently with the 12-week FMLA entitlement. Expanded FMLA is available only to individuals who have 1) worked for their employer for the past 30 days, 2) have active work obligations and 3) are unable to perform those work obligations due to the need to provide care for the individual's child because the child's school or place of care is closed or the child's care provider is unavailable due to COVID-19 related reasons. Employees who do not meet normal FMLA criteria (one year of service with a minimum of 1040 hours worked) will be eligible to apply for Expanded FMLA leave if they meet the 30-day requirement and other criteria.

➤ **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 apply for Expanded FMLA leave?**

Employees can apply for this leave through the normal [FMLA process](#).

➤ **What documentation is required for expanded FMLA leave?**

Employees will need to provide the following information via DocuSign link which is provided by the Protected Leave office after submitting their request in EmpCenter:

- 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.

➤ **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.

➤ **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?**

OSU is not allowing for intermittent use of Expanded FMLA leave.

➤ **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 Emergency Family and Medical Leave Expansion 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.

➤ **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.

➤ **Was the Oregon Family Leave Act (OFLA) expanded for COVID-19 reasons also?**

OFLA was expanded under [BLI 4-2020](#). **This Order** 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. The temporary measure is currently effective March 18, 2020, through September 13, 2020. 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.

➤ **Does the new emergency expansion to FMLA extend to student employees?**

OSU has determined that student employees do qualify for this expanded FMLA as long as that student employee was “an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested.” The expanded FMLA takes effect on April 1, 2020.