



Milwaukee County COVID-19 Public Health Emergency
Federal Families First Coronavirus Response Act
Administrative Order 20-10v1

Version 1 Issued and Effective as of 12:01 a.m. on Wednesday, April 1, 2020

Version 2 Issued and Effective as of 12:01 a.m. on Saturday, April 25, 2020

Pursuant to the federal **Families First Coronavirus Response Act (FFCRA)**, Milwaukee County is instituting a new paid sick leave policy that will provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. Per federal law, effective at 12:01 a.m., April 1, 2020, this policy and the bank of sick time will replace the Milwaukee County employees' current Supplemental Paid Leave (SPL) bank, issued on March 20, 2020. Therefore, the **SPL Administrative Order (20-1v2) no longer applies to employees covered by this Order**. Employees exempted under Sections V.A.1 and V.A.2 are still covered by the relevant collateral agreements for supplemental paid leave. Please note that this Order and related Orders may be subsequently revised as legally required.

Version 2 of the FFCRA Administrative Order replaces 20-10v1 as of 12:01 a.m. on April 25, 2020. Major changes in version two are denoted in red.

If you have questions about this, or any other Administrative Order or policy, please email: COVID-19@milwaukeecountywi.gov

I. Summary of Milwaukee County FFCRA Leave Policy

Generally, Milwaukee County's FFCRA Leave policy provides that employees are eligible for leave if they are unable to work on-site **and cannot telework**, as follows:¹

A. Expanded Paid Sick Leave Bank ("EPSL Bank")

Qualified employees will all be provided with an EPSL Bank on April 1, 2020, or upon employment per the following:

1. Full-time equivalent employees will receive a bank of 80 hours of **EPSL** paid at **100 percent** of the employee's regular rate of pay.
2. Employees classified as part-time, hourly, or seasonal who work less than 40 hours in a week will receive an EPSL bank, paid at **100 percent** of the employee's regular rate of pay, consisting of the greater of:
 - i. the average number of hours they work in a typical two-week period;
 - ii. 40 hours.

¹ Note: The FFCRA allows employers to exclude "health care providers" and "emergency responders" from eligibility for Expanded Paid Sick Leave and Expanded Family and Medical Leave under the FFCRA based upon the nature of their responsibilities in responding to critical community needs. Please see Section V for Milwaukee County employees who are excluded from eligibility for Expanded Paid Sick Leave and/or Expanded Family Medical Leave for Childcare.

B. Expanded Family Medical Leave for Childcare (“FMLA for Childcare”)

Certain, but not all, employees will be eligible for up to 12 weeks of partially paid FMLA for Childcare based on a bona fide need for leave to care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19. The first two (2) weeks of FMLA for Childcare are unpaid, unless the employee elects to use EPSL hours or another bank of personal accrued paid leave time. **Consistent with new guidance issued by the Department of Labor for the FFCRA, the County is now requiring that the remaining 10 weeks of FMLA for Childcare run concurrently with other paid leave currently available to its employees, including vacation, personal, holiday, and accrued overtime, but not including sick leave unless the employee elects to use their sick leave. This time will be paid out at 100 percent of the employee’s regular rate of pay. After exhausting available leave, any remaining time during the 10 weeks will be paid at 66 percent of the employee’s regular rate of pay.**

II. How to Use EPSL Bank Hours

If an employee is unable to report to work and is unable to telework due to any of the circumstances outlined in Section II.A.1-4, the EPSL Bank is available to use, per the process in Section II.B.

A. Qualifying Reasons for Using EPSL Bank Hours and Associated Payroll Codes

Unless an employee is teleworking, the EPSL Bank hours for qualifying reasons related to COVID-19 must be taken in full-day increments.²

1. Employee:
 - i. Is subject to self-quarantine or isolate³ per a Federal, State, or local quarantine or isolation order related to COVID-19; or
 - ii. Is required to self-quarantine due to procedures outlined in the “Responding to Confirmed COVID-19 Cases or Symptomatic Individuals, and Their Close Contacts” Administrative Order;⁴ or

² According to Department of Labor Guidelines, “Unless you are teleworking, once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.” Question 21: <https://www.dol.gov/agencies/whd/pandemic/ffcr-questions>

³ An **Isolation Order** is intended to separate sick people with a quarantinable communicable disease from people who are not sick. A **Quarantine Order** separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick. The State of Wisconsin “Safer at Home Order” or similar federal, state, or local population-level policies do not qualify as quarantine or isolation orders. A quarantine or isolation order must be specific to an individual employee.

⁴ For most-recent version of this Administrative Order (20-7), please visit: <https://county.milwaukee.gov/EN/COVID-19>

- iii. Traveled out of state before 5:00 p.m. on March 14, 2020, and is finishing their 14-day self-quarantine period.⁵
 - iv. **Payroll Code: FFCRA EPSL Bank COVID Quar**
2. Employee has been advised by a health care provider⁶ to self-quarantine because of COVID-19.
 - i. **Payroll Code: FFCRA EPSL Bank Healthcare Quar**
 3. Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
 - i. **Payroll Code: FFCRA EPSL Bank Symptoms**
 4. The employee is caring for an individual subject or advised to quarantine or isolation.
 - i. **Payroll Code: FFCRA EPSL Bank Care**

B. Process for Using EPSL Bank Hours

The process for using EPSL hours is different than accessing the hours in Milwaukee County's previous SPL Bank policy. The additional steps are to ensure proper documentation for compliance with federal law.

1. Employees are subject to the call-in policies of their respective departments/divisions and must call in consistent with those procedures. In addition, they must identify the qualifying reason (II.A.1-4) for why they are unable to work.
2. **Employees must contact FMLASOURCE to request leave at www.fmlasource.com, or by phone at 1-877-462-3652.**
 - i. Please note, an employee may start using EPSL Bank hours prior to contacting FMLASOURCE, but should make every effort to contact FMLASOURCE during the first day they are taking leave for a given qualifying reason.⁷

III. How to Use FMLA for Childcare

Federal policy allows for 12 workweeks of time off under FMLA for Childcare based on a bona fide need for leave to care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19. The **first two (2) workweeks of time are unpaid** unless the employee chooses to use their EPSL Bank hours or available personal paid leave time during this period. Once the two-week period is fulfilled, qualified employees will be eligible for an additional 10 weeks of FMLA for Childcare.

⁵ Employees qualifying for this reason (II.A.1.iii) only do not need to follow the process in II.B. They may use this payroll code directly.

⁶ A qualified "health care provider" means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

⁷ If an employee takes EPSL time under one qualifying reason and then uses more EPSL time for a different qualifying reason, they must contact FMLASOURCE one time for use of each qualifying reason.

Consistent with federal regulations interpreting the requirements of the FFCRA, 29 CFR sec. 826.23(c), Milwaukee County requires that the 10 weeks of FMLA for Childcare run concurrently with an eligible employee's other accrued leave as follows:

- Accrued leave to cover an employee's time off includes vacation, personal, holiday, and accrued overtime;
- When an employee concurrently uses their accrued leave with FMLA for Childcare, the employee will be paid out at 100 percent of their regular rate of pay for the time used;
- Employees who exhaust their vacation, personal, holiday, and accrued overtime may elect to either:
 - Cover approved leave for FMLA for Childcare with accrued sick time (paid out at 100 percent of their regular rate of pay for the time used), or
 - Be paid as provided in the FFCRA at 66 percent of their regular rate of pay for any remaining approved FMLA for Childcare leave.⁸
- Employees who elect to use accrued sick time after exhausting their regular accrued time may thereafter revise their election **only once**, and opt to be paid out at 66 percent of their regular rate of pay for any remaining approved FMLA for Childcare leave.

A. Qualifying Reasons for FMLA for Childcare and Associated Payroll Codes

To use the paid FMLA for Childcare, a qualified employee (one who has not been excluded from eligibility under Section V.A or V.B) must be caring for a child⁹ whose school or place of care is closed, or childcare provider is unavailable, for reasons related to COVID-19. **FMLA for Childcare time can be used intermittently for any reason.** Employees should follow the below guidelines for coding their time.

1. **REVISED** Charge Codes to Use for FMLA for Childcare

i. For the first two (2) workweeks:

- a. If an employee is electing to go **unpaid** for the first two (2) workweeks of the FMLA for Childcare, they should use **Payroll Code: FFCRA FMLA Childcare Unpaid.**

⁸ The FMLA for Childcare provided under the FFCRA is not in addition to the current 12 weeks provided under FMLA. The FFCRA simply provides an additional reason for which FMLA time may be used.

⁹ Under the FFCRA, a "child" 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 or financially support a child. This specifically includes 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. See guidance on "child" at question 40: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> Employees taking leave under this category will be required to provide a statement that includes the name(s) and age(s) of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave. With respect to the employee's inability to work or telework because of a need to provide care for a child *older than fourteen* during daylight hours, the employee will also be required to provide a statement that special circumstances exist requiring the employee to provide care. See Internal Revenue Service FAQs, question 44 at https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#sick_leave

- b. If an employee is electing to use their **EPSL Bank hours to receive 100% pay** for all or part of the first two (2) workweeks of the FMLA for Childcare, they should use **Payroll Code: FFCRA EPSL Bank FMLA Childcare**.
- c. If an employee is electing to use **personal accrued paid time off¹⁰ to receive 100% pay** for all or part of the first two (2) workweeks of the FMLA for Childcare, they should use the standard pay code for the time off they are using.

ii. REVISED CODES

- a. For time used during the 10-week period employee **must** use regular accrued time until exhausted, in any order:
 - 1. Use **Payroll Code: FFHLU (draws from accrued Holiday time)**
 - 2. Use **Payroll Code: FFOTU (draws from accrued Overtime)**
 - 3. Use **Payroll Code: FFPer (draws from Personal time)**
 - 4. Use **Payroll Code: FFVAC (draws from Vacation time)**
- b. After regular accrued paid leave time is exhausted, employee may elect to either:
 - 1. Use accrued sick time to receive 100 percent of their regular pay rate: Use **Payroll Code: FFSICK (draws from accrued Sick time), or**
 - 2. Receive the standard FFCRA rate of 66 percent of their regular pay rate: Use **Payroll Code: FFCRA FML 66% Pay Extended Childcare**.
- c. After accrued time is exhausted, regular and sick time (if elected), employee will receive the standard FFCRA rate of 66 percent of their regular pay rate: Use **Payroll Code: FFCRA FML 66% Pay Extended Childcare**.

2. Process for Using FMLA for Childcare

The process for using FMLA for Childcare time is different than accessing the hours in Milwaukee County's previous SPL Bank policy. The additional steps are to ensure proper documentation for compliance with federal law.

- i. Employees are subject to the call-in policies of their respective departments/divisions and must call in consistent with those procedures. In addition, they must identify that they will be using FMLA for Childcare.
- ii. **Employees must contact FMLASOURCE to request leave at www.fmlasource.com, or by phone at 1-877-462-3652.**
 - a. Please note, an employee may start using EPSL Bank hours prior to contacting FMLASOURCE, but should make every effort to contact FMLASOURCE during the first day they are taking leave.

¹⁰ Employees may want to save their EPSL Bank of time for future use and pay for their first two weeks of FMLA for Childcare with accrued paid leave. There are no limitations on which bucket of paid time off an employee uses to cover this two-week period.

IV. Employees Who Cannot Work or Telework, but Do Not Qualify for Leave under the FFCRA

The FFCRA does not require employers to provide paid leave for employees who are not able to work or telework for reasons other than those provided above. Milwaukee County recognizes that certain employees cannot telework due to the nature of their job duties, and have not been able to work onsite due to a facility or service closure, or departmental decision that employees not report to work. Such employees who cannot work or telework must:

- A. Determine whether they fall into any of the FFCRA leave categories above (EPSL Bank or FMLA for Childcare) and follow the directions for using that leave. Employees **should not** be using the PH Close code if they have an FFCRA qualifying reason; this code is only for non-telework, non-essential employees without a qualifying FFCRA reason.
- B. Only if employees do not fall into any of those categories, they may use **Payroll Code: PH Close**

V. Milwaukee County Employees EXCLUDED from Eligibility for Extended Paid Sick Leave and/or Expanded Family Medical Leave for Childcare

The federal government is allowing exemptions for employees serving in critical-need areas during the public health crisis; the exemptions granted are at the discretion of Milwaukee County.

- A. The following employees will be excluded from eligibility for Extended Paid Sick Leave and Expanded Family Medical Leave for Childcare:
 1. Members of the Milwaukee County Sheriff Deputies' Association ("MDSA"). At this time, members of the MDSA may continue to use leave time in accordance with the Collateral Agreement executed between Milwaukee County and the MDSA on March 19, 2020.
 2. Members of the International Association of Fire Fighters, Local 1072 ("IAFF< Local 1072"). At this time, members of IAFF, Local 1072 may continue to use leave time in accordance with the Collateral Agreement executed between Milwaukee County and the MDSA on March 19, 2020.
- B. The following employees will be exempted only from the FMLA for Childcare policy at the discretion of department heads or designees; these department leaders or designees will have the authority to use or not use the exemption granted to them and can change their decision at any time to meet the critical needs of their services. Milwaukee County reserves the right to change exemptions granted at any time to best meet the needs of employees and County operations.

The departments and/or divisions listed below have discretion over whether or not their staff will be allowed to use the FMLA for Childcare policy due to the critical nature of their work during a public health emergency:

1. All employees of the Sheriff's Office (not already covered under Section V.A), without limitation.
2. All employees of the House of Corrections, without limitation.
3. All employees in Office of Emergency Management, without limitation.
4. All employees at the DHHS Behavioral Health Division Acute Inpatient Psychiatric Hospital and Crisis Services, without limitation.
5. All employees at the DHHS DYFS Vel R. Phillips Juvenile Justice Center, without limitation.
6. All employees at the Medical Examiner's Office, without limitation.
7. All employees of the Zoo Animal Division, without limitation.

VI. Terms and Conditions of FFCRA Leave Policy (20-10v1)

- A. The EPSL Bank is available to all employees through **December 31, 2020**, and must be used for COVID-related matters consistent with procedures outlined in this policy.
- B. The EPSL Bank is immediately available to new employees.
- C. Expanded Family Medical Leave for Childcare is available immediately, except for new employees who must be on Milwaukee County's payroll 30 calendar days before they are eligible to use.
- D. Employees have no right to continued use of the leave provided under PH Close payroll code. It is available only during this public health crisis, and may be reduced or eliminated at any time, for any reason, at the sole discretion of the Milwaukee County Executive, or his designee.
- E. Unused leave provided under this Administrative Order will not be payable to any employee upon termination or retirement from the County.
- F. The FFCRA leave provided under this policy is specific to the COVID-19 public health emergency and cannot be carried over or used in a different public health emergency absent further authorization.
- G. The enactment of the FFCRA Administrative Order, replacing the SPL Administrative Order (20-1v2), does not nullify the following limitation of use for the SPL policy:
 1. Employees who terminate their employment within 90 days after the designated end of the COVID-19 public health emergency and who have used time from the SPL Bank, will be subject to a one-to-one day reduction in any accrued time that would normally be paid out at the separation pursuant to MCO sec. 17.17.
- H. New employees shall be permitted to immediately use any banked sick time ordinarily unavailable to the employee due to the six-month waiting period under Milwaukee County Ordinance 17.18(2).
- I. Given the rapidly evolving circumstances associated with the COVID-19 public health emergency, this Administrative Order (20-10v2) may be revised to address additional issues as they arise.