

**LAWRENCE BERKELEY NATIONAL LABORATORY
GUIDANCE ON USE OF
EMERGENCY PAID SICK LEAVE (EPSL) AND/OR
EXPANDED FAMILY AND MEDICAL LEAVE (EFML)**

Sections I and II of this guidance document provide important information regarding LBNL employees' entitlement to leaves under the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA), which were enacted as part of the Families First Coronavirus Response Act (FFCRA). **These leaves are only available April 1, 2020 through December 31, 2020.**

An employee may request Emergency Paid Sick Leave (EPSL) by filling out the **EMERGENCY PAID SICK LEAVE (EPSL) REQUEST FORM** and may request Expanded Family and Medical Leave (EFML) by filling out the **EXPANDED FAMILY AND MEDICAL LEAVE (EFML) REQUEST FORM**. If an employee qualifies for both EPSL and EFML, the employee may request both. The signed form should be returned to Integrated Disability and Absence Management Services (IDAM).

Many terms used below have specific meanings in the context of these federal laws. If a term is italicized, it is defined in [Appendix A](#).

I. Emergency Paid Sick Leave (EPSL) – Background Information

An eligible employee may take EPSL if LBNL has work for the employee and one of the six qualifying reasons below prevents the employee from being able to perform that work, either under normal circumstances at their normal worksite or by means of telework.

A. Qualifying Reasons

An employee may take EPSL if one or more of the following reasons apply:

Reason 1:

The employee is unable to work or telework because the employee is subject to a federal, state, or local **quarantine or isolation order** related to COVID-19.

- An employee may not take EPSL for this reason if LBNL does not have work for the employee to do as a result of the *quarantine or isolation order* or other circumstances.

Reason 2:

The employee is unable to work or *telework* because the employee has been advised by a *health care provider* to **self-quarantine** due to concerns related to COVID-19.

Reason 3:

The employee is unable to work or *telework* because the employee is **experiencing symptoms** of COVID-19 and is seeking a medical diagnosis from a *health care provider*.

- An employee may not take EPSL for this reason if the employee does not actually seek a medical diagnosis.

Reason 4:

The employee is unable to work or *telework* because they are **caring for an individual** who is either subject to a federal, state, or local *quarantine or isolation order* related to COVID-19 or who has been advised by a *health care provider* to self-quarantine due to concerns related to COVID-19.

- *Health care workers* are not eligible to take EPSL for this purpose.
- The employee will need to identify the *individual* for whom care is being provided and their relationship to that *individual*.

Reason 5:

The employee is unable to work or *telework* because the employee is **caring for their child whose school or place of care has closed** (or whose *child care provider* is unavailable) due to COVID-19 precautions.

- *Health care workers* are not eligible to take EPSL for this purpose.
- The employee will need to confirm that there is no other suitable person to care for the employee's *child* during the period for which the employee is requesting EPSL.
- If the *child* is older than 14 and the employee will be caring for the *child* during daylight hours, the employee will need to explain the special circumstances that make it necessary for the employee to provide care to that *child* during that period.
- If the *child* is 18 years or older, the *child* must be incapable of self-care due to a mental or physical disability.

Note: If you are taking EPSL for this reason, your EPSL will run concurrently with your first 2 workweeks of EFML (which would otherwise be unpaid), provided you are eligible for EFML and have EFML entitlement remaining.

Reason 6:

The employee is unable to work or *telework* because the employee is experiencing any other **substantially-similar condition** specified by the U.S. Department of Health and Human Services (HHS).

- HHS had not identified any such condition as of April 1, 2020.

B. Eligibility for EPSL

All employees are eligible for EPSL if one or more of the 6 qualifying reasons apply except that *health care workers* are not eligible to take EPSL for Reasons 4 or 5.

C. Amount of Potential EPSL Entitlement

1. Length of time an employee may take EPSL:
 - Up to 80 hours for full-time employees and the two-week equivalent for part-time employees.
2. Amount of pay an eligible employee will receive during EPSL:
 - The employee will receive their regular rate of pay during EPSL. (Although the law allows employers to place caps on pay for EPSL, the University has decided not to apply these caps.).

D. How EPSL May Be Taken

1. EPSL periods

- For exempt employees, the minimum EPSL period is one day.
- For non-exempt employees, the minimum EPSL period is one hour.

2. Intermittent Leave

- Employees reporting to an LBNL work site may take EPSL intermittently for Reason 5, subject to agreement with their supervisor.
 - Employees reporting to an LBNL work site may not take EPSL intermittently for Reasons 1-4 or 6.
 - Once the employee begins to take EPSL for one or more of Reasons 1-4 or 6, they must use the permitted leave consecutively until the employee no longer has a qualifying reason to take EPSL.
- Employees who are solely teleworking may take EPSL intermittently for any qualifying reason, subject to agreement with their supervisor.

II. Expanded Family and Medical Leave (EFML) – Background Information

An eligible employee may take EFML if LBNL has work for the employee and the employee is unable to perform that work, either under normal circumstances at their normal worksite or by means of *telework* due to the qualifying reason below.

When an employee's need for EFML is foreseeable, the employee should give LBNL notice as soon as practicable.

A. Qualifying Reason

Reason 5 above: An eligible employee may take EFML if the employee is unable to work or *telework* because the employee is **caring for their child whose school or place of care has closed** (or whose *child care provider* is unavailable) due to COVID-19 precautions.

- *Health care workers* are not eligible to take EFML.
- The employee will need to confirm that there is no other suitable person to care for the employee's *child* during the period for which the employee is requesting EFML.
- If the *child* is older than 14 and the employee will be caring for the *child* during daylight hours, the employee will need to explain the special circumstances that make it necessary for the employee to provide care to that *child* during that period.
- If the *child* is 18 years or older, the *child* must be incapable of self-care due to a mental or physical disability.

B. Eligibility for EFML

- *Health care workers* are not eligible for EFML.

- All other employees are eligible for EFML if they have been on LBNL or UC's payroll for the 30 calendar days immediately prior to the day that their EFML would begin.

C. Amount of Potential EFML Entitlement

Length of time an employee may take EFML:

1. Up to 12 workweeks during 2020.
 - For an employee who is eligible for leave under the Family and Medical Leave Act (FMLA), the amount of EFML that employee can take will depend on whether the employee has already used any of their leave under FMLA in 2020. If an employee has taken some but not all of their 12 workweeks of FMLA leave in 2020, the employee may take the remaining workweeks of leave as EFML. If an employee has already used 12 workweeks of FMLA leave during 2020, the employee will not be able to take any EFML.
 - An employee who is not eligible for leave under the FMLA will have a full 12 workweek entitlement to EFML in 2020 if eligible for EFML.
2. The first 2 workweeks of EFML are unpaid, but the employee may receive pay during these 2 workweeks by electing to use their EPSL entitlement for Reason 5 during this period. Alternatively, the employee may elect to use any other paid leave option available to the employee, such as Paid Administrative Leave or accrued paid leave (such as accrued vacation or PTO) that an employee may use to take care of a *child* when the *child's school* is closed or their *child care provider* is unavailable.
3. The remaining period of EFML is paid, and the employee will receive their regular rate of pay during that period consistent with their normal work schedule. (Although the law allows employers to place caps on pay for EFML, the Laboratory has decided not to apply these caps.)

CI. How EFML May Be Taken

Employees may take EFML intermittently subject to agreement with their supervisor.

APPENDIX A DEFINITIONS

Child: The employee's biological, adopted, or foster child, a stepchild, a legal ward, or a child to whom the employee stands *in loco parentis*, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee stands *in loco parentis* to a child when the employee has day-to-day responsibilities to care for or financially supports the child.

Child Care Provider: A provider who receives compensation for providing child care services on a regular basis, including 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 and satisfies State and local requirements. An eligible child care provider need not be compensated or licensed if they are a family member or friend, such as a neighbor, who regularly cares for the employee's child.

Health Care Provider (for purposes of EPSL Reasons 2, 3, and 4): A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; a podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to the treatment of the spine to correct a subluxation as demonstrated by x-ray to exist), nurse practitioner, nurse mid-wife, physician assistant, or clinical social worker who is authorized to practice in the State and is performing within the scope of their practice as defined under State Law; a Christian Science practitioner; any health care provider that the employee's health plan carrier recognizes for purposes of payment; and a health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of their practice as defined under such law.

Health Care Worker (for purposes of the exclusion from EPSL eligibility for Reasons 4 and 5 and the exclusion from EFML): Anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

Individual (for purposes of EPSL Reason 4): The employee's immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she

were quarantined or self-quarantined. “Individual” does not include persons with whom the employee has no personal relationship.

Place of Care: A physical location in which care is provided for the employee’s child while the employee works for LBNL. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

Quarantine or Isolation Order: Includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the employee to be unable to work even though LBNL has work that the employee could perform but for the order. This also includes when a Federal, State, or local government authority has advised categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of employees to be unable to work even though LBNL has work for them.

School: An “elementary school” or “secondary school” as follows:

- “Elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law.
- “Secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

Telework: Work LBNL permits or allows an employee to perform while the employee is at home or at a location other than the employee’s normal workplace. An employee is able to telework if:

- LBNL has work for the employee;
- LBNL permits the employee to work from the employee’s location; and
- There are no extenuating circumstances (such as serious COVID–19 symptoms) that prevent the employee from performing that work.