

## **FREQUENTLY ASKED QUESTIONS REGARDING THE CITY OF BOSTON POLICY ON THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

Please be advised that the City will change or update these FAQs as necessary to address questions frequently asked by employees that are not already addressed below and as the Department of Labor issues additional or updated guidance or regulations related to the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act that are part of the Families First Coronavirus Response Act.

Please note these FAQs are intended to be informative in nature. The City's Policy on the Families First Coronavirus Response Act and application and interpretation of that Policy govern. If the information in these FAQs in any way conflicts with the language in the City of Boston's Policy or the City's interpretation of that Policy, the Policy itself governs and the City's interpretation of that language supersedes the information in these FAQs.

### **I. General Questions**

**When are the Emergency Sick Paid Leave Act ("EPSLA") and the Emergency Family and Medical Leave Expansion Act ("EFMLEA") in effect?**

They take effect on April 1, 2020 and expire on December 31, 2020.

**How do I apply for EPSLA leave?**

Please fill out the [EPSLA Leave Request Form](#) and submit it along with any required documentation to the Office of Human Resources ("OHR") at [Covidleave@boston.gov](mailto:Covidleave@boston.gov) for review and approval.

**How do I apply for EFMLEA leave?**

Please fill out the [EFMLEA Leave Request Form](#) and submit it along with any required documentation to OHR at [Covidleave@boston.gov](mailto:Covidleave@boston.gov) for review and approval.

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking FMLA leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of EPSLA because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to provide medical certifications under the FMLA as requested.

**What documentation do I have to submit to show that my child's school or place of care is closed or my child's child care provider is unavailable?**

At this time, all schools in Massachusetts are closed through at least May 4, 2020 so you do not have to provide any documentation at this time. As the situation evolves, if some schools or places of care are open or some care providers are available, the City may ask you to provide documentation establishing that your child's school or place of care is closed or your child's care provider is unavailable because of COVID-19 concerns.

**If I elect to take EPSLA or EFMLEA, will the City of Boston continue my health coverage?**

If you are enrolled in group health coverage through the City of Boston, you are entitled to continued group health coverage during your expanded family and medical leave on the same terms as if you continued to work. Similarly, if you are enrolled in family coverage, you may maintain coverage during your expanded family and medical leave. You must continue to make any normal contributions to the cost of your health coverage. The City will deduct these costs from your payment for your paid leave. If

your pay during your leave is insufficient to cover the cost of your insurance coverage, you must pay the Office of Human Resources, Health Benefits and Insurance Division (“HBI”) directly for your health insurance premiums to avoid cancellation of your insurance benefits. You will receive a monthly billing statement for each month that your pay is insufficient to cover the cost of the insurance for as long as you remain eligible for benefits. Please ensure that you make the check or money order payable to the “City of Boston.”

HBI reserves the right to cancel your coverage for non-payment of premiums. If your payment is more than 30 days overdue, your coverage will be canceled for non-payment of premium retroactive to your paid through the date of coverage. You will be responsible for any medical claims incurred after the termination date of coverage. If you wish to cancel your coverage voluntarily, please notify HBI in writing and provide proof of coverage elsewhere. If you voluntarily cancel your coverage or fail to pay the owed premiums, you will not be able to re-enroll in a plan until the next annual enrollment period or unless you experience a qualifying event. Returning to work from a Leave of Absence is not a qualifying event to re-enroll in a health plan. For more information please contact HBI at (617) 635-4570 or [hbi@boston.gov](mailto:hbi@boston.gov).

**If I remain on leave beyond the maximum period of EFMLEA, may I keep my health coverage?**

If you do not return to work at the end of your expanded family and medical leave, you must request and be granted an approved leave of absence pursuant to the City of Boston’s leave policies. If you are granted a leave of absence, you may be eligible to keep your health coverage on the same terms (including contribution rates).

If you are on an unpaid leave of absence or if you have not had regular health insurance deductions taken because you have not received a continuous paycheck, you must pay the Office of Human Resources, Health Benefits and Insurance Division (“HBI”) directly for your health insurance premiums to avoid cancellation of your insurance benefits. You will receive a monthly billing statement for your health insurance premiums. Each month, you will continue to receive a monthly billing statement for as long as you remain eligible for benefits. Please ensure that you make the check or money order payable to the “City of Boston.”

HBI reserves the right to cancel your coverage for non-payment of premiums. If your payment is more than 30 days overdue, your coverage will be canceled for non-payment of premium retroactive to your paid through the date of coverage. You will be responsible for any medical claims incurred after the termination date of coverage. If you wish to cancel your coverage voluntarily, please notify HBI in writing and provide proof of coverage elsewhere. If you voluntarily cancel your coverage or fail to pay the owed premiums, you will not be able to re-enroll in a plan until the next annual enrollment period or unless you experience a qualifying event. Returning to work from a Leave of Absence is not a qualifying event to re-enroll in a health plan. For more information please contact HBI at (617) 635-4570 or [hbi@boston.gov](mailto:hbi@boston.gov).

**Do I have a right to return to work if I am taking EPSLA or EFMLEA leave?**

In most instances, you are entitled to be restored to the same or an equivalent position when you return from EPSLA or EFMLEA leave. The City of Boston will not fire, discipline, or otherwise discriminate against you because you take EPSLA or EFMLEA leave. Nor will the City of Boston fire, discipline, or otherwise discriminate against you because you filed any type of complaint or proceeding relating to EPSLA or EFMLEA leave, or have or intend to testify in any such proceeding. However, if while you are

out on **EPSLA** or **EFMLEA** or another form of leave, or if you are working, and your position is eliminated, you may not be permitted to return to work and you may no longer be eligible for **EPSLA** or **EFMLEA**.

**Can I use **EPSLA** and **EFMLEA** leave intermittently?**

No. You may not use **EPSLA** or **EFMLEA** intermittently.

**May I take two weeks of **EPSLA** leave for my self-quarantine and then another two weeks of **EPSLA** sick leave for another qualifying reason under the **EPSLA**?**

No. You may take up to two weeks (capped at your regular scheduled hours over a two weeks period) of **EPSLA** for any combination of qualifying reasons. If you require additional leave, you must use your existing leave balances in accordance with the City of Boston Families First Coronavirus Response Act Policy, the City of Boston's Attendance Policy as modified, and the City of Boston's Medical Leave Policy, as well as any other applicable policies and procedures and collective bargaining agreements.

**Am I retroactively entitled to **EPSLA** or **EFMLEA** if I took leave for a reason identified in the **EPSLA** or **EFMLEA** prior to the Act going into effect?**

No. **EPSLA** and **EFMLEA** imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

## **II. QUESTIONS REGARDING QUALIFYING CONDITIONS FOR LEAVE AND ELIGIBILITY**

**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 paid sick leave under the **EPSLA** regardless of whether you have used FMLA leave or how much FMLA leave you have taken.

**EFMLEA** is available to eligible employees who have worked with the City for more than 30 days, as opposed to twelve months.

Your eligibility for **EFMLEA** leave will also depend on how much FMLA leave you have already taken during the preceding 12-month period. You may take a total of 12 workweeks of leave for FMLA or **EFMLEA** reasons during a 12-month period. If you have taken some, but not all, 12 workweeks of your leave under FMLA, you may take the remaining portion of leave available as **EFMLEA**. If you have already taken 12 workweeks of FMLA leave during the preceding 12-month period, you may not take additional **EFMLEA**.

For example, if you took two weeks of FMLA leave in January 2020 to undergo and recover from a surgical procedure, you have 10 weeks of FMLA leave remaining. Because **EFMLEA** leave is a type of FMLA leave, you would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any **EFMLEA** leave you take will count against your entitlement to preexisting FMLA leave.

If the City has designated you as either a Health Care Provider or Emergency Responder, you are not an eligible employee for either **EPSLA** or **EFMLEA** leave benefits.

**May I use EPSLA and EFMLEA leave together for any COVID-19 related reasons?**

No. The EFMLEA applies **only** when you are on leave to care for your child whose school or place of care is closed, or whose childcare provider is unavailable, due to COVID-19 related reasons. However, you can take EPSLA leave for several other reasons such as: 1) if you are subject to a Federal, State or local quarantine or isolation order related to COVID-19; 2) you have been advised by a health care provider to self-quarantine due to concerns related to COVID-19; 3) you are experiencing symptoms of COVID-19 and seeking a medical diagnosis; 4) you are caring for an individual who is subject to an order as described 1 or 2 above; 5) you are caring for your child because the child’s school or place of care has been closed, or the child’s childcare provider is unavailable, due to COVID-19 precautions; or 6) you are experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services. Please see below section on EPSLA for more details.

**Who is my son or daughter for purposes of the EPSLA and EFMLEA?**

Your minor child and your 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—meaning you have the day to day responsibilities to care for the child or you financially support the child.

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.

If you have questions regarding your eligibility, please reach out to Michael Kerr in OHR at [Covidleave@boston.gov](mailto:Covidleave@boston.gov) or (617)-635-3370.

**How do I know whether I have “been employed for at least 30 calendar days by the City of Boston” for purposes of EFMLEA?**

You have been employed by the City of Boston for at least 30 calendar days if you were on the City’s payroll for the 30 calendar days immediately before the day your leave will begin. For example, if you want to take leave on May 1, 2020, you must have been on the City of Boston’s payroll as of April 2, 2020. If you have been working for the City of Boston as a temporary employee, and the City of Boston has subsequently hired you on a full-time basis, you may count any days you previously worked as a temporary employee toward this 30-day eligibility period.

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

You are unable to work for a COVID-19 related reason if have a COVID-19 qualifying reason set forth in the FFCRA that prevents you from being able to complete the work your Department has for you either at your regular worksite or remotely.

If you and your Department 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 and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

**If I am or become unable to telework, am I entitled to EPSLA or EFMLEA leave?**

If the City has not designated you as an Emergency Responder and your Department allows you to telework—for example, allows you to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or

work the required hours because of one of the qualifying reasons for paid sick leave, then you may be eligible to take **EPSLA**.

Similarly, if you are unable to perform those teleworking tasks or work the required teleworking 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 may be entitled to **EFMLEA** leave. Of course, to the extent you are able to telework and satisfactorily perform the functions of your job while caring for your child, **EPSLA** and **EFMLEA** are not available.

**For purposes of **EPSLA** leave, what does “caring for an individual” mean?**

An “individual” means an immediate family member, a person who regularly resides in your home, or a similar person with whom you have a relationship that creates an expectation that you will care for the person if the person were quarantined or self-quarantined. You may take **EPSLA** leave to care for such an individual if the individual depends on you to take care of him or her **and** is either: (1) subject to a Quarantine or Isolation Order; or (2) has been advised to self-quarantine by a health care provider because of a belief that— (A) the individual has COVID-19; (B) the individual may have COVID-19 due to known exposure or symptoms; or (C) the individual is particularly vulnerable to COVID-19.

**The **EPSLA** provides for leave when an “employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.” What does this mean?**

Currently, this condition does not exist. The U.S. Department of Health and Human Services has not yet identified any “substantially similar conditions” that would satisfy qualifying reason (6) for FFCRA sick leave. If such a condition is identified, U.S. Department of Labor (DOL) is expected to issue additional guidance about it. If the DOL issues additional guidance on the matter, the City will update its policy and provide additional information.

**III. QUESTIONS REGARDING OTHER FORMS OF PAID LEAVE**

**If I take paid sick leave under the **EPSLA**, does that count against my other types of COB paid leave balances?**

**EPSLA** leave is in addition to your current leave balances.

**If I take leave under the **EFMLEA**, does it run concurrently with my other types of City of Boston paid leave balances?**

The first two weeks of **EFMLEA** are unpaid. However, you can elect to use any available **EPSLA**, or any available appropriate accrued leave (including vacation, personal leave, or comp time but excluding sick leave), to receive payment during that time.

After week two, any of your appropriate accrued leave (including vacation, personal leave, or comp time but excluding sick leave) will run concurrently with your **EFMLEA** until you exhaust your appropriate accrued leave (including vacation, personal leave, or comp time but excluding sick leave).

You will receive your regular pay during any time in which your available appropriate accrued leave (including vacation, personal leave, or comp time but excluding sick leave) runs concurrently with **EFMLEA**. If you exhaust your available appropriate accrued leave (including vacation, personal leave, or comp time but excluding sick leave) before you exhaust your **EFMLEA leave**, the City will pay you 2/3 of your regular rate of pay up to \$200/day up to a maximum of \$10,000, until you exhaust your **EFMLEA** leave or you no longer need the leave.

Please note that the amount of **EFMLEA** available for you to use will depend on how much FMLA leave you have already taken during the preceding 12-month period. You may take a total of 12 workweeks of leave for FMLA or **EFMLEA** reasons during a 12-month period. If you have taken some, but not all, 12 workweeks of your leave under the FMLA, you may take the remaining portion of leave available as **EFMLEA**. If you have already taken 12 workweeks of FMLA leave during the preceding 12-month period, you may not take additional **EFMLEA**.

**If I take leave under the **EPSLA**, does it run concurrently with my other types of City of Boston paid leave balances?**

The City will not run any balances concurrent with your **EPSLA** leave. Nor may you request to supplement the pay you receive for **EPSLA** leave by using your accrued leave balances. However, you may elect to use your other paid balances before using **EPSLA**. When you use **EPSLA** for reasons 1, 2, or 3 in the City of Boston Families First Coronavirus Response Act Policy (for your own illness or quarantine), you will receive your regular pay. If you use your **EPSLA** for purposes 4, 5, or 6 in the Policy (to care for others), you will receive 2/3 of your regular rate of pay for the number of hours that you would otherwise normally be scheduled to work (capped at 80 hours) or the State minimum wage, capped at \$200 per day and a total of \$2,000 for the two week period..

**Can I use my sick leave or other paid balances to cover the two weeks of unpaid **EFMLEA** leave?**

Yes. You may choose to use an appropriate City of Boston paid leave (including vacation, personal leave, or comp time but excluding sick leave) to cover the initial unpaid 10 days of **EFMLEA** leave. You may also use **EPSLA** leave to cover the initial unpaid 10 days of **EFMLEA**. If you do elect to use **EPSLA**, you will receive 2/3 of your regular rate of pay for the number of hours that you would otherwise normally be scheduled to work (capped at 80 hours) or the State minimum wage, capped at \$200 per day and a total of \$2,000 for the two week period.

**If I am not a designated exempted emergency responder and I am home with my child because his or her school or place of care is closed, or child care provider is unavailable, do I get **EPSLA** leave, **EFMLEA** leave, or both—how do they interact?**

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both **EPSLA** and **EFMLEA** leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The **EPSLA** provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of **EFMLEA** leave, which are otherwise unpaid under the **EFMLEA** unless you elect to use appropriate accrued leave (including vacation, personal leave, or comp time but excluding sick leave). After the first ten workdays, any of your appropriate accrued leave (including vacation, personal leave, or comp time but excluding sick leave) will run concurrently with your **EFMLEA** leave until you exhaust your appropriate accrued leave (including vacation, personal leave, or comp time but excluding sick leave).

You will receive your regular pay during any time in which your available appropriate accrued leave (including vacation, personal leave, or comp time but excluding sick leave) runs concurrently with **EFMLEA**. If you exhaust your available appropriate accrued leave (including vacation, personal leave, or comp time but excluding sick leave) before you exhaust your **EFMLEA** leave, the City will pay you 2/3 of your regular rate of pay for the number of hours that you would otherwise normally be scheduled to work or the state minimum wage, capped at \$200 per day and up to a maximum of \$10,000 until you exhaust your **EFMLEA** leave or you no longer need the leave.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the **EFMLEA** for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons and you are unable to work or telework as explained above.

**My regular wages total more than \$200 per day and I do not want to see a reduction in my pay. Can I elect to use my own leave balances rather than use **EPSLA**?**

Yes. You may elect to use any appropriate form of paid leave before using **EPSLA** leave. However, you cannot supplement the **EPSLA** leave with other existing balances.

**Is all leave under the FMLA now paid leave?**

No - only **EFMLEA** leave that exceeds ten days to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

#### **IV. QUESTIONS RELATED TO EMERGENCY RESPONDERS**

**Am I an emergency responder who is exempted from coverage under the **EPSLA** and **EFMLEA**?**

The City will email you a Notification of Designation as a Health Care Provider or Emergency Responder if the City so designates you. If you are designated as a health care provider or emergency responder, you will be exempted from coverage under the **EPSLA** and **EFMLEA** but you will be covered by the City's Policy on Coronavirus Supplemental Paid Sick Leave. However, all police officers regardless of rank or assignment, and all firefighters regardless of rank or assignment are exempted from the FFCRA as Emergency Responders whether or not they receive an email notifying them of this designation. As this fluid situation evolves, the City may, based on operational needs, designate additional positions as emergency responder positions.

**If I am an emergency responder who is exempted from coverage under the **EPSLA** and **EFMLEA** , how long will that last?**

It will last until the **EPSLA** and **EFMLEA** expires on December 31, 2020 or until the City emails you a Revocation of **EPSLA** and **EFMLEA** Exemption Notification Form.

**If the City has not designated my position as an exempted emergency responder as of now, can the City change that designation at some point in the future?**

Yes. As this fluid situation evolves, the City may, based on existing conditions and operational needs, designate additional positions as emergency responder positions exempted from coverage under the **EPSLA** and **EFMLEA**.

**How did the City decide which employees to designate as Health Care Providers and Emergency Responders?**

The City followed the Department of Labor's definitions of health care providers and emergency responders. The Department of Labor has defined:

- **Health Care Providers** as "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.”

- **Emergency Responders** as “an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.”

**V. MISCELLANEOUS QUESTIONS**

**Will I be reimbursed or compensated for any unused **EFMLA** or **EPSLA** leave if my employment with the City of Boston ends?**

No.

**Can I carry over unused **EFMLA** or **EPSLA** leave at the end of the year?**

No. **EFMLA** and **EPSLA** leave expire on December 31, 2020 and cannot be carried over to 2021.

**Will leave under the City’s Policy on the Families First Coronavirus Response Act count towards the ten (10) instances under the City of Boston’s Attendance Policy?**

No. Leave taken pursuant to The City’s Policy on the Families First Coronavirus Response Act will not count as an instance for purposes of the City of Boston’s Attendance Policy.

If you have additional questions regarding these benefits or your eligibility, please contact Michael Kerr at [Covidleave@boston.gov](mailto:Covidleave@boston.gov) or (617)-635-3370.