

# Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act Frequently Asked Questions



## What is the effective date of Emergency Paid Sick Leave Act (EPSL) and the Emergency Family and Medical Leave Expansion Act (EFMLEA) and when do they expire?

EPSL and EFMLEA are effective starting April 1, 2020 and expire December 31, 2020.

## What is the difference between EPSL and EFMLEA?

EPSL is the paid benefit of the Emergency Paid Sick Leave Act while EFMLEA is an expansion to FMLA which provides Public Health Emergency Leave (PHEL) specifically for the care of a child due to child care provider/school closures.

## What are the most common reasons to apply for EPSL and/or PHEL?

- The employee is unable to telework, non-essential and subject to a local/state quarantine order, or the employee is essential and has received a directive by an authorized government official to quarantine/self-isolate.
- A healthcare provider has instructed the employee or family member to quarantine or self-isolate.
- An employee is experiencing symptoms of Covid-19 and is seeking a diagnosis.
- The employee or their family member has Covid-19.
- The employee is unable to work due to school/child care closure or the primary care provider is unavailable.
- Please note PHEL covers only school and child care provider closures due to COVID-19, and not the other leave needs listed above

## Can you describe the paid benefit of EPSL and PHEL?

If the employee is on leave for their own condition outlined above, they would receive 80 hours of EPSL at 100% of their regular pay, up to \$511 per day not to exceed \$5,110.

If the employee is on leave to take care of a sick or quarantined family member, they would receive 80 hours at 2/3 of their regular pay up to \$200/day not to exceed \$2,000 total.

If they are on leave to take care of a child due to school closure or the primary care provider is unavailable and there is no one else available to provide child care, and they qualify under PHEL, the first two weeks the employee could either use their accruals, any available EPSL, or may seek Department Head authorization to use any remaining County Special Paid Leave (80 hours total), or be unpaid. For week 3-12 the employee would receive 2/3 of their regular pay up to \$200/day not to exceed \$10,000 total.

## How can an employee apply for EPSL and/or PHEL?

- Complete the Emergency Paid Sick Leave and Public Health Emergency Leave Request Form
- Provide supporting documentation, if applicable
  - Health care provider certificate for illness or quarantine/self-isolation or,
  - Notice of closure from the school or daycare, or letter from a child care provider.

## If an employee receives EPSL but it results in less than their normal paycheck could they supplement with their accrued leave?

Yes, if the employee requests it and has accrued leave.

## How do you count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?

A part-time employee is eligible for this benefit prorated by their FTE. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, the county will use a six-month average to calculate the average daily hours. If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring.

## Which employees are eligible for EPSL or PHEL?

All employees, including regular, contract, county temporary, paid interns, and retired annuitants are eligible for EPSL, however, to be eligible for PHEL the employee needs to be employed by the County for at least 30 days.

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### **May an employee take 80 hours of EPSL for self-quarantine and then another 80 hours if their immediate family member has to self-quarantine or becomes sick with Covid-19?**

No. An employee may receive up to 80 hours total for this benefit.

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

No. The paid benefit is only for 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.

### **Under PHEL employees must have worked for the County for at least 30 days to qualify. How is this calculated?**

An employee would qualify if they have been on payroll for the 30 calendar days immediately prior to the day leave would begin. For example, if an employee wanted to take leave on April 1, 2020, they would need to be employed by the County as of March 2, 2020.

### **Who is a son or daughter for EPSL and/or PHEL purposes?**

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 standing in loco parentis—someone with day-to-day responsibilities to care for. Also included are 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.

### **May an employee take PHEL intermittently while working remotely?**

Yes. If mutually agreed upon by the employee and the Department.

### **An employee’s 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 EPSL and/or PHEL.

### **If an employee took 12 weeks to care for their child due to school closures under the PHEL and then later become infected, can they take an additional 12 weeks of regular FMLA for their own serious health condition?**

No, employees only get 12 weeks total.

### **An employee is able to work remotely, however, due to childcare closures they are not functionally able to work while watching their 3 small children. Are they able to take PHEL?**

Possibly, each scenario is reviewed on a case by case basis.

### **Who is a “child care provider”?**

The term “Child Care Provider” means a provider who receives compensation for providing child care services on a regular basis. The term includes a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that is licensed, regulated, or registered under State law as described in section 9858c(c)(2)(E) of Title 42; and satisfies the State and local requirements, including those referred to in section 9858c(c)(2)(F) of Title 42. Under the Families First Coronavirus Response Act (FFCRA), the eligible child care provider need not be compensated or licensed if he or she is a family member or friend, such as a neighbor, who regularly cares for the Employee's child.

### **Who is a “health care provider”?**

A licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

### **If an employee is qualified to receive EPSL do they need to use the County Special Paid Leave or their accrued leave before using this benefit?**

No. If qualified for EPSL the employee has the option to use EPSL before using any County Special Paid Leave or accrued leave. However, if the paid benefit of EPSL is not enough to equal 100% of the employee's wages they may use their accrued leave to supplement their pay. Employees must exhaust their EPSL before receiving County Special Paid Leave.

## Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act Frequently Asked Questions

### **Does an employee qualify for leave for a COVID-19 related reason even if they have already used some or all of their leave under the Family and Medical Leave Act (FMLA)?**

If they are an eligible employee, they are eligible for up to 80 hours of EPSL under the Emergency Paid Sick Leave Act regardless of how much leave they have taken under the FMLA.

However, FMLA is only a 12 week benefit total, so if an employee has already used 4 weeks of FMLA for another purpose this year they would only be eligible for up to 8 weeks of FMLA or the PHEL benefit.

For example, assume you are eligible for pre-existing FMLA leave and took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. You therefore have 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, you would be eligible to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave you take would count against your entitlement to pre-existing FMLA leave.

### **If an employee as used all of the FMLA for the year are they eligible to receive EPSL?**

Yes, if they qualify for EPSL.

### **Can employees still use the County Special Paid Leave hours provided by the County after the shelter in place order was effective 3/18/2020?**

Yes, this is still in place.

### **Who may approve use of the County Special Paid Leave?**

Please refer to Section 10 of the [Human Resources Emergency Response Manual](#) for additional information regarding the County Special Paid Leave.

### **What happens if an employee exhaust their EPSL benefit, the County Special Paid Leave, and have no additional accrued leave?**

The County Administrative Officer or designee may approve up to 20 days of paid admin leave. If this is exhausted, or not granted, the employee would fall into an unpaid status. Alternatively, the employee may be reassigned as a disaster service worker.

### **Can an employee who was approved for the County's 80 hours special paid leave, and who does not qualify for leave under EPSL and/or PHEL continue to use the special paid leave hours until they run out?**

Yes

### **An employee is scheduled to return from leave, but now that child care providers are closed they are not able to return due to the need to watch their children. Are they eligible for PHEL?**

Yes, if the employee still has FMLA hours available for the year.

**What if an employee submits a medical certification that states employee is to be off work, for example, 4/6-4/27 with no indication that it is Covid-19 related?** If the medical certification does not indicate a self-quarantine specifically and/or COVID-19 related absence, the leave would be treated as a regular FMLA. EPSL is available for leave specifically related to COVID-19.

### **If an employee is out on leave for any given illness or injury, and then receives a medical extension based on pre-existing condition to self-isolate, would they be eligible for EPSL?**

Yes

### **What is the process to reassign staff to other departments that are in need of staff (i.e. for special assignments)?**

Available staff may be reassigned through the Disaster Service Worker program. Questions related to this program may be sent to [DSW@co.monterey.ca.us](mailto:DSW@co.monterey.ca.us)

### **Where can staff find more information?**

See the Human Resources Department (HRD) COVID-19 Emergency Services & Resources [website](#)