

Guidance Regarding COVID-19 Related Leaves and Job Protections April 13, 2020 – Issuance

Summary of COVID-19 Related Notices and Regulations Pertaining to Academic Personnel

- On March 16, 2020, President Napolitano issued an executive order whereby eligible employees would receive a *“one-time allotment of up to 128 hours of paid administrative leave,”* subject to specific enumerated conditions.¹
- On March 18, 2020, the Families First Coronavirus Response Act (FFCRA), which created two new emergency paid leave requirements – the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA), was signed into law by President Trump.²
- On April 2, 2020, President Napolitano and the ten Chancellors issued a job protections letter indicating that there would *“no COVID-19 related layoffs for all career employees through fiscal year ending on June 30, 2020.”*³

Summary of COVID-19 Related Paid Leaves

Below is a summary of the three COVID-19 related paid leave provisions potentially available to academic appointees. Appointees who are eligible for more than one of these leave options may apply for all entitlements they are eligible for and can choose which to take first. Regardless of whether academic appointees have exhausted their administrative and emergency paid leave options, they may use paid leave throughout the current Stay-at-Home timeframe by using any remaining personal time off or vacation. They may also use any remaining other sick leave balances provided for in the APM or applicable collective bargaining agreement for their COVID-19 related or family member’s COVID-19 related illness. More detailed guidance regarding the University’s obligations under the FFCRA can be found here:

<https://ucnet.universityofcalifornia.edu/news/2020/04/uc-leave-obligations-under-ffcra.pdf>.

¹ <https://ucnet.universityofcalifornia.edu/news/2020/03/coronavirus-update-expanded-leave-policies.html>.

² <https://www.dol.gov/agencies/whd/ffcra>.

³ <https://ucnet.universityofcalifornia.edu/news/2020/04/president-napolitano-and-the-10-uc-chancellors-provide-assurances-to-uc-employees-during-these-unprecedented-times.html>.

UC Expanded Paid Administrative Leave (PAL)	FFCRA Emergency Paid Sick Leave (EPSL)	FFCRA Expanded Family & Medical Leave (EFML)
128 hours or 16 days for FTE prorated for part-time appointees	80 hours for FTE or the two-week equivalent for part-time appointees	Up to 12 workweeks for any eligible appointee
March 1 – December 31, 2020	April 1 – December 31, 2020	April 1 – December 31, 2020
No prior service requirements	No prior service requirements	On payroll for 30 calendar days immediately prior to the leave
Must be taken in whole day increments but may be taken intermittently	Must be taken in two-week block	Must be taken in blocks of at minimum two-weeks
<p>Qualifying reason for use – unable to work or telework because of:</p> <ol style="list-style-type: none"> 1. Appointee’s own COVID-19 related illness or that of a family member⁴ 2. Appointee directed not to come to worksite for COVID-19 related reasons and/or worksite has COVID-19 related remote work program or is under shelter in place order <u>and</u> it is not operationally feasible for employee to work remotely 3. COVID-19 related school or daycare closure requires appointee to be at home with child/dependent <u>and</u> it is not operationally feasible for appointee to work remotely or in conjunction with childcare commitment <p>The use of PAL “shall not adversely affect the delivery of essential University services” which includes instruction. Instructors are not eligible to take PAL during their scheduled remote lectures/class sessions for criterion 3 above.</p>	<p>Qualifying reason for use – unable to work or telework because of:</p> <ol style="list-style-type: none"> 1. Quarantine or isolation order 2. Told by health care provider to self-quarantine 3. Experiencing COVID-19 symptoms and seeking diagnosis 4. Caring for individual subject to quarantine/isolation order or who was told by health care provider to self-quarantine 5. Caring for child whose school/place of care is closed or child care provider unavailable b/c of COVID-19 6. Other substantially similar condition specified by HHS Secretary <p>Health care workers and emergency responders are not eligible to take EPSL for Reasons 4 or 5 above.</p>	<p>Qualifying reason for use – unable to work or telework because of:</p> <ol style="list-style-type: none"> 1. Caring for child whose school/place of care is closed or child care provider unavailable b/c of COVID-19 (same as reason #5 under EPSL) <p>Health care workers and emergency responders are not eligible for EFML.</p> <p>Any prior use of Family & Medical Leave Act (FMLA) entitlement in 2020 reduces appointee’s entitlement under EFML. Any use of EFML also reduces FMLA entitlement in 2020 assuming appointee is eligible for FMLA. First two weeks of EFML are unpaid unless appointee elects to use other available paid leave. An employee’s maximum potential paid entitlement under expanded family and medical leave is 10 workweeks</p>

⁴ Pursuant to APM - 715-0(b), “family member” is defined as an appointee’s child, parent, spouse, or domestic partner (same sex or opposite sex).

FAQs Related to Job Protections Letter

1. **Does the April 2, 2020 letter from President Napolitano and the Chancellors regarding job protections apply to academic appointees?**

The April 2, 2020 letter indicating that there would be “no COVID-19 related layoffs for career employees through the fiscal year ending on June 30, 2020” generally applies to part-time and full-time academic appointees, including faculty, lecturers, librarians, researchers, and students employed in academic positions. However, academic appointees on term appointments with pre-determined end dates prior to June 30, 2020 will continue to be guided by the terms of their appointment. Similarly, an academic appointee on a research contract or grant where the contract or funding expires or is depleted prior to June 30 for reasons unrelated to COVID-19 will be guided by the terms and conditions of their appointment.

2. **Does the April 2, 2020 letter from President Napolitano and the Chancellors regarding job protections prevent locations from continuing to manage the performance of academic appointees, including up to termination if warranted?**

No, the April 2, 2020 job protections letter does not preclude normal performance management expectations or processes. If an appointee alleges that COVID-19 related reasons are negatively affecting their ability to perform their work, locations should engage in a conversation to determine whether the academic appointee is eligible for leave and/or an accommodation.

3. **Does the April 2, 2020 letter from President Napolitano and the Chancellors regarding job protections affect layoff notices that were issued before April 2, 2020?**

Layoff notices issued prior to April 2, 2020 to be effective before June 30, 2020 that were not based upon COVID-19 related reasons are not affected. Layoff notices issued prior to April 2, 2020 that were based upon COVID-19 reasons and have already taken effect (i.e., the appointee has already separated from the University) are not affected. Locations should assess other layoff notices issued prior to April 2, 2020 that will become effective before June 30, 2020; if determined to be based upon COVID-19 reasons, layoff should be rescinded or the effective date postponed until after June 30, 2020.

4. **Does the April 2, 2020 letter from President Napolitano and the Chancellors regarding job protections preclude reductions in time or changes to appointment percentage?**

Involuntary reductions in time or changes to appointment percentage that occur during certain times of the year in the normal of course of business should proceed as usual.

Reductions in time and changes to appointment percentage that are not COVID-19 related may also proceed. Reductions in time and changes to appointment that are COVID-19 related and that do not normally occur in the regular course of business are precluded by the April 2, 2020 letter. Voluntary reductions in time and voluntary reductions in appointment percentage are not affected by the April 2, 2020 letter. Voluntary reductions in time and voluntary reductions in appointment percentage should follow the applicable procedures set forth in APM and applicable collective bargaining agreements.

5. How should locations determine whether a layoff is COVID-19 related or not?

If a layoff would not have occurred “but for” COVID-19, the layoff should be considered COVID-19 related and, therefore, would be precluded through June 30, 2020.

6. Will academic appointees who do not have work because of facility closures, curtailed operations or other disruptions due to COVID-19 be eligible to receive their regular pay through June 30, 2020?

Appointees are expected to work to the fullest extent they can. However, if appointees are unable to work or telework, they must speak with their supervisor to determine if they can be redeployed to another assignment they are capable of performing. For academic appointees whose appointments are covered by a collective bargaining agreement, locations should endeavor to assign appropriate alternative work in the same unit.

If no suitable positions or related work are available, locations should discuss the appropriate leave options with the academic appointee including COVID-19 related leave options that may have been available to the appointee (i.e., UC Expanded Paid Administrative Leave, EPSL and/or EFML). If COVID-19 related leave options are exhausted or unavailable and the appointee is still unable to work or telework, appointees who accrue leave will be required to use up to 5 days (40 hours) of their accrued vacation, PTO, and other similar leave accruals prorated for part-time appointees, but not their accrued sick or paid medical leave. If an academic appointee who accrues leave has less than 5 days accrued, they are required to use the balance available. Locations should consider other paid leaves allowable under the APM or applicable collective bargaining agreements through June 30, 2020.

7. Does the April 2, 2020 letter from President Napolitano and the Chancellors regarding job protections affect other terms and conditions of existing academic appointments?

Other than as described herein, the existing terms and conditions of the appointment are not changed. The application of the current terms and conditions should be made taking COVID-19 into consideration.

FAQs Related to COVID-19 Paid Leaves

For additional information on the application of UC Expanded Paid Administrative Leave, please see guidance for academic supervisors (<https://www.ucop.edu/academic-personnel-programs/files/special-announcements/covid-19-leave-guidance-for-academic-supervisors.pdf>).

- 8. Will an academic appointee be asked to complete documentation to request emergency paid sick leave (EPSL) or the expanded family and medical leave (EFML) provided under the Families First Coronavirus Response Act (FFCRA?)**

Yes, a systemwide leave request form will be provided that requires the appointee to specify pertinent information regarding eligibility for a FFCRA leave and to certify that the information provided is correct.

- 9. When can an academic appointee subject to a quarantine or isolation order (including a stay-at-home order) (Reason 1) elect emergency paid sick leave (EPSL)? For example, can an appointee subject to a quarantine or isolation order elect EPSL because they are unable to telework for lack of an ergonomic computer set-up?**

The implementation guidelines issued by the U.S. Department of Labor provide that the critical question to determine eligibility for paid sick leave is “*whether the employee would be able to work or telework ‘but for’ being required to comply with a quarantine or isolation order.*” The DOL further provides, “*that an employee subject to a quarantine or isolation order is able to telework, and therefore may not take paid sick leave, if (a) his or her employer has work for the employee to perform; (b) the employer permits the employee to perform that work from the location where the employee is being quarantined or isolated; and (c) there are no **extenuating circumstances** that prevent the employee from performing that work. For example, if a law firm permits its lawyers to work from home, a lawyer would not be prevented from working by a stay-at-home order, and thus may not take paid sick leave as a result of being subject to that order. In this circumstance, the lawyer is able to telework even if she is required to use her own computer instead of her employer’s computer.*” Examples of **extenuating circumstances** include serious COVID-19 symptoms or a power outage. Lack of ergonomic computer set-up likely does not meet the same standard of extenuating circumstances and thus an appointee subject to a quarantine or isolation order would not be permitted to take paid sick leave under EPLSA for lack of an ergonomic computer set-up at home. However, to the extent there are disability concerns, locations should engage in the **interactive process**. Similarly, an appointee subject to a quarantine or isolation order could not elect EPSL where the University does not have work for the appointee regardless of whether the cause for the lack of work is COVID-19 related or not. However, under the April 2, 2020 job protections letter, the appointee may be

eligible for reassignment or other leave, such as UC Expanded Paid Administrative Leave.

10. When can an academic appointee who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (Reason 2) elect EPSL?

The implementation guidelines issued by the U.S. Department of Labor provide that to be eligible for EPSL in this situation the *“advice to self-quarantine must be based on the health care provider’s belief that the employee has COVID-19, may have COVID-19, or is particularly vulnerable to COVID-19. And self-quarantining must prevent the employee from working. An employee who is self-quarantining is able to telework, and therefore may not take paid sick leave for this reason, if (a) his or her employer has work for the employee to perform; (b) the employer permits the employee to perform that work from the location where the employee is self-quarantining; and (c) there are no extenuating circumstances, such as serious COVID-19 symptoms, that prevent the employee from performing that work.”*

11. When can an academic appointee experiencing COVID-19 symptoms (Reason 3) elect EPSL?

The implementation guidelines issued by the U.S. Department of Labor provide that *“paid sick leave taken for this reason must be limited to the time the employee is unable to work because he or she is taking affirmative steps to obtain a medical diagnosis. Thus, an employee experiencing COVID-19 symptoms may take paid sick leave, for instance, for time spent making, waiting for, or attending an appointment for a test for COVID–19. But, the employee may not take paid sick leave to self-quarantine without seeking a medical diagnosis. An employee who is waiting for the results of a test is able to telework, and therefore may not take paid sick leave, if: (a) His or her employer has work for the employee to perform; (b) the employer permits the employee to perform that work from the location where the employee is waiting; and (c) there are no extenuating circumstances, such as serious COVID-19 symptoms, that may prevent the employee from performing that work.”* In addition, an appointee *“may continue to take leave after testing positive for COVID-19, regardless of symptoms experienced, provided that the health care provider advises the employee to self-quarantine...”* (Reason 2). An appointee who is *“unable to telework may continue to take paid sick leave under this reason while awaiting a test result, regardless of the severity of the COVID-19 symptoms that he or she might be experiencing.”*

12. When can an academic appointee caring for an individual who is either subject to a federal, state, or local quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (Reason 4) elect EPSL?

The implementation guidelines issued by the U.S Department of Labor provide that this qualifying reason applies only if *“but for a need to care for an individual, the employee would be able to perform work for his or her employer.... Furthermore, the employee must have a genuine need to care for the individual.”* Accordingly, the appointee will need to identify the individual for whom care is being provided and their relationship to that individual.

13. An academic appointee has requested paid leave (i.e., UC Expanded Paid Administrative Leave, EPSL and/or EFML) because they are unable to telework due to a lack of childcare as a result of COVID-19. How can I determine whether the appointee is eligible for paid leave and which leave they are eligible for?

An academic appointee who is unable to work or telework because they are caring for their child whose school or place of care has closed (or whose child care provider is unavailable) due to COVID-19 reasons is eligible to take UC Expanded Paid Administrative Leave, EPSL (Reason 5) and/or EFML (assuming they meet the 30 days' service requirement). To be eligible for EPSL and/or EFML for this purpose, the appointee must confirm that there is no other suitable person to care for their child during the period for which the appointee is requesting paid leave. If their child is older than 14 and the appointee will be caring for the child during daylight hours, the appointee will need to explain the special circumstances that make it necessary for the appointee to provide care to that child during that period. If the child is 18 years or older, the child must be incapable of self-care due to a mental or physical disability. Health care workers and emergency responders are not eligible to take EPSL for this reason or to take EFML. The use of UC Expanded Paid Administrative Leave must not adversely affect the delivery of essential University services, which includes the delivery of instruction.

An appointee who has already utilized leave under the Family Medical Leave Act (FMLA) this calendar year, will have their EFML entitlement reduced by their FMLA use. Similarly, any EFML use will count against an appointee's total 2020 FMLA entitlement. The first two workweeks of EFML are unpaid. However, the appointee may receive pay during these two workweeks by electing to use any of the paid leave options that may be available to the appointee, such as UC Expanded Paid Administrative Leave, EPSL, or accrued paid leave (such as vacation) that an appointee may use to take care of a child when the child's school is closed or their child care provider is unavailable. If an appointee utilizes other paid leave accruals during the first two weeks of EFML that are unpaid, such use would run concurrently with the appointee's EFML entitlement.

- 14. How are the paid leave entitlements related to COVID-19 (i.e., UC Expanded Paid Administrative Leave, EPSL and/or EFML) being funded? To which funding source should locations charge time when an academic appointee is determined to be eligible for paid leave?**

Locations should charge paid leave to an academic appointee's regular funding source unless instructed otherwise. There is no systemwide central source of funds.

- 15. May an eligible academic appointee on approved UC Expanded Paid Administrative Leave elect to use such leave intermittently?**

Per President Napolitano's executive order, UC Expanded Paid Administrative Leave may be taken intermittently. For exempt employees, this means it must be taken for a minimum of one working day.

- 16. May an eligible academic appointee on approved EPSL and/or EFML elect to use such leave intermittently?**

EPSL may only be taken in a block of two weeks. EFML may only be taken in blocks of a minimum of two weeks. If leave taken for childcare purposes (EPSL Reason 5 or EFML) is foreseeable, appointees should provide notice of their need to take such leave as soon as practicable and, if possible, two weeks in advance so that the department can plan for the appointee's absence.

- 17. Can a department or supervisor ask if academic appointees foresee COVID-19 related childcare issues that will prevent them from working?**

Yes, as a planning tool, departments or supervisors can inquire if leave for COVID-related childcare is anticipated. It is best if such inquiries be made of everyone in the department or team so as not to single out individuals.

- 18. Does an academic appointee on paid leave related to COVID-19 (i.e., UC Expanded Paid Administrative Leave, EPSL and/or EFML) continue to accrue service credit for purposes of UCRP and continue to accrue vacation and sick time, if applicable?**

An academic appointee on paid leave continues to accrue vacation and sick time, as well as service credit for purposes of UCRP, as they normally would under pay status. Academic appointees who are eligible to accrue sabbatical leave shall continue to accrue credits as they normally would under pay status.

19. May an academic appointee elect paid leave related to COVID-19 (i.e., UC Expanded Paid Administrative Leave, EPSL and/or EFML) past their pre-determined appointment end date?

No, consistent with applicable collective bargaining agreements and the APM, an academic appointee may not elect paid leave related to COVID-19 past their pre-determined appointment end date.

20. Who should an academic appointee contact to initiate paid leave related to COVID-19?

An academic appointee should first notify their direct supervisor of the need to take paid leave related to COVID-19. Academic appointees and supervisors should work with their local academic personnel office to determine eligibility.

21. If a fiscal year academic appointee is on approved paid leave (i.e., UC Expanded Paid Administrative Leave, EPSL and/or EFML) because they are unable to work or telework due to lack of childcare related to COVID-19 school closures, can they continue to use such leave even once their child's school would have ended – i.e., during the summer?

Yes, assuming that the same eligibility requirements are met, such as summer school, daycare or summer recreation camp closure, fiscal year academic appointees would continue to be eligible for such leave during the summer. However, new documentation may be required. Academic-year appointees that are not in service during the summer, would not need to use leave during their non-service period.

22. May an academic appointee be laid off while they are on paid leave related to COVID-19 if the layoff is not based upon COVID-19 and is otherwise not for an unlawful purpose?

Yes, an academic appointee may be laid off prior to June 30, 2020 while on paid leave related to COVID-19 if the layoff is not COVID-19 related and is otherwise not for an unlawful purpose. Consistent with the APM and relevant academic collective bargaining agreements, if an appointee's position has been abolished or affected by layoff during an approved leave, an appointee will be afforded the same considerations that they would have been afforded had the appointee been actively working when the position was abolished or affected by layoff.

23. Will COVID-19 related leaves need to be tracked?

The University is tracking and reporting the amount of COVID-19 leave taken and the associated payroll expense. The UCPath Center is working on mechanisms to track the type of leaves taken, including the reason. Not all entry and calculations will be automated

in UCPath or PPS – locations will need to process some manual entry and upload of leaves.

24. What is the rate of pay to apply when an appointee is on paid leave related to COVID-19 (i.e., UC Expanded Paid Administrative Leave, EPSL or EFML)?

Although federal regulations provide a daily and cumulative cap on EPSL and EFML (after the initial two week unpaid EFML period), the University has decided to pay appointees on EPSL and EFML (after the initial two week unpaid EFML period) at the appointee's regular rate of pay. Separate guidance will be provided regarding the calculation of regular pay.

25. Can extramural funds be used to pay the salaries of academic employees who cannot work remotely or whose work is limited due to COVID-19?

Please refer to UCOP's Research and Innovation Office, Research Policy Analysis and Coordination's webpage with current information from extramural funders at <https://www.ucop.edu/research-policy-analysis-coordination/policies-guidance/coronavirus/updates.html> and consult with your local Contracts & Grants/Sponsored Projects office.