

iNote - April 1, 2020

Important details on FFCRA temporary COVID-related leave

As we shared with you last week, the “Families First Coronavirus Response Act” (FFCRA) was signed into law on March 18, 2020. While Federal and State agencies continue to provide updated guidance and clarifications (the Department of Labor’s most updated guidance can be found at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>), we feel it is important to share key points of the FFCRA as they apply to Santee Cooper employees and provide administrative guidelines and expectations for employees who wish to utilize the leave provided by the FFCRA.

After reviewing the information below and on the attached flyer from Department of Labor, if you have any additional questions, please contact the HR Service Desk at 843-761-8000 ext. 8888 or HRServiceCenter@santecooper.com. The flyer is also available on the COVID-19 pages on iPort and www.santecooper.com/covid19.

The FFCRA provides two different paid leave types related to the 2019 novel coronavirus (COVID-19):

- ***Emergency Paid Sick Leave Act:*** Provides up to 80 hours of temporary, emergency paid sick leave (EPSL) to qualified employees for six qualifying reasons related to COVID-19, which are explained below. (Leave Type “FF – Families First” in Timesheets)
- ***Emergency Family and Medical Leave Expansion Act (EFMLA):*** Expands the Family and Medical Leave Act (FMLA) to provide a temporary category of leave available for use within the FMLA’s 12-week allotment, 10 additional weeks of which may be paid at a reduced rate. This is available to qualified employees who are unable to work or telework as a result of having to care for a dependent child due to a COVID-19 related closure of a school or place of care (or if childcare provider is unavailable). The definition of “dependent child” is one who is under the age of 18, or a child 18 years of age or older who is incapable of self-care because of a mental or physical disability. (Leave Type “EF – Expanded Family & Medical” in Timesheets)

Both paid leave provisions take effect April 1, 2020, and both expire Dec. 31, 2020. The FFCRA is not retroactive and cannot be used for leave taken prior to April 1, 2020. Leave provided under the FFCRA expires on December 31, 2020, regardless of use. Employees are not entitled to reimbursement for unused FFCRA leave upon termination, resignation, retirement or any other separation from employment at Santee Cooper.

- ***Can I use the leave provided under the FFCRA if I am teleworking?***

Telework is when Santee Cooper allows an employee to perform work while the employee is at home or a location other than the normal workplace. The leave provided by the FFCRA is only for employees who cannot work or telework as a result of qualified COVID-19 reasons as detailed below. Supervisors should continue to maximize opportunities for employees to telework.

- ***What does it mean to be available to work, including telework?***

Many employees can or will be able to complete all or some of their job responsibilities remotely via a telework arrangement. Each employee should understand that to facilitate a telework arrangement, he or she may be asked to take on different job responsibilities, which may be more compatible with remote work. In addition, unless alternative arrangements have been made, teleworking employees are expected to be available during their normal hours or to support critical operations. If an employee is unable to fulfill any work arrangement, he or she will need to qualify for, and take, the appropriate leave.

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave (EPSL) Act is a temporary form of leave which provides up to 80 hours of EPSL for qualifying reasons outlined below. Employees are eligible for EPSL from their first day of employment. This additional leave is designated as leave type “FF – Families First” in Timesheets.

- ***What are the qualifying reasons for EPSL?***

EPSL may be used if the employee is unable to work or telework because:

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 seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in reason 1 or has been advised as described in reason 2. Please note that the person being cared for does not have to be related to the employee for the employee to qualify for leave.
5. The employee is caring for a dependent son or daughter of such employee if the school or place of care of the son or daughter has been closed, or if the childcare provider of such son or daughter is unavailable, due to COVID–19 precautions.

6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

- ***Does Executive Order 2020-11 constitute a quarantine or isolation order?***

Yes, current guidance from the South Carolina Department of Administration provides that Governor McMaster's Executive Order requiring all non-essential state employees not report to work constitutes a "Federal, State, or local quarantine or isolation order related to COVID-19." Therefore, all non-essential employees who are unable to telework would qualify for this leave. Again, supervisors should continue to maximize telework opportunities for employees.

- ***Does a recommendation from a medical professional, including those associated with Santee Cooper's Occupational Health Department, to self-quarantine suffice for Reason #2 under the Qualifying Reasons for Leave Related to COVID-19?***

Yes.

- ***Are all Santee Cooper employees covered by EPSL?***

The FFCRA provides employers with the option to exclude emergency responders from both leave provisions under the FFCRA (EPSL and EFMLA). The current guidance defines "emergency responder" to include "public works personnel." While it is Santee Cooper's desire to extend the FFCRA temporary leave provisions to all employees who meet the qualifications, Santee Cooper reserves the right to exclude employees if necessary to meet critical staffing needs, ensure continuity of operations or provide safe and reliable power and water to our stakeholders.

- ***How many hours of EPSL can be taken for full-time employees?***

Full-time employees who qualify under the FFCRA are entitled to a maximum of 80 hours of EPSL (actual leave to which employee is entitled is calculated as outlined below). For those qualifying employees, EPSL will be provided according to an employee's regular work schedule, even if that is more than 40 hours in a week. However, the total number of EPSL hours available to each full-time employee is capped at 80 hours.

For example, an employee who regularly is scheduled to work 50 hours a week may take 50 hours of EPSL in the first week but only 30 hours of EPSL in the second week because the total number of EPSL hours is capped at 80 hours.

- ***Are part-time employees entitled to the same amount of EPSL leave?***

No. Part-time employees are entitled to EPSL for the number of hours equal to the number of hours worked, on average, over a two-week period.

- ***Is the EPSL paid at the employees' regular rate of pay?***

Under the FFCRA, the rate of pay varies based upon which qualifying reason triggers the EPSL. However, Santee Cooper will pay the 80 hours of EPSL qualifying reasons at 100%, i.e., the employee's regular rate of pay without regard to the per-day and aggregate caps. The EPSL can be taken concurrently with the first two weeks of EFMLA leave if the qualifying reason meets FFCRA guidelines; however any remaining weeks of paid leave taken under the EFMLA will be paid in accordance with FFCRA guidelines at two-thirds of the regular rate. (See Emergency Family Medical Leave Act Expansion section)

- ***Does the pay include a premium for overtime?***

No.

- ***Can EPSL be taken intermittently?***

Generally, yes. An employee may only take EPSL intermittently in less than full-day increments if teleworking or for qualifying reason #5 above. If not, EPSL must be taken in full-day increments. In all cases, EPSL hours shall not exceed the amount of hours an employee is regularly scheduled to work each week and shall not exceed 80 hours total.

- ***May an employee take 80 hours of EPSL for their self-quarantine and then another amount of EPSL for another qualified reason under the EPSLA?***

No. An employee may only take up to 80 (pro-rated for part-time employees) hours of EPSL for any combination of qualifying reasons.

- ***Does EPSL carry-over to next year?***

No. Leave may be used at any time between April 1, 2020 and December 31, 2020. Both types of leave under the FFCRA expire after December 31, 2020, regardless of use.

- ***What documentation is required from employees?***
 - Reasons 1-4: Employee must provide an email explanation of reason for leave to supervisor. Supporting documentation such as doctor's note (or other proof of visit) which states the employee or employee's spouse or dependent must self-quarantine is preferred.
 - Reason 5: Employee must provide an email explanation of reason for leave to supervisor. Supporting documentation including link or screenshot of school/daycare website, email, or letter from school/daycare with closure detail is preferred.

Supervisors should ensure appropriate documentation has been received and is maintained by the supervisor as a component of approving the respective employee's timesheet.

- ***Are employees required to use other accrued leave before using FFCRA leave?***

No, employees are not required to use other paid leave for qualified COVID-19 reasons before using paid leave under the FFCRA, although the employee may request to do so.

- ***Will the use of EPSL impact an employee's Corporate Goals Incentive (CGI) personal attendance goal payout eligibility?***

Yes, like any other sick leave taken by an employee, this will impact his or her payout eligibility for the personal attendance goal in the CGI program.

Emergency Family and Medical Leave Expansion Act (EFMLA)

The EFMLA amends and expands the Family and Medical Leave Act (FMLA), on a temporary basis, to provide qualifying employees a total of 12 weeks of leave only if the employee is unable to work or telework due to the need to care for the employee's dependent child if the child's school or place of care is closed or the child care provider is unavailable due to a COVID-19 related reasons. This additional leave is designated as leave type "EF – Expanded Family & Medical" in Timesheets and is allocated by HR once the employee is approved.

- ***Who is eligible to take EFMLA?***

Employees are eligible to take leave under the EFMLA Act if they have been employed at Santee Cooper for at least 30 calendar days as of the date the leave is requested. Unlike the other provisions of the FMLA, there are no hours-worked requirements for eligibility, and employees are not required to work the normal 12-month period as a prerequisite for leave taken pursuant to the EFMLA.

- ***Are all Santee Cooper employees covered by the EFMLA?***

The FFCRA provides employers with the option to exclude emergency responders from both leave provisions under the FFCRA. The current guidance defines “emergency responder” to include “public works personnel.” While it is Santee Cooper’s desire to extend the FFCRA temporary leave provisions to all employees who meet the qualifications, Santee Cooper reserves the right to exclude employees if necessary to meet critical staffing needs, ensure continuity of operations or provide safe and reliable power and water to our stakeholders.

- ***Is EFMLA leave paid or unpaid?***

The first 10 workdays of the 12 workweeks of leave provided under the EFMLA are unpaid, but in accordance with standard FMLA guidelines, employees may use any paid leave available (including EPSL) concurrently with EFMLA leave during this 10-day period. After the first 10 workdays, any qualified employee taking EFMLA leave will be paid at a reduced rate as outlined below. The employee will be paid the reduced rate for EFMLA (up to 10 weeks) for hours the employee would have been normally scheduled to work, even if that is more than 40 hours in a week.

- ***Is the EFMLA leave paid at the employees’ regular rate of pay?***

The paid leave provided under the EFMLA to qualified employees shall be calculated at two-thirds of an employee’s regular rate of pay and should be based on the number of hours the employee would otherwise be normally scheduled to work. Santee Cooper will pay this leave at two-thirds of an employee’s regular rate, without regard to the per day or aggregate caps.

- ***Does the pay include a premium for overtime?***

No.

- ***How is the available leave calculated for part-time employees?***

A part-time employee is entitled to leave for his or her average number of work hours worked per day in a two-week period.

- ***May employees use earned leave to supplement leave taken pursuant to the EFMLA that is paid at two-thirds of the employee’s rate?***

Yes, employees may use earned leave (vacation, sick, sick-family, flex) to supplement the leave taken pursuant to the EFMLA (which is paid at two-thirds of the rate) but only up to their regular salary rate.

- ***Can EFMLA leave be taken intermittently?***

Yes, but shall not exceed the amount of hours an employee is regularly scheduled to work each week and shall not exceed 12 weeks.

- ***What notice must be given by employees taking EFMLA leave?***

An employee is expected to provide Santee Cooper, both his or her supervisor and the HR Service Center, with as much notice as is practicable.

- ***How do employees apply for EFMLA?***

Employees should notify their supervisors of their need to apply for EFMLA and complete the request by going to iPort > Departments > Human Resources > HR Service Center > Under “What Can I Do Today”, Click on FMLA/Military/FFCRA. Employee will enter details regarding the name and location of the childcare provider/school and the preferred method of contact. The form will be submitted to the HR Service Center. Human Resources and Payroll will then allocate EF-Expanded Family & Medical Leave and provide guidance on supplemental leave usage. Employees will be expected to provide the appropriate supporting documentation for the EFMLA request. If you have additional questions, please contact the HR Service Center at 843-761-8000 ext 8888 or at HRServiceCenter@santeecooper.com.

- ***What documentation is required for an employee to take EFMLA?***

Examples of required supporting documentation can include a link or screenshot of school’s website, email, or letter from school with closure detail. If these documents are unavailable, you may complete “The Childcare Provider Documentation Form” located on the HR Service Center link on iPort.

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

No, only the last 10 weeks of leave available under the EFMLA is eligible for compensation.

- ***If I have already used FMLA in 2020, can I take the leave provided under the EFMLA?***

It depends. Any employee who has not exhausted the 12-week per calendar year allotment of FMLA leave may take leave under the EFMLA (if qualified), but the maximum amount of FMLA leave (including EFMLA) available is 12 weeks in a 12-month period (480 hours).

- ***May I collect unemployment insurance for the time in which I receive pay for EPSL or the paid portion of EFMLA leave?***

No.

- ***Do job restoration requirements apply to EFMLA leave?***

Yes.

- ***Will the use of EFMLA impact an employee's the Corporate Goals Incentive (CGI) personal attendance goal payout eligibility?***

Yes, like any sick leave taken by an employee, this will impact his or her payout eligibility for the personal attendance goal in the CGI program.