

EMPLOYEE LEAVE GUIDANCE

The following is guidance (which is subject to change) related to the types of leave that may be available for employees based on the recently enacted Families First Coronavirus Response Act:

Emergency Family and Medical Leave Expansion Act

- Eligible employees: Employees who have been employed for at least 30 calendar days. This includes any employee of the University, *i.e.*, student workers, temporary employees, part time employees, etc.
- Entitlement: When an employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19.
- Duration of Leave: Up to 12 weeks. Employee may take this leave intermittently. Please note that the employee is only eligible for a combined 12 weeks of FMLA leave in a 12 month period which includes any leave taken under this Act. Depending on how much FMLA leave has already been taken by the employee, they may have already exhausted their FMLA leave for the period or may only be entitled to a portion of leave under this Act.
- Pay During Leave: First 10 days are unpaid but employee may substitute and use accrued vacation leave, personal leave, or medical or sick leave during this period. Employee can also use the paid sick leave under the Emergency Paid Sick Leave Act to cover these first 10 days. Remaining period of the 12 weeks is paid at 2/3 regular rate of pay but is subject to caps (see chart below for calculations of pay).
- Effective date: April 1, 2020 to December 31, 2020.
- Employer notice to employees: Employers must post notice of Act requirements.
- Employee notice to employer: Employee must provide as much notice of leave as is practicable when the need for leave is foreseeable.
- No retaliation: Employers may not take action against an employee for taking leave under, or engaging in protected activity related to, the Act.
- Job restoration: Employers must restore employees to the same or equivalent position after their return from leave.
- Tax credit and treatment: No tax credit. Amounts paid to employees under the Act are not considered “wages” subject to income tax under IRC 3221(a) or social security taxes (6.2%) under IRC 3111(a), but they are considered wages for purposes of medicare taxes (1.45%) under IRC 3111(b).

Emergency Paid Sick Leave Act

- Eligible employees: Employees are eligible from the first day of employment. This includes any employee of the University, *i.e.*, student workers, temporary employees, part time employees, etc. Employers may not require employees to use other paid leave before using this leave.
- Entitlement: Paid leave when an employee is unable to work (or telework) due to a need for leave because:
 - (a) employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
 - (b) employee has been advised by a health care provider to self-quarantine due to COVID-19;
 - (c) employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
 - (d) employee is caring for an individual who is subject to an order under (a) above or being advised under (b) above;
 - (e) employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID-19;
 - (f) 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.
- Duration of Leave: For full-time employees, 80 hours. For part-time employees, a number of hours equal to the number of hours the employee works on average over a 2-week period.
- Pay During Leave: Depends on circumstances for the leave and is subject to caps (see chart below for calculations of pay).
- Effective dates: April 1, 2020 - December 31, 2020
- Employer notice to employees: Employers must post notice of Act requirements.
- Employee notice to employer: Employee may be required to follow reasonable notice procedures after the employee's first workday receiving the leave.
- No retaliation: Employers may not take action against an employee for taking leave under, or engaging in protected activity related to, the Act.
- Tax credit and treatment: No tax credit. Amounts paid to employees under the Act are not considered "wages" subject to income tax under IRC 3221(a) or social security taxes (6.2%) under IRC 3111(a), but they are considered wages for purposes of medicare taxes (1.45%) under IRC 3111(b).

Qualifying Reasons for Leave and Related Pay Entitlements

Reason	Details/Conditions	Duration	Pay Entitlement
Ordered Quarantine or Self-Quarantine	Pursuant to government order or advice of a health care provider.	Two weeks (up to 80 hours)	<ul style="list-style-type: none"> Employees eligible from first date of employment to paid sick time at <u>regular rate</u> of pay for normally-scheduled hours Prorated for part-time employees Capped at \$511/day and \$5,110 total
COVID-19 Symptoms	Experiencing COVID-19 symptoms and seeking medical diagnosis.	Two weeks (up to 80 hours)	<ul style="list-style-type: none"> Employees eligible from first date of employment to paid sick time at <u>regular rate</u> of pay for normally-scheduled hours Prorated for part-time employees Capped at \$511/day and \$5,110 total
Care for Quarantined Individual	Pursuant to federal, state, or local government order or advice of a health care provider. "Individual" not defined.	Two weeks (up to 80 hours)	<ul style="list-style-type: none"> Employees eligible from first date of employment to paid sick time at <u>2/3 regular rate</u> of pay for normally-scheduled hours Prorated for part-time employees Capped at \$200/day and \$2,000 total
School Closure/ Unavailable Child Care	Care for a child (of any age) whose school or child care provider is closed or unavailable for reasons related to COVID-19.	Two weeks (up to 80 hours)	<ul style="list-style-type: none"> Employees eligible from first date of employment to paid sick time at <u>2/3 regular rate</u> of pay for normally-scheduled hours Prorated for part-time employees Capped at \$200/day and \$2,000 total
	Care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19.	<p><u>Employees eligible only if they have worked at least 30 days for:</u></p> <p>Up to 10 weeks after 10 days unpaid (employee may elect to be paid by substituting accrued paid leave, including EPSL)</p> <p>But, employers may elect to exclude health care providers and emergency responders.</p>	<p><u>Employees with regular (non-variable) work hours:</u></p> <ul style="list-style-type: none"> At least <u>2/3 regular rate</u> of pay for normally-scheduled hours Capped at \$200/day and \$10,000 total <p><u>For variable-hour employees who worked for six months prior to taking leave:</u></p> <ul style="list-style-type: none"> At least <u>2/3 regular rate of pay</u> for the average number of hours the employee was scheduled per day. Capped at \$200/day and \$10,000 total <p><u>For variable-hour employees who did not work for six months prior to taking leave:</u></p> <ul style="list-style-type: none"> At least <u>2/3 regular rate</u> of pay for the employee's reasonable expectation when hired of the average number of hours per day that the employee would normally be scheduled to work Capped at \$200/day and \$10,000 total.
Substantially-similar Condition	Any other substantially similar condition specified by HHS Secretary	Two weeks (up to 80 hours)	<ul style="list-style-type: none"> Employees eligible from first date of employment to paid sick time at <u>2/3 regular rate</u> of pay for normally-scheduled hours Prorated for part-time employees Capped at \$200/day and \$2,000 total

Calculation of Hours:

A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that. 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. If there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

Overtime Hours:

The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

The Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80 hours.

Calculating Rate of Pay:

The rate of pay used to calculate the Pay Entitlement in the chart above is the greater of:

- The employee's regular rate of pay,
- the federal minimum wage in effect under the FLSA, or
- the applicable State or local minimum wage.

An employee's regular rate of pay is the average of the employee's regular rate over a period of up to six months prior to the date on which the employee takes leave. If the employee has not worked for the University for six months, then the regular rate used to calculate the employee's paid leave is the average of the employee's regular rate of pay for each week the employee worked for the University.