Comparing Requirements

Requirements	FMLA	Expanded FMLA/EFMLEA	Legal Citation
Eligibility	At least 12 months of employment AND have 1,250 hours of service most recent 12-months;	30 calendar days of employment; NO hours of service provision	29 CFR 826.10; 29 CFR 826.30(b)
Application	All employees	All employees BUT employer can exclude "health care providers" and "emergency responders"	29 CFR 826.10
Length of Leave	12 weeks	12 weeks, BUT amount is reduced based any of other FMLA used in past 12 months	29 CFR 826.23;
Intermittent Leave	Can be take intermittently or consecutively	Can be take intermittently if employer agrees	29 CFR 826.50
Reason for Leave	Bond with newborn/newly adopted child; Care for employee's own serious health condition, or to care for a covered family member with a serious health condition; military related reason	ONLY to care for an employee's child whose school or place of care is closed or child care provider is unavailable due to COVID–19 related reasons.	29 CFR 826.20
Pay while on Leave	Unpaid; see State law for pay requirements; Employee can use accrued leave per employer policies	Unpaid for first 2 weeks; paid for remaining 10 weeks at 2/3 pay rate, up to $200/day Prorated for part-time employees	29 CFR 826.24
Notice to Employer	Foreseeable, at least 30 days' notice Unforeseeable, as soon as practicable	ONLY require to follow reasonable notice procedures as soon as practicable AFTER the first workday or portion of a workday for which an employee receives paid sick leave in order *to continue* to receive such leave.	29 CFR 826.90
Documentation of Notice	Sufficient information for employer to determine whether FMLA may apply Employer can require certification from health care provider If leave is foreseeable, anticipated timing and duration of leave	(1) The employee's name; (2) the date(s) for which leave is requested; (3) the COVID–19 qualifying reason for leave; and (4) a statement representing that the employee is unable to work or telework because of the COVID–19 qualifying reason; (5) The name of the child being care for; (6) the name of the school, place of care, or child care provider that closed or became unavailable due to COVID–19 reasons; and (7) a statement	29 CFR 826.100

		representing that no other suitable person is available to care for the child during the period of requested leave.	
Return to Work	Entitled to be restored to the same or an equivalent position upon return; can layoff while on leave if can demonstrate layoff would occur regardless of whether leave was taken	entitled to be restored to the same or an equivalent position upon return; can layoff while on leave if can demonstrate layoff would occur regardless of whether leave was taken (exception for employers with less than 25 employee if certain conditions met)	29 CFR 826.130
Prohibitions	Prohibited from: -interfering with, restraining, or denying an employee's exercise of or attempt to exercise any right under the FMLA, including the EFMLEA; -discriminating against an employee for opposing any practice made unlawful by the FMLA, including the EFMLEA; AND -interfering with proceedings initiated under the FMLA, including the EFMLEA.	Same as FMLA	29 CFR 826.150
Enforcement	29 USC 2615; 2616 Secretary to enter a workplace and have access to, inspect, and copy documents, and/or require witness attendance and testimony, relating to any matter under investigation, from any person or entity being investigated or proceeded against, at any stage of any proceeding or investigation, at any place in the United States.	Same as FMLA	29 CFR 826.151-153