

HR/LR Policy 1441

Expanded FMLA for COVID-19 Related School/Child Care ("EFMLA")

Date Issued: 07/22/2020

Date Revised: 09/18/2020

Authority: Families First Coronavirus Response Act

OVERVIEW

Objective

Pursuant to the federal Families First Coronavirus Response Act, to provide up to 12 workweeks of expanded Family and Medical Leave Act ("FMLA") leave (up to 10 workweeks of which are partially paid) to eligible executive branch employees when they must be absent from work to care for their child whose school or place of care is closed, or whose child care provider is unavailable, for reasons related to COVID-19, and there is no other suitable person available to care for their child during the period of absence ("EFMLA").

Policy Statement

This policy establishes EFMLA and the terms and conditions for eligibility and use. After the first two workweeks of EFMLA, which are unpaid, EFMLA will be paid at partial pay, up to a specified dollar value cap. In addition, because EFMLA is another qualifying reason for use of FMLA, eligible employees may not take more leave for EFMLA than is available in the employee's FMLA leave bank, and an employee who has exhausted their FMLA leave bank is not entitled to EFMLA. FMLA leave remains unpaid other than the up to 10 workweeks of partially paid EFMLA under this policy.

Scope and Eligibility

This policy applies to all employees who have been employed for at least 30 calendar days by any agency in the executive branch, as defined in Minnesota Statutes 2019, section 43A.02, subdivision 22, including Minnesota State Retirement System, the Public Employees Retirement Association, the Teacher's Retirement Association, and the Minnesota State Colleges and Universities system.

Duration

This policy is effective beginning on July 22, 2020 and applies to all leave for school or childcare closures due to COVID-19 taken on and after this effective date. The September 18, 2020 policy revisions are effective beginning September 16, 2020 and apply to all EFMLA leave taken on and after this effective date. This policy expires on December 31, 2020.

This policy is subject to change as needed at the discretion of Minnesota Management and Budget. All approvals of leave under this policy are subject to change to conform with any changes that may be made to this policy, and all leave approved under this policy expires when this policy is no longer in effect, except as may be required under law.

Definitions and Key Terms

Terms	Definitions
<i>Child</i>	The employee’s biological, adopted, or foster child, stepchild, legal ward, or child via in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act (as amended).
<i>Childcare Provider</i>	A provider who receives compensation for providing childcare services on a regular basis. The term includes a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that is licensed, regulated, or registered under State law as described in section 9858c(c)(2)(E) of Title 42; and satisfies the State and local requirements, including those referred to in section 9858c(c)(2)(F) of Title 42. Under the Families First Coronavirus Response Act (FFCRA), the eligible child care provider need not be compensated or licensed if the provider is a family member or friend, such as a neighbor, who regularly cares for the employee’s child.
<i>Eligible Employee</i>	An employee who has been employed for at least 30 calendar days prior to the commencement of leave by any executive branch agency, as defined in Minnesota Statutes, section 43A.02, subdivision 22, including Minnesota State Retirement System, the Public Employees Retirement Association, the Teacher’s Retirement Association, and the Minnesota State Colleges and Universities system.
<i>Emergency Responder</i>	<p>For purposes of determining which employees are assigned to Priority 1 or 2 critical services for purposes of this policy, an emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the State of Minnesota’s response to COVID-19.</p> <p>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, child welfare workers and service providers, 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 those individuals and whose work is necessary to maintain the operation of the facility.</p> <p>This also includes any individual who is determined to be an emergency responder necessary for the State of Minnesota’s response to COVID-19.</p>

<p><i>Health Care Provider</i></p>	<p>For purposes of determining which employees are assigned to Priority 1 or 2 critical services for purposes of this policy, a health care provider is:</p> <ul style="list-style-type: none"> • A licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the Family and Medical Leave Act (29 C.F.R. § 825.102). • Any employee who is employed to provide the following health care services: diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care. This includes nurses, nurse assistants, medical technicians, and any other persons who directly provide these health care services, or any employee who provides these health care services under the supervision, order, or direction of, or providing direct assistance to, a health care provider as defined above. • Any employee who is otherwise integrated into and necessary to the provision of these health care services, such as laboratory technicians who process test results necessary to diagnoses and treatment. <p>For all other purposes described in this policy, a health care provider is a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the Family and Medical Leave Act (29 C.F.R. § 825.102).</p>
<p><i>Place of Care</i></p>	<p>A physical location in which care is provided for the employee’s child while the employee works for the employer. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.</p>
<p><i>Priority 1 or 2 Critical Services</i></p>	<p>Employees assigned to Priority 1 or 2 critical services for purposes of this policy are employees who are assigned to duties as Health Care Providers or Emergency Responders, including any employee who is assigned to duties that are determined to be necessary for the State of Minnesota’s response to COVID-19.</p>
<p><i>School</i></p>	<p>An “elementary school” or “secondary school” as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801). “Elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. “Secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.</p>

Legal References

Families First Coronavirus Response Act and temporary regulations at 29 C.F.R. Part 826.

GENERAL STANDARDS AND EXPECTATIONS

I. EFMLA

- a. Employees generally are expected to report to work or to telework as directed by their supervisor. If an eligible employee must be absent from work due to a need to care for their child whose school or place of care has been physically closed, or whose childcare provider is unavailable, for reasons related to COVID-19, and there is no other suitable person available to care for their child during the period of absence and no other person will be providing care for their child during the period of absence, they:
 - i. Should telework, with supervisor approval, if their job responsibilities can be performed through telework. Employees may telework even if their children are present in the remote work location, so long as the employee is actually performing their job duties and working their normal work schedule or flexing their time as approved by their supervisor.
 - ii. Eligible employees not assigned to Priority 1 or Priority 2 critical services as defined in this policy may use available EFMLA if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework while also providing childcare, or they are not permitted to telework by their supervisor.
 - iii. Eligible employees who are assigned to Priority 1 or Priority 2 critical services as defined in this policy, with authorization by their appointing authority, may use available EFMLA if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework while also providing childcare, or they are not permitted to telework by their supervisor. Each agency will designate a process for determining when EFMLA will be used in this circumstance.
- b. To use EFMLA, eligible employees who cannot work or telework because of a need to provide care for a child older than 14 during daylight hours must certify that special circumstances exist requiring the employee to provide care.
- c. EFMLA is limited to up to 12 workweeks of leave. The first 2 workweeks of leave are **unpaid**, but can be supplemented with Paid COVID-19 Leave to the extent available, accrued vacation leave, or accrued compensatory time. The remaining up to 10 workweeks of leave are partially paid as set forth below.
- d. EFMLA shall not exceed the employee's normal work schedule.
- e. Paid EFMLA will be compensated at **2/3 of the employee's regular rate of pay**. Employees are permitted to supplement the remaining 1/3 with accrued vacation leave or accrued compensatory time.
- f. Paid EFMLA is limited to a daily cap of **\$200 per day**. Employees are permitted to supplement their normal salary above the daily cap with accrued vacation or accrued compensatory time.
- g. Use of EFMLA, for employees normally eligible for FMLA leave, will run concurrently with FMLA and will be counted against the employee's existing FMLA balance. The total amount of FMLA leave available to any employee eligible for both FMLA and EFMLA shall not exceed 12 workweeks. .

II. General Provisions

- a. Beginning on July 22, 2020, all new and continuing leave for COVID-19-related school or childcare closures is subject to the limits and caps set forth in this policy.
- b. Eligible employees are limited to up to 12 workweeks of EFMLA, with the first 2 weeks unpaid.

- c. Because EFMLA is another qualifying reason for use of FMLA, eligible employees may not take more leave for EFMLA than is available in the employee's FMLA leave bank, and an employee who has exhausted their FMLA leave bank is not entitled to EFMLA.
- d. Employees must complete a Paid COVID-19 Leave/EFMLA Request Form and receive approval for use.
- e. Eligible employees assigned to perform Priority 1 and Priority 2 critical services as defined in this policy must submit a completed Request Form and receive approval in advance of taking EFMLA.
- f. Eligible employees assigned to perform Priority 1 and Priority 2 critical services as defined in this policy must obtain additional authorization by their appointing authority to take EFMLA.
- g. Eligible employees not assigned to perform Priority 1 or Priority 2 critical services as defined in this policy who request EFMLA must submit a completed Request Form as soon as is practicable. If the need for leave is foreseeable, it will generally be practicable to provide notice prior to the need to take leave.
- h. Employees must complete a new Request Form and receive a new approval for use if the reason for their need for leave changes.
- i. Employees must notify the agency promptly once their need for EFMLA ceases.
- j. All approvals of leave under this policy are subject to change to conform with any changes that may be made to this policy, and all leave approved under this policy expires when this policy is no longer in effect, except as may be required under law.
- k. EFMLA may be taken on an intermittent or reduced schedule basis with agency permission.
- l. Use of EFMLA does not count as hours worked.
- m. Employees are not entitled to reimbursement or payout for unused EFMLA.

III. Payroll Earnings Codes

- a. Eligible employees must use earnings code **FNP Unpaid COVID19 Expanded FMLA** to track **unpaid** EFMLA leave time during the first 2 weeks of available EFMLA.
- b. Eligible employees must use earnings code **FCS Paid COVID19 Expanded FMLA** to track **paid** EFMLA time during the remaining up to 10 weeks of available EFMLA.
- c. A system generated earnings code, **CFM COVID19 DailyLimit-SchLveFMLA**, will display the amount the employee's pay has been reduced to reflect partial pay and daily caps on pay as described above.
- d. EFMLA payroll earnings codes **do not** accrue vacation or sick leave.

RESPONSIBILITIES

Agencies are responsible for:

- Adopting this policy.
- Instructing employees on this policy.
- Requiring and obtaining completed Request Forms for all eligible employees requesting EFMLA.
- Determining which employees are assigned to perform Priority 1 and Priority 2 critical services as defined in this policy.
- Communicating to employees requesting leave whether their assignments are considered Priority 1/Priority 2 as defined in this policy.
- Determining a process for obtaining appointing authority approval or disapproval of EFMLA for employees assigned to perform Priority 1 or Priority 2 critical services as defined in this policy.
- Ensuring the continuation of critical priority services, including by assigning and reassigning employees, and allowing for their redeployment as provided in Executive Order 20-07.
- Keeping current emergency contact lists used by the agency and MMB for emergency notices.
- Assigning employees to telework when possible.

MMB is responsible for:

- Monitoring the public health situation.
- Redeploying employees as provided in Executive Order 20-07.
- Making any needed modifications to this policy.

RESOURCES

HR/LR Policy #1440 - Paid COVID-19 Leave

Paid COVID-19 Leave/EFMLA Request Form

[Executive Order 20-07](#)

CONTACTS

MMB Enterprise Human Resources