BASIC QUESTIONS

1. When will the new leave benefits, which includes the FFCRA’s Emergency Paid Sick Leave (EPSL) and the Emergency Family and Medical Leave Expansion Act (FMLA+) as well as Auburn University’s Emergency COVID-19 Administrative Leave (ECAL) begin at Auburn University?

All 3 new leave benefits will begin on May 10, 2020.

2. Which employees are eligible for Emergency Paid Sick Leave (EPSL), Expanded Family and Medical Leave (FMLA+) and Emergency COVID-19 Administrative Leave (ECAL)?

All employees, including non-benefits eligible and student employees are eligible for up to two weeks of Emergency Paid Sick Leave (EPSL) if they are unable to work either on campus or remotely because they:

1. are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. have been advised by a health care provider to self-quarantine related to COVID-19;
3. are experiencing COVID-19 symptoms and are seeking a medical diagnosis;
4. are caring for an individual subject to a quarantine or isolation order as described in (1), or has been advised to self-isolate as described in (2);
5. are unable to work their scheduled weekly hours either on campus or remotely because they need to care for their child(ren) whose school or place of care is closed, or whose child care provider is unavailable due to COVID-19 related reasons; or
6. are experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services

Employees, including non-benefits eligible and student employees, who have been employed for at least 30 calendar days, may be eligible for up to 12 weeks of Expanded Family and Medical Leave (FMLA+) due to qualifying reason #5 above, if they are unable to work either on campus or remotely because they need to care for their child(ren) whose school or place of care is closed, or whose child care provider is unavailable due to COVID-19 related reasons. The first two weeks of FMLA+ are unpaid, but an employee may choose to use their own accrued vacation leave or apply the 2 weeks of EPSL to ensure continuity of pay. Then weeks 3-12 will be paid as FMLA+ pay at the employee’s normal compensation rate.

Employees, including non-benefits eligible and student employees who have been employed for at least 30 calendar days, may be eligible for Auburn University’s Emergency COVID-19 Administrative Leave (ECAL) for qualifying reasons 1-4 and 6 above. ECAL may only be used when an employee has exhausted his/her EPSL and is paid at 100 percent of the employee’s normal compensation rate. ECAL will be available through June 30.

3. How long will these new leave benefits be available?

- As required by law, access to EPSL and FMLA+ will continue through December 31, 2020.
• ECAL is a University provided benefit, and will be offered through June 30, 2020. Decisions regarding post June 30 will be shared later.
• EPSL, FMLA+ and ECAL will all be paid at 100 percent of compensation through June 30, 2020. Decisions about whether Auburn continues pay at 100 percent compensation, or if we will follow federal guidelines regarding limits and caps on pay, will be shared later.

4. Are temporary and student employees, including federal work-study students, eligible for FFCRA leave?

Yes, generally speaking FFCRA leave is available to an individual who is actively employed with work available and meets the qualification requirements of the new law. Federal work-study students are subject to the guidance of the Department of Education regarding financial aid payments during the COVID-19 pandemic.

5. Are nine-month faculty eligible for FFCRA leave?

Nine-month faculty who have a summer appointment are eligible for FFCRA leave (EPSL, FMLA+ and ECAL) being offered through June 30. Nine-month faculty without summer appointments will be eligible for FFCRA leave (EPSL and FMLA+) upon returning to active pay status in the fall semester.

6. How do I know whether I have “been employed for at least 30 calendar days by Auburn University” for purposes of expanded family and medical leave?

- You are considered to have been employed by Auburn University for at least 30 calendar days if you have been on payroll for the 30 calendar days immediately prior to the day your leave would begin.
- For example, if you wanted to take leave on April 1, 2020, you would need to have been on the payroll as of March 2, 2020.

7. Who is a son or daughter under FFCRA?

- Under the FFCRA, 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. For additional information about in loco parentis, see Fact Sheet #28B: Family and Medical Leave Act (FMLA) leave for birth, placement, bonding or to care for a child with a serious health condition on the basis of an “in loco parentis” relationship.
- In light of Congressional direction to interpret definitions consistently, WHD clarifies that under the FFCRA a “son or daughter” is also 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. For additional information on requirements relating to an adult son or daughter, see Fact Sheet #28K and/or call the Department of Labor toll free information and help line available 8 am–5 pm, 1-866-4US-WAGE (1-866-487-9243).

8. I am a student employee and left school when classes shifted to online. Am I eligible for EPSL, FMLA+ or ECAL?

Not unless you would have been considered an active employee and scheduled to work during the time for which you are requesting EPSL, FMLA+ of ECAL.
9. What does it mean to be under self-quarantine on advice of a health care provider, as stated in Qualifying Reason 2?

Qualifying Reason 2 applies when a health care provider has advised the employee to self-quarantine because the employee has COVID-19, may have COVID-19, or is particularly vulnerable to COVID-19 and the employee is unable to work, including telework, as a result of being in self-quarantine.

10. What does it mean to be seeking medical diagnosis for COVID-19 symptoms, as stated in Qualifying Reason 3?

The “symptoms of COVID-19” for purposes of qualifying reason (3) are fever, dry cough, shortness of breath, or any other symptoms identified by the CDC (U.S. Centers for Disease Control and Prevention). “Seeking a medical diagnosis” means that the employee is “taking affirmative steps, such as making, waiting for, or attending the appointment for a test for COVID-19.”

11. What does it mean when it says unable to work their scheduled weekly hours either on campus or remotely because they need to care for their child(ren) whose school or place of care is closed, or whose child care provider is unavailable due to COVID-19 related reasons as stated in Qualifying Reason 5?

The Department of Labor’s Q&As emphasize that you may take EPSL or FMLA+ to care for your child only when you need to, and actually are, caring for your child if you are unable to work or telework as a result of providing care. Generally, you do not need to take such leave if a co-parent, co-guardian, or your usual child care provider is available to provide the care your child needs.

12. When am I eligible for paid sick leave based on a “substantially similar condition” specified by the U.S. Department of Health and Human Services as stated in Qualifying Reason 6?

The U.S. Department of Health and Human Services (HHS) has not yet identified any “substantially similar condition” that would allow an employee to take paid sick leave. If HHS does identify any such condition, the Department of Labor will issue guidance explaining when you may take paid sick leave on the basis of a “substantially similar condition.”

13. What documents do I need to give AU Human Resources to get EPSL, FMLA+ or ECAL?

To initiate your FFCRA leave of absence (for any of the six reasons noted above), you should notify your immediate supervisor as soon as possible and complete the COVID-19 Leave Request Form.

**LEAVE AND PAY**

1. What does it mean to be unable to work, including remote work for COVID-19 related reasons?

You are unable to work if your manager or supervisor has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of working remotely.
If you and your manager agree that you will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then you are able to work (paid normally) and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

2. If I am or become unable to work remotely due to one of the COVID-19 related reasons, am I entitled to EPSL, FMLA+ or ECAL?

If you are unable to perform the tasks currently assigned to you – including those implemented as part of a remote work agreement because of one of the qualifying reasons 1-6 above, then you are entitled to take up to 2 weeks of EPSL. Upon exhaustion of EPSL and for qualifying reasons 1-4 and 6, you may also take ECAL.

Similarly, if you are unable to perform those remote working tasks or work the required remote working hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take FMLA+. Of course, to the extent you are able to work remotely while caring for your child, EPSL nor FMLA+ are available.

3. Do I qualify for leave for a COVID-19 related reason even if I have already used some or all of my leave under the Family and Medical Leave Act (FMLA)?

If you are an eligible employee, you are entitled to EPSL under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA.

Your eligibility for FMLA+ depends on how much leave you have already taken during the 12-month rolling calendar period used for FMLA. You may take a total of 12 workweeks for FMLA or FMLA+ reasons during a 12-month period. If you have taken some, but not all, of the 12 workweeks of your leave under FMLA during the current 12-month period, you may take the remaining portion of leave available. If you have already taken 12 workweeks of FMLA leave during this 12-month period, you may not take additional FMLA+.

For example, assume you took two weeks of FMLA leave in January 2020 to undergo and recover from a surgical procedure. You therefore have 10 weeks of FMLA leave remaining. Because FMLA+ is a type of FMLA leave, you would be entitled to take up to 10 weeks of FMLA+, rather than 12 weeks. And any FMLA+ leave you take would count against your entitlement to preexisting FMLA leave.

4. May I take leave under the FMLA over the next 12 months if I used some or all of my expanded family and medical leave under the FMLA+?

It depends. You may take a total of 12 workweeks of leave during a 12-month rolling calendar period under the FMLA, including the FMLA+. If you take some, but not all, of the 12 workweeks of your FMLA+ leave by December 31, 2020, you may take the remaining portion of FMLA leave for a serious medical condition, as long as the total time taken does not exceed 12 workweeks in a rolling 12-month period. Please note that FMLA+ leave is available only until December 31, 2020; after that, you may only take FMLA leave.

For example, assume you take four weeks of FMLA+ leave in April 2020 to care for your child whose school is closed due to a COVID-19 related reason. These four weeks count against your entitlement of 12 weeks of FMLA leave in a rolling 12-month period. If you are eligible for regular FMLA leave and need to take such leave in August 2020 because you need surgery, you would be entitled to take up to the remaining eight weeks of FMLA leave.
However, you are entitled to emergency sick leave under the EPSL regardless of how much leave you have taken under the FMLA. Paid sick leave is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap. But please note that if you take EPSL concurrently with the first two weeks of FMLA+, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period.

5. May I take 80 hours of EPSL for my self-quarantine and then another amount of EPSL for another reason provided under the Emergency Paid Sick Leave Act?

No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of EPSL for any combination of qualifying reasons. However, the total number of hours for which you receive EPSL is capped at 80 hours under the Emergency Paid Sick Leave Act.

6. May I take paid sick leave or expanded family and medical leave if I am receiving OJI or temporary disability benefits/salary continuation through my employer’s plan?

In general, no, unless you were able to return to light duty before taking leave. If you receive OJI or salary continuation benefits because you are unable to work, you may not take paid sick leave or expanded family and medical leave. However, if you were able to return to regular or light duty and a qualifying reason prevents you from working, you may take paid sick leave or expanded family and medical leave, as the situation warrants.

7. Do hours paid for EPSL, FMLA+ and ECAL count as hours worked for purposes of overtime calculations?

No. Only hours worked will be counted towards the 40 hours in a workweek for purposes of overtime calculations.

8. Will I receive shift differential pay for EPSL, FMLA+ and ECAL?

Yes. An employee’s regular rate of pay will include shift differential pay.

9. Is all leave under the FMLA now paid leave?

No. The only type of family and medical leave that is paid leave (through EPSL and FMLA+) is FMLA+.

10. If I elect to take EPSL, FMLA+ or ECAL, will Auburn continue my health coverage?

Yes. You will be able to continued group health coverage, including any family coverage in which you are enrolled.
11. When calculating pay due to employees, will required overtime hours be included?

- The FMLA+ requires that the employee is paid for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week. However, the total number of hours paid under the EPSL is capped at 80.
- For example, an employee who is scheduled to work 50 hours a week may take 50 hours of emergency sick leave in the first week and 30 hours of emergency sick leave in the second week.
- Please note that pay does not need to include a premium for overtime hours under either the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act.

12. How will Auburn count hours worked by a part-time employee for purposes of EPSL, FMLA+ or ECAL?

- A part-time employee is entitled to leave for the average number of work hours in a two-week period.
- Part-time employee leave hours will be calculated based on the number of hours the employee is normally scheduled to work based on their assigned schedule in workforce (for non-exempt hourly employees) or based on the assigned FTE (for exempt employees).
- For example, a 1.0 FTE employee would be eligible for up to 80 hours of EPSL and an additional 10 weeks at 40 hours per week of FMLA+ while a .5 FTE employee (or an employee with a 20-hour standard work schedule in workforce) would be eligible for up to 40 hours of EPSL and an additional 10 weeks at 20 hours per week of FMLA+.
- If the normal hours scheduled are unknown or varies, we will use a six-month average to calculate the average daily hours. A part-time employee may take EPSL for this number of hours per day for up to a two-week period; and may take FMLA+ for the same number of hours per day up to ten weeks after that.
- If this calculation cannot be made because you have not been employed for at least six months, we will use the number of hours that you and your supervisor agreed that you would work upon hiring. If there is no such agreement, we will calculate the appropriate number of hours of leave based on the average hours per day you were scheduled to work over the entire term of your employment.
- Please note that if seasonal employees are not scheduled to work, for example, because it is the off-season, then you do not have to provide EPSL, FMLA+ or ECAL.

13. If I take emergency paid sick leave under the EPSL, does that count against my accrued leave?

No. EPSL is in addition to other leave provided under Auburn’s existing policy.

14. May I use my accrued personal or sick leave instead of using leave under the FFCRA?

Yes. If you are taking EPSL, you may substitute any accrued vacation leave, sick leave, or comp time, you have accrued. Please note, however, accrued sick time may not be used for childcare needs due to COVID-19 related closures of your child(ren)’s school, daycare, or childcare provider.

15. May I take my EPSL, FMLA+ or ECAL intermittently?

It depends on why you are taking the leave, and if you are working on campus or remotely.
Unless you are working remotely, it cannot be taken intermittently if the leave is being taken because:

- You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- You are 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
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless you are working remotely, once you begin taking emergency sick leave for one or more of these qualifying reasons, you must continue to take emergency sick leave each day until you either (1) use the full amount of emergency sick leave or (2) no longer have a qualifying reason for taking emergency 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 emergency sick leave as necessary to keep you from spreading the virus to others.

In contrast, if you and your manager agree, you may take emergency sick leave intermittently if you are taking emergency sick leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if your child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you may take emergency sick leave on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite on Tuesdays and Thursdays.

If you are working remotely, EPSL, FMLA+ and ECAL may be used intermittently.

16. My question has not been answered here. Where can I find more information?

Employees are encouraged to visit https://www.dol.gov/agencies/whd/pandemic/ffhra-questions or email univhr@auburn.edu.