

Guidance on Emergency Sick Leave and Emergency Extended Family Medical Care Leaves (COVID -19)

Effective April 1, 2020 – December 31, 2020

April 1, 2020
OHLONE COMMUNITY COLLEGE DISTRICT

In addition to leaves authorized by Board Policies, Administrative Procedures, and provisions in the Collective Bargaining Agreement, there are new laws that temporarily provide additional leaves to assist employees during the COVID-19 pandemic. This document describes two types of the emergency or special leaves: (1) Emergency Paid Sick Leave (EPSL), and (2) Emergency Extended Family and Medical Leaves (EFML). These leaves are part of the Families First Coronavirus Response Act signed into law on March 18, 2020 (as modified by the CARES Act). Ohlone allows eligible employees who meet the requirements to take leave from the worksite in accordance with applicable law.

When the employee is at work or is teleworking, the employee must be able to perform essential job duties in a professional and timely manner and comply with all directives, laws, rules, regulations, and policies.

Emergency Paid Sick Leave

Emergency Paid Sick Leave (EPSL) is leave for use under certain conditions or for certain “qualifying reasons.” EPSL allows for two weeks (up to 80 hours) (prorated for part-time) of paid sick leave that are applied at a 100% or 66.7% of pay depending on the qualifying reason. There are six (6) qualifying reasons.

An employee needing more time beyond EPSL will be able to use his/her accumulated sick leave for the remainder of time that the employee is out ill or will be able to use other accrued paid time (such as vacation and comp time hours) for the remainder of time that the employee is out for a reason other than for which the employee can use regular sick leave.

Employees who meet the requirements are entitled to up to two weeks (80 hours, or a part-time employee’s two-week equivalent) of EPSL based on their regular rate of pay (or the highest applicable minimum wage, which for Ohlone employees means your regular rate of pay, which is usually higher than any applicable minimum wage).

Full-time employees are entitled to 80 hours of EPSL (prorated for part-time) at **full pay** (up to a maximum of \$511/day) if:

1. the employee is subject to a Federal, State or local quarantine or isolation order related to COVID-19;
2. the employee has been advised by a health care provider to self-quarantine related to COVID-19; or
3. the employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.

Employees are entitled to 80 hours of EPSL (prorated for part-time) at **2/3 pay** (up to a maximum of \$200/day) if:

1. the employee is caring for an individual who is subject to:
 - a Federal, State, or local quarantine or isolation order related to COVID-19 or
 - has been advised by a health care provider to self-quarantine related to COVID-19
2. the employee is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 precautions; or
3. the employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

An employee may only use that employee's total allotted EPSL time of 2 weeks (10 days) for any of these reasons. The employee receives a total of 10 days, not 10 days for each of the six reasons for EPSL.

Eligible employees are not required to use other available paid leave (such as leave accruals available to the employee) before using EPSL. Employees are not required to find replacements to cover their duties during use of EPSL. We will not discharge, discipline, or discriminate against any employee for taking EPSL.

Employees may elect to use accrued leave from any leave bank source to supplement the 2/3rds regular rate being paid while on EPSL under reasons (4), (5), or (6) above.

Unused EPSL hours do not carry over after December 31, 2020 for any employee.

[Emergency Family and Medical Leave Expansion Act](#)

Expanded Family Medical Leave (EFML) provides up to 12 weeks, with the first two weeks unpaid (unless the employee used EPSL or other available leave), of partly paid leave at 2/3 pay if the eligible employee cannot work or telework and if the employee is caring for his or her child under age 18 (or a child age 18 or older who is incapable of self-care because of a mental or physical disability) whose school or place of care is closed (or child care provider is unavailable) due to COVID19 related reasons.

There is only one qualifying reason for leave under the EFML, which is employee leave to care for his or her child whose school, childcare provider is closed, or unavailable related to COVID-19.

Employees are eligible for this leave if the following requirements are met:

- (a) The employee has been employed by the District for at least 30 calendar days.
- (b) The employee is **unable to work (or telework)** due to a need to care for a child under 18 years of age (or a child age 18 or older who is incapable of self-care because of a mental or physical disability) whose school or place of care has been closed, or whose child care provider is unavailable due to a COVID-19 emergency declared by either a Federal, State or Local authority, and
- (c) The employee provided reasonable notice of the need for the leave, as soon as is practicable, when the need is foreseeable.

Note: this EFML leave is a form of FMLA leave and is not an additional 12 weeks of EFML on top of the 12 weeks for other FMLA leave, in that each employee has a total of 12 weeks the employee can request to take leave for a qualifying reason for FMLA **or** for EFML. EFML does not provide additional time off beyond the 12 total weeks available for FMLA leave. If an employee has already used FMLA during the applicable 12 months, their eligibility for EFML is based on the balance available to the employee. For example, if an employee has already taken 8 weeks of regular FMLA, the employee may request to take only 4 weeks of EFML leave to care for a child for COVID-19 reasons. FMLA and EFML cannot exceed a total of 12 weeks in the applicable 12-month period.

The first two weeks of regularly scheduled work days (which is usually 10 days for full-time employees) of Emergency Family Medical Leave is unpaid leave, unless the employee elects to utilize available or accrued leaves, including Emergency Paid Sick Leave for an authorized reason or to utilize accrued paid time (such as vacation or comp time) at the same time as unpaid EFML leave to receive pay during this otherwise unpaid period. An employee meeting the requirements for leave under EFML will qualify for paid leave under EPSL #5 (childcare), and therefore, such employee may use EPSL during the initial 10-day, unpaid period of EFML. EPSL for childcare reasons is paid at **two-thirds** of the employee's regular rate of pay (up to a maximum of \$200/day).

An employee requesting leave under EPSL for reasons other than ESPL #5 (child care), may be eligible for regular family and medical care leave in accordance with requirements for FMLA/CFRA. FMLA and CFRA are unpaid; however, an employee may use their own accrued leave or EPSL in accordance with current policy. An employee may qualify for SDI or Paid Family Leave through the EDD.

If an employee is requesting leave under EPSL for reason #4 (care of an individual), this leave must be for someone with whom the employee has a personal relationship, such as an immediate family member, roommate, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person.

Upon conclusion of EPSL, eligibility for FMLA/CFRA is in accordance with the law, which defines eligibility for a leave to care for a family member.

After the initial two weeks of unpaid EFML, for the remaining 10 weeks of EFML, the employee is entitled to be paid at **two-thirds** of the employee's regular rate of pay (up to a maximum of \$200/day). Part-time employees are entitled to pay based on 2/3rds of their regular pay based on the number of hours they would otherwise have been scheduled to work during the time they are taking leave, up to a maximum of \$200 per day.

An employee may elect to use that employee's accrued leave from any leave source (such as vacation or compensatory time) to supplement the 2/3rds regular rate being paid while on EFML, provided that the EFML pay when combined with accrued leave pay does not equal more than 100% of their regular earnings. If you elect to use accrued paid leave to supplement the pay you receive under EFML, please provide a written notification to HR.

Your health insurance is continued under the same terms as if you are working during the leave. You are required to continue to pay for the employee portion of premiums through payroll deduction or other arrangement if payroll is insufficient.

If the employee's childcare needs change, the employee must immediately inform the employee's supervisor and the Ohlone VP of HR, Shairon Zingsheim, and the employee may be directed to report to work (or telework).

Restoration of Prior Position

Employees out on Emergency Family and Medical Leave are entitled to reinstatement to their prior or an equivalent position, unless the position held by the employee does not exist due to economic conditions or other changes in operating conditions during the period of the leave. An employee is not protected from employment actions, such as layoffs, which would have affected the employee had they not taken leave. There is no job restoration if the employee would not otherwise have been employed at the time reinstatement is requested. Restoration can be denied to certain key employees who are in the highest paid 10% of all employees employed by Ohlone. (29 CFR 825.217).

Requests and Forms for EPSL and/or EFML

Employees shall request leave as soon as practicable and shall certify the need for leave in writing at the time of the request. Forms are available to assist you in understanding the request process and the documentation and information required to be provided by each employee for the applicable reason the leave is being requested. Links to the forms follow:

[EFML Leave certification and request form 4.7.20](#)

[EPSL Leave certification and request form 4.7.20](#)

Completed forms should be submitted directly by email to Human Resources for processing and approval prior to initiating leave.

When Emergency Paid Sick Leave (EPSL) is being requested in coordination with Emergency Family Medical Leave (EFML), both requests should be submitted together.

In the event of a medical emergency where the employee is unable to provide the form prior to absence, such form shall be submitted as soon as reasonably practicable and can, if necessary, be completed by a family member or other person assisting the employee.

Forms shall be submitted via email to jgapuz@ohlone.edu

HR will consider the request and confirm an employee's eligibility for leave and that the leave request is approved, or provide an explanation as to why the employee is not eligible and the leave is denied.

The employee is required to provide any other documentation that Ohlone requests or as may be required by the IRS to document the use of this EPSL and/or EFML being for authorized purposes.

After the first workday (or portion thereof), an employee receives EPSL, the District may require the employee to follow reasonable notice procedures in order to continue receiving EPSL. HR will notify you if there is an ongoing notice procedure.

EPSL time provided to an employee shall cease beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick time.

If the employee's circumstances change, the employee must immediately inform the employee's supervisor and the Ohlone VP of HR, Shairon Zingsheim, and the employee may be directed to report to work (or telework).

Excluded Positions and Disaster Service Workers

The District may deny this leave to any employee who is designated by President Browning or designee as a health care provider or emergency responder.

The District is continuing to assess necessary personnel and emergency responders and reserves the right to deny leave to an emergency responder or to call an employee back from leave in the event the employee is needed to provide emergency response services in order to provide services determined essential by the District and to support efforts to promote the health and safety of the campus community. All District employees are disaster service workers and are required to perform disaster service activities as assigned by their supervisors or by law:

It is hereby declared that the protection of the health and safety and preservation of the lives and property of the people of the state from the effects of natural, manmade, or war-caused emergencies which result in conditions of disaster or in extreme peril to life, property, and resources is of paramount state importance requiring the responsible efforts of public and private agencies and individual citizens. In furtherance of the exercise of the police power of the state in protection of its citizens and resources, **all public employees are hereby declared to be disaster service workers subject to such disaster service activities as may be assigned to them by their superiors or by law.**

(Cal. Gov't Code § 3100.) Each employee is a disaster service worker and is required to perform disaster service activities as assigned by a supervisor or by law.

Denial of leave or call back would apply to individuals taking leave for non-personal medical purposes.

No employee taking leave under Emergency Paid Sick Leave reasons (1), (2), or (3) will be subject to denial of leave or callback:

1. the employee is subject to a Federal, State or local quarantine or isolation order related to COVID-19;
2. the employee has been advised by a health care provider to self-quarantine related to COVID-19; or
3. the employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.

Legal Clarifications

As Congress or government agencies clarify these requirements, the District will interpret this policy in compliance with those clarifications.

Determining eligibility is factually specific and needs to consider government clarifications, so HR will review and determine eligibility for a requested EPSL or EFML leave as soon as reasonably practicable and in compliance with the law, regulations, guidance, and other clarifications from the government.

Expiration

The provision of the law and this policy shall expire on December 31, 2020, unless a later law extends this sunset date.

Note: each situation is unique. Please reach out to Human Resources to discuss your particular situation.