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# Frequently Asked Questions **as of 1/6/2021** Expanded Family and Medical Leave Act (EFMLA) and Emergency Paid Sick Leave (EPSL) Provisions

On December 27, 2020, the federal government passed the Consolidated Appropriations Act (CAA 2021), which allows employers to extend the EPSL and EFMLA through March 31, 2021.

**IMPORTANT:** This FAQ document is intended for guidance only and limited to the information available at the time and will be updated as new information becomes available. For additional guidance, visit: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

In addition, these federal benefits do not modify any County benefits for which employees may be eligible due to COVID19.

## Overview

### 1. Why are there new expanded Family and Medical Leave Act (FMLA) and Emergency Paid Sick Leave (EPSL) provisions?

On March 18, 2020, The President of the United States signed H.R. 6201, Families First Coronavirus Response Act (FFCRA), into law. This law responds to the coronavirus (COVID-19) outbreak by expanding the use of FMLA and providing emergency paid sick leave under certain circumstances.

### 2. What is EFMLA?

EFMLA refers to the new qualifying need and benefits provided under FMLA as established by H.R. 6201 FFCRA. The details of EFMLA are discussed below.

### 3. What is EPSL?

EPSL refers to the new emergency paid sick leave benefits established by H.R. 6201 FFCRA. The details of EPSL are discussed below.



## **Expanded Family and Medical Leave Act (EFMLA)**

### **4. Am I eligible for the benefits established by EFMLA?**

Employees who have worked for the County for the 30 calendar days immediately prior to the day leave would begin are eligible for the benefits established under EFMLA. For example, if an employee wants to take leave on April 1, 2020, an employee would need to have been employed by the County as of March 2, 2020. These benefits are available to full- and part-time regular, contractual, and temporary County employees.

Please note, the provisions under EFMLA do not change eligibility requirements or rules under regular FMLA/FML.

Further note, health care providers and emergency responders may be excluded from being able to take EFMLA and/or emergency paid sick leave under the FFCRA. See the [Department of Labor's FFCRA Questions 56-57](#) for additional information.

### **5. For what purpose can EFMLA be used?**

EFMLA may be used if an employee is unable to work, including telework, due to the need to care for a son or daughter under 18 if the child's school or place of care has been closed, or childcare provider is unavailable, due to a public health emergency.

### **6. What if I am considered an essential employee but my personal childcare provider and/or daycare is closed?**

Maryland State has established childcare programs specifically for essential personnel, which can be found at [earlychildhood.marylandpublicschools.org](http://earlychildhood.marylandpublicschools.org) or by calling 877-261-0060 between 7 a.m. and 7 p.m. Monday through Friday.

### **7. Who qualifies as a "son or daughter" for EFMLA?**

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 or financially support a child. A son or daughter also includes an adult son or daughter who is 18 years of age or older who has a mental or physical disability and is incapable of self-care because of that disability.

**8. How long may an employee take leave under EFMLA? *UPDATED***

The amount of leave an employee is eligible for under EFMLA depends on how much leave an employee has already taken during the 12-month period that the County uses for FMLA leave. You may take a total of 12 weeks for FMLA or EFMLA during a 12-month period. If an employee has taken some, but not all, 12 weeks of leave under FMLA during the current 12-month period, the employee may take the remaining portion of leave available. If an employee has already taken 12 weeks of FMLA during the 12-month period, the employee may not take additional FMLA. For example, if an employee took 2 weeks of FMLA in January 2020 to undergo and recover from a surgical procedure, the employee has 10 weeks of FMLA remaining, and therefore has 10 weeks available under EFMLA.

If an employee has not used any FMLA leave during the 12-month period, then the employee is eligible for 12 weeks under EFMLA until March 31, 2021.

Likewise, if an eligible employee has not used any FML leave during the 12-month period, then the employee is eligible for 12 weeks under EFMLA until March 31, 2021, and may take an additional 3 weeks under FML during the current 12-month rolling period.

**9. May an employee take leave under FMLA over the next 12 months if some or all of the leave under EFMLA is used? *UPDATED***

It depends. An employee may take a total of 12 weeks of leave during a 12-month period under FMLA, including EFMLA. If employees take some, but not all 12, weeks under EFMLA by March 31, 2021, the employee may take the remaining portion of FMLA leave for qualifying reasons, as long as the total time taken does not exceed 12 weeks in the 12-month period. Please note that EFMLA is only available until March 31, 2021; after that, an employee may only take FMLA leave.

**For example:** if an employee takes 4 weeks of EFMLA leave in April 2020 to care for a child whose school is closed due to a COVID-19 related reason, these 4 weeks count against the entitlement to 12 weeks of FMLA leave in a 12-month period. Using this example, an employee would have 8 weeks of FMLA leave remaining in the 12-month period. Likewise, if an employee is also eligible for FML benefits and takes 4 weeks of EFMLA leave in April 2020 to care for a child whose school is closed due to a COVID-19 related reason, these 4 weeks count against the entitlement to 15 weeks of FML leave in a 12-month period. Using this example, an employee would have 11 weeks of FML leave remaining in the 12-month period.

However, an employee is entitled to EPSL regardless of how much leave is taken under FMLA. EPSL is not a form of FMLA leave and therefore does not count toward the 12 weeks in the 12-month period cap, unless taken concurrently with the first 2 weeks of EFMLA (which may otherwise be unpaid), then those two weeks do count towards the 12 weeks in the 12-month period.

**10. How much will an employee be paid under EFMLA?**

The first 10 days for which an employee takes leave under EFMLA are unpaid, but an employee is allowed to use accrued paid leave during this time (including annual, personal, and compensatory, or EPSL, as available). For the remaining 10 weeks of leave, the County will provide paid leave in an amount that is not less than 2/3 of an employee's regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work.

**11. Is all leave under FMLA now paid leave?**

No. The only type of FMLA that is paid leave is EFMLA when such leave exceeds 10 days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.

**12. If I am ill or taking care of someone who is ill, can I use the benefits under EFMLA?**

No, EFMLA provisions do not apply to an employee's illness or taking care of someone due to illness, but other FMLA and EPSL provisions may apply.

**13. When will EFMLA benefits be available? *UPDATED***

EFMLA benefits are available starting April 1, 2020 and apply to leave taken between April 1, 2020 and March 31, 2021.

**14. Can EFMLA leave benefits retroactively be applied?**

Yes, back to as early as April 1, 2020, if you would have been eligible for EFMLA but could not request benefits due to the lack of an established request process. Otherwise, no.

**15. Can I use EFMLA benefits if I have a condition that puts me at higher risk in relation to the coronavirus (COVID-19)?**

No, EFMLA benefits pertain specifically to the need of an employee to be home to care for a minor child, whose school and childcare facilities are closed due to a public health emergency.

**16. How much notice do I need to give under EFMLA provisions?**

The employee should provide as much notice as practicable.

**17. What documentation is needed to provide in support of EFMLA?**

EFMLA may only be taken to care for an employee's child under age 18 if the child's school or place of care has been closed, or childcare provider is unavailable, due to a public health emergency. Accordingly, employee's documentation must include the name of their child and their child's school or childcare provider, as well as a notice of closure or unavailability from the child's school, place of care, or childcare provider. Such documentation may be a notice that was posted on a government, school, or day care website, published in a newspaper, or emailed to the employee from the school, place of care, or childcare provider.

If EPSL is taken concurrently with EFMLA, the same documentation applies.

## **Emergency Paid Sick Leave (EPSL)**

**18. Who is eligible for EPSL?**

Regular, contract, LTGF, and temporary County employees are eligible immediately for EPSL. There is no work time requirement.

Please note, health care providers and emergency responders may be excluded from being able to take EFMLA and/or emergency paid sick leave under the FFCRA. See the [Department of Labor's FFCRA Questions 56-57](#) for additional information.

**19. How is EPSL different from the paid sick leave I accrue and receive from the County?**

EPSL benefits do not impact your accrued County sick leave balance and are granted by the federal government only in specific circumstances as it relates to a public health emergency. Additionally, the covered pay rate varies under EPSL depending on the qualifying reason for the leave.

**20. What are the qualifying reasons for which I can use EPSL?**

An employee is eligible for EPSL if they are unable to work, including telework, due to the following qualifying reasons:

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 due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. The employee is caring for an individual subject to an order described in (1) or has been advised as described in (2);
5. The employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions; or
6. The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

**21. Who is a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for EPSL?**

The term “health care provider,” as used to determine individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for EPSL, means a licensed Doctor of Medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

**22. How much EPSL is provided for employees who meet one of the qualifying reasons?**

Full-time employees are eligible for up to 80 hours (10 days) of EPSL.

**23. How much will an employee be paid while taking EPSL?**

It depends on the employee’s normal schedule, as well as why the employee is taking leave. Full-time employees are eligible for up to 80 hours (10 days) of EPSL.

If an employee is taking EPSL because an employee is unable to work, including telework, as a result of (1) being subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) having been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) experiencing

symptoms of COVID-19 and are seeking medical diagnosis, an employee will receive 100% of their regular rate of pay.

If an employee is taking EPSL because an employee is unable to work, including telework, as a result of (1) caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (2) caring for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or (3) experiencing any other substantially similar condition that may arise, as specified by the Secretary of Health and Human Services, an employee is entitled to compensation at 2/3 of regular rate of pay.

**24. May an employee take 80 hours of EPSL for self-quarantine, and then another amount of EPSL for another qualifying reason?**

No. An employee may take up to two weeks – or ten days – (80 hours for a full-time employee) of EPSL for any combination of qualifying reasons. However, the total number of hours for which an employee may receive EPSL is capped at 80 hours.

**25. Will I be required to use my accrued leave provided by the County prior to using EPSL?**

No, employees are not required to use their accrued leave offered by the County prior to using EPSL, if the employee meets one of the qualifying conditions.

**26. If an employee uses EPSL, does that count against other types of paid sick leave to which an employee is entitled from the County?**

No. EPSL is in addition to other leave provided by the County.

**27. Will I be able to carry over this leave next year? *UPDATED***

Eligible employees will be able to carry over their unused 2020 EPSL balance until March 31, 2021.

**28. When will EPSL be available? *UPDATED***

EPSL benefits are available April 1, 2020 and apply to leave taken between April 1, 2020, and March 31, 2021.

**29. Can EPSL benefits retroactively be applied?**

Yes, back to as early as April 1, 2020, if you would have been eligible for EPSL but could not request benefits due to the lack of an established request process. Otherwise, no.

**30. How much notice do I need to give to use EPSL?**

The employee must inform their supervisor of the need for EPSL as soon as practicable.

**31. What documentation is needed to provide in support of EPSL?**

If an employee is taking EPSL for any of the 5 qualifying reasons that are medical in nature (excluding taking care of a child whose school or place of daycare is closed, or child care provider is unavailable), then documentation should come from a health care provider and include the specific qualifying reason for which the employee is taking EPSL. This may include the COVID-19 symptoms you are experiencing as well as the date of your scheduled test and/or medical appointment related to COVID-19.

It should be noted that medical certifications are still required for leave taken as a result of a qualifying condition under regular FMLA.

**Usage of EFMLA and EPSL**

**32. Can an employee be eligible for both EFMLA and EPSL?**

An employee may be eligible for both types of leave, but only for a total of 12 weeks of paid leave. An employee may take both EPSL and EFMLA to care for a child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons. EPSL provides for an initial 2 weeks of paid leave. This period thus covers the first 10 workdays of EFMLA, which are otherwise unpaid unless you elect to use accrued leave. After the first 10 days have elapsed, an employee receives 2/3 of regular rate of pay for the hours an employee would have been scheduled to work during that time.

Employees are not required to use EPSL and EFMLA concurrently.

**33. May an employee use EPSL and EFMLA together for any COVID-19 related reasons?**

No. EFMLA only applies when an employee is on leave to care for a child whose school or place of care is closed, or whose child provider is unavailable, due to COVID-19 related reasons.

However, an employee can take EPSL for one of the six qualifying reasons identified. If EPSL is requested for childcare purposes and an employee is qualified, then paid EPSL benefits may be used concurrently with unpaid EFMLA benefits during the initial two-week period.

**34. What does it mean to be unable to work, including telework, for COVID-19 reasons?**

An employee is unable to work if the County has work for an employee and one of the COVID-19 qualifying reasons set forth in FFCRA prevents the employee from being able to perform that work, under normal circumstances at a normal worksite or by means of telework.

If the appointing authority or supervisor agrees that an employee will work normal hours, but outside of normally scheduled hours (for instance, early in the morning or late at night), then an employee is considered able to work and leave is not necessary unless a COVID-19 qualifying reason prevents an employee from working that schedule.

**35. If an employee is unable to telework, are they entitled to EPSL or EFMLA?**

If teleworking is permitted but an employee is unable to perform tasks or work the required hours because of one of the qualifying reasons for EPSL or EFMLA, then an employee is entitled to the leave established under these provisions. If an employee is able to telework, EPSL and EFMLA is not available.

**36. May an employee take EPSL or EFMLA intermittently while teleworking?**

Yes, if the appointing authority or supervisor allows it and the employee is unable to telework a normal schedule of hours due to one of the qualifying reasons.

**37. May an employee take EPSL or EFMLA intermittently while working at their usual worksite (as opposed to teleworking)? *UPDATED***

It depends on why the leave is being taken and if the appointing authority or supervisor agrees. Unless an employee is teleworking, EPSL for qualifying reasons

related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

- An employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- An employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- An employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- An employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- An employee experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless teleworking, an employee must continue to take EPSL each day until either (1) the full amount is used; or (2) the employee no longer has a qualifying reason for taking EPSL. This limit is imposed because if an employee is 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 to keep from spreading the virus to others.

If an employee no longer has a qualifying reason for taking EPSL before the 80 hours is exhausted, the employee may take any remaining EPSL for a qualifying reason at a later time, until March 31, 2021.

In contrast, if an employee and appointing authority or supervisor agree, an employee may take EPSL and EFMLA intermittently if taking leave to care for a child whose school or place of care is closed, or whose childcare provider is unavailable, because of COVID-19 related reasons. For example, if an employee's child is home and agrees to take leave on Mondays, Wednesdays and Fridays, but returns to the normal worksite or teleworks on Tuesdays and Thursdays.

**38. May an employee who has been teleworking productively since mid-March without any issues now claim they need to take EPSL or EFMLA benefits to care for their children, whose school is closed because of COVID-19, even though this employee has been teleworking with their children at home for eight**

**weeks? May this employee be asked to explain why they are now unable to work or if they have pursued alternative childcare arrangements?**

Yes. The fact that an employee has been teleworking despite having his or her children at home does not mean that the employee cannot now take leave to care for his or her children whose schools are closed for a COVID-19 related reason. For example, an employee may not have been able to care effectively for the children while teleworking or, perhaps, this employee may have made the decision to take EPSL or EFMLA benefits to care for the children so that the employee's spouse, who is not eligible for any type of paid leave, could work or telework. These (and other) reasons are legitimate and do not afford a basis for denying employee EPSL or EFMLA benefits to care for a child whose school is closed for a COVID-19 related reason.

The County may require this employee to provide the qualifying reason he or she is taking leave, submit an oral or written statement that the employee is unable to work because of this reason, and provide other documentation outlined in section 826.100 of the Department's rule applying the FFCRA. While a supervisor may ask the employee to note any changed circumstances in his or her statement as part of explaining why the employee is unable to work, supervisors should exercise caution in doing so, lest it increase the likelihood that any decision denying leave based on that information is a prohibited act.

This does not prevent the County from disciplining an employee who unlawfully takes paid sick leave or expanded family and medical leave based on misrepresentations, including, for example, to care for the employee's child(ren) when the employee, in fact, has no children and is not taking care of a child.

**39. If an employee claims to have tiredness or other symptoms of COVID-19 and is requesting EPSL to seek a medical diagnosis, what documentation may the County require from the employee to support their efforts to obtain a diagnosis? When can it be required?**

In order for an employee to take leave under the FFCRA, the County may require the employee to identify his or her symptoms and a date for a test or doctor's appointment. However, the County may not require an employee to provide further documentation or similar certification that he or she sought a diagnosis or treatment from a health care provider in order for the employee to be approved for EPSL due to COVID-19 related symptoms. The minimal documentation required to take this

leave is intentional so that County employees with COVID-19 symptoms may take leave and slow the spread of COVID-19.

Please note, however, that if an employee were to take unpaid leave under the FMLA, the FMLA's [documentation requirements](#) are different and apply. Further, if the employee is concurrently taking another type of paid leave, any documentation requirements relevant to that leave still apply.

**40. An employee already received EPSL and is currently receiving EFML to care for their children whose school is closed for a COVID-19 related reason. After this employee's child completed distance learning, the child's school closed for summer vacation. May this employee continue to receive EPSL or EFMLA to care for their child because their child's school is closed for summer vacation?**

No. EPSL and EFMLA are not available for this qualifying reason if the school or childcare provider is closed for summer vacation, or any other reason that is not related to COVID-19. However, this employee may be able to take leave if his or her child's care provider during the summer—a camp or other programs in which the employee's child is enrolled—is closed or unavailable for a COVID-19 related reason.

## **FFCRA Human Resources Liaison (HRL) FAQs**

### **General**

**41. Are leave adjustments only done if the employees request it or must we do them for those that have already been out?**

Agency HRLs are responsible for advising their personnel of the availability of these benefits, as well as the requirements for requesting these benefits, and the benefit request process. However, timecard adjustments should be made only after submitted EPSL and/or EFMLA requests have been approved.

**42. Is the supervisor validation for these benefits absolute necessary? Please clarify the supervisor's role in the EPSL and EFMLA request/review process.**

For both EPSL and EFMLA requests, it is necessary for the employee's supervisor to validate that the employee is not able to work or telework. Once the inability to work has been verified by the supervisor, it is the HRL's responsibility to determine whether that employee's inability to work is due to a qualifying COVID-19 reason.

## **Emergency Paid Sick Leave (EPSL)**

**43. Are we required to go back and do timesheet adjustments for those that have already been out and used Health and Safety leave and change it to EPSL?**

Yes. In compliance with the Act, any employee who would have been eligible for either EPSL and/or EFMLA as of April 1, 2020, should receive a timecard adjust and be provided the maximum benefits for which they are qualified before any other payroll leave code, paid or unpaid, is used.

**44. Does the request form need to be forwarded to OHRM once the appointing authority approves?**

No. EPSL request forms should not be forwarded to OHRM.

**45. If an employee has no leave and needs more than the 80 hours or other provided leave (AHS) are they then put on LWOP?**

If an employee has exhausted their maximum 80 hours of EPSL but still needs to be out of work, they should be coded for any paid leave for which they are eligible to receive. If the employee is not eligible for any additional paid leave, then they should be placed on LWOP, as long as the reason for the employee's continued absence is approved by their supervisor.

**46. What is the difference between EPSL and the Administrative Health and Safety Leave?**

EPSL is a paid federal leave benefit created only for specific COVID-19 related circumstances whereas Administrative Health and Safety leave is a County paid leave benefit related to a public health emergency. Each have different benefit durations as well as eligibility and qualification requirements. Additionally, the covered pay rate varies under EPSL depending on the qualifying reason for the leave.

**47. Should agencies use the 14 days of Health and Safety Leave before using EPSL?**

No. In compliance with the FFCRA, any employee who is eligible and qualified to receive EPSL should be granted the maximum amount of EPSL for which they are entitled to receive, prior to the usage and granting of any other leave provided by the County.

**48. If an employee has a doctor's note stating that they have an underlying chronic condition that requires them to stay home during this pandemic situation, but they can telework until released from care, can their EPSL request be denied?**

Yes. Despite having a qualifying condition, if an employee can either work or telework and perform their job duties, the employee will not be eligible for either EPSL or EFMLA.

**49. If two siblings work for the county, can both use EPSL benefits to care for a parent, or will they have to share?**

In order to be eligible for EPSL, each sibling would have to be unable to work or telework due to their responsibilities of caring for their parent. Therefore, the siblings could not use EPSL, to care for a parent who has been advised to self-quarantine due to COVID-19, during the same time. However, the siblings would not have to share their EPSL benefits.

For example, co-care providers who both work for the County, may each request 4 hours of EPSL benefits for May 20 through May 31, 2020, in order to care for an individual with whom they have an established relationship that expects such care due to a qualifying COVID-19 reason, as long as they are providing care to that individual in shifts throughout the day. However, the co-care providers could not both request EPSL in order to provide care for that individual at the same time.

## **Expanded Family and Medical Leave Act (EFMLA)**

**50. Can employees receive donated leave similar to FML benefits?**

No. Donated leave is only available for employees who meet the eligibility requirements and who have been approved for regular FMLA and/or FML benefits.

**51. If they qualify, would an employee's EFMLA run concurrent with FMLA?**

No. Employees are only eligible to receive either regular FML/FMLA benefits or EFMLA benefits for a specific timeframe, but not both. Therefore, timecard adjustments should be made if it is later discovered that the employee was eligible for EFMLA benefits in accordance with the Act. In addition, any time for which an employee is approved for EFMLA for childcare purposes would be deducted from that employee's maximum benefit eligibility balance for general family and medical leave purposes.

However, an employee may run EPSL concurrently with EFMLA during the initial two-week unpaid period of EFMLA in order to receive a paid benefit at two-thirds (2/3) of their salary.

**52. Some employers are requiring employees to submit a special justification specifying the need to provide care when the child is over the age of 14, will that be required?**

No. Currently, the County is not making a distinction between minor children under the age of 18 and minor children over the age of 14.

**53. If an employee is in the initial unpaid two-week EFMLA period or they use EFMLA and are only receiving two-thirds (2/3) of their salary, how will this effective their payroll deductions? Does the County pay their medical with the understanding that they pay it back later?**

The same health care coverage policy stated in the family and medical leave section of Personnel Procedure 284 applies for EFMLA purposes. If any employee on EFMLA does not have enough paid salary in any given pay period to cover their healthcare benefit premium deductions, they should contact the Benefits Division of OHRM for guidance and assistance.

**54. Once an employee exhausts their EFMLA benefits, would the employee still be entitled to their full number of weeks under FMLA? *UPDATED***

It depends. An employee may take a total of 12 weeks of leave during a 12-month period under FMLA, including EFMLA. If employees take some, but not all 12, weeks under EFMLA by March 31, 2021, the employee may take the remaining portion of FMLA leave for qualifying reasons, as long as the total time taken does not exceed 12 weeks in the 12-month period. Please note that EFMLA is only available until March 31, 2021; after that, an employee may only take FMLA leave.

**For example:** If an employee takes four (4) weeks of EFMLA leave in April 2020 to care for a child whose school is closed due to a COVID-19 related reason, these 4 weeks count against the entitlement to 12 weeks of FMLA leave in a 12-month period. Using this example, an employee would have 8 weeks of FMLA leave remaining in the 12-month period. Likewise, if an employee is also eligible for FML benefits and takes 4 weeks of EFMLA leave in April 2020 to care for a child whose school is closed due to a COVID-19 related reason, these 4 weeks count against the entitlement to 15 weeks of FML leave in a 12-month period. Using this example, an employee would have 11 weeks of FML leave remaining in the 12-month period.

However, an employee is entitled to EPSL regardless of how much leave is taken under FMLA. EPSL is not a form of FMLA leave and therefore does not count toward the 12 weeks in the 12-month period cap, unless taken concurrently with the first two (2) weeks of EFMLA (which may otherwise be unpaid), then those two weeks do count towards the 12 weeks in the 12-month period.

**55. What if my child's daycare is open, but only open to essential employees determined by the state and the County is still under an active stay-at-home or safe-at-home orders... Can I still qualify?**

If you are unable to work or telework, even though the County has work for you, because your lack of childcare due to COVID-19 prevents you from being able to perform that work at a normal worksite or by means of telework, then you may be eligible for EFMLA and/or EPSL benefits.

**56. What if my childcare/school is closed but I can telework, will I have to use my own leave?**

If you are able to telework and can perform your job duties, you will not qualify for either the EFMLA or EPSL benefit provided under the FFCRA. If you wish to be absent from work in this situation, you will need to submit a regular County leave request through your agency's normal leave request process and if approved, use an applicable County pay code.

**57. Since EFMLA requests are not medically related, can the EFMLA determinations be made at the Department level similar to EPSL?**

Yes. Upon further consideration, since the only qualifying condition for EFMLA benefits is for childcare purposes, which is not medically-related, OHRM has decided that both EPSL and EFMLA requests should be evaluated, approved, and tracked at the agency level.