



To: Local Leaders and OEA Staff
From: Adam Arms, OEA General Counsel
Date: April 22, 2020
Subject: FFCRA leave and OFLA leave

This memorandum briefly discusses the recent change in Oregon's medical leave law, compares it to the new federal FFCRA leave laws, and addresses a few of the latest questions related to FFCRA leave.

The Recent Oregon Family Leave Act (OFLA) Change

A temporary (effective 3/18/20 – 9/13/20) OFLA rule modified OAR 839-009-0230 to add to the existing reasons for which one may take OFLA leave: “. . . absence to care for an employee's child whose school or place of care has been closed in conjunction with a statewide public health emergency declared by a public health official.” However, unlike the FFCRA's emergency sick leave and expanded FMLA leave (highlighted below), OFLA does *not offer any paid leave* to employees. Employees can, though, substitute their accrued paid leave for unpaid OFLA leave.

Families First Coronavirus Response Act (FFCRA) Emergency Sick Leave & Expanded FMLA

The FFCRA provides for two kinds of *paid* leave to certain employees:

- **Two weeks of emergency sick leave** compensated at 100% of the employee's pay rate, up to a cap of \$511 daily and \$5,110 total, for the employee's own quarantine or to seek a diagnosis or preventative care for coronavirus, or at 2/3 pay with a cap of \$200 daily and \$2,000 total to care for a family member for such purposes or to care for a child whose school has closed or whose child care provider is unavailable due to the coronavirus (the 80 hours of emergency sick leave is *in addition* to any leave the employee already has); and
- **Up to an additional 10 weeks of expanded family and medical leave** compensated at 2/3 of the employee's regular rate of pay, based on the number of hours the employee would otherwise normally be scheduled to work, capped at \$200 per day and \$10,000 total, to care for their child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons.

Under the FFCRA, one is entitled to 2/3 pay (with a cap) for leave taken to care for a child whose school has closed or whose childcare provider is unavailable due to the Coronavirus. Is there a way to receive 100% pay?

Assuming eligibility and that the employee has accrued paid leave (sick, personal, etc.), an employee could take the 2/3 paid FFCRA leave and supplement it with their own accrued paid leave to reach 100% of their pay until the accrued leave runs out. That way, an employee would only use 1/3 day of their accrued leave for each day of leave for childcare reasons or to care for someone else. Alternatively, some employers may be willing to supplement the 2/3 pay and contribute an additional 1/3 pay to make the employee whole. Local Associations should consider bargaining some form of supplement arrangement into MOUs.

Can one can take FFCRA leave on a reduced or intermittent schedule?

YES – but only if the employer agrees. This is a mandatory subject of bargaining, so Local Associations should consider bargaining this into an MOU if possible.

I recently had a baby and I'm on FMLA leave to care for my newborn child. Can I now convert the rest of this previously-scheduled 3-month parental leave to FFCRA leave?

Possibly. Paid leave for childcare purposes under the FFCRA requires the child's school to be closed or child care provider to be unavailable due to COVID-19 – *and it also requires that the employee would have been able to work* but for the closed school or unavailability of the child care provider. If the employee's plan had been for the baby to go to a childcare provider, and that provider is no longer available due to COVID-19, thereby requiring the employee to provide childcare, the employee should qualify for the paid leave. That would be the case regardless of whether the childcare provider was a licensed provider, relative, or third-party in-home care provider. *However*, the employee is not eligible for paid FFCRA leave if the parental leave was taken in order for the employee to take care of the newborn themselves and the employee is currently not able to work for that reason.

In any event, it is likely that after expiration of the 3-month parental leave, if stay-at-home orders are still in place and childcare is unavailable, the employee could then get the FFCRA emergency paid sick leave.