



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF ADMINISTRATION

Enterprise Policy

Division of Human Resources – Families First Coronavirus Response Act - 2020

Division of Human Resources

Families First Coronavirus Response Act Policy

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**1. Purpose**

The purpose of this policy is to effectuate the Families First Coronavirus Response Act (FFCRA) and establish procedures for supporting employees and advising them of their rights and responsibilities in discharging leave under this policy.

This policy replaces, and hereby revokes, the temporary measure allowing employees the ability to discharge sick leave due to family responsibilities arising out of COVID-19 as announced on March 19, 2020 in the [Director’s Message: Family Responsibilities and Sick Leave](#). Any requests for such leave approved prior to issuance of this policy will be honored.

**2. Governing Authority**

This policy is governed by the Families First Coronavirus Response Act (PL. 116-127, 134 State 178) and regulations issued by the U.S. Department of Labor, Wage and Hour Division.

**3. Scope**

This policy applies to all Executive Branch employees, excluding those employees who are health care providers and emergency responders as defined below and as determined by each Executive Branch Agency in consultation with the Rhode Island Department of Health.

As relates only to health care providers and emergency responders, who are otherwise excluded from all application of this policy, the State will permit requests for emergency paid sick leave (only) if the need for paid emergency sick leave arises under I.A.(1), (2) or (3).

**4. Definitions**

*Caring for an individual* - for purposes of section 5-I-A(4) of this policy, an ‘individual’ means an employee’s immediate family member, a person who regularly resides in the employee’s home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined. For this purpose, “individual” does not include persons with whom the employee has no personal relationship.

**Child** – Under the FFCRA, a “child” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis – someone with day-to-day responsibilities to care for or financially support a child, who is under eighteen (18) years of age or is an adult child (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability.

**Emergency responder** - For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, and who are hereby excluded under this policy, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. 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, 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 these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

**Emergency paid sick leave** – means paid leave under the Emergency Paid Sick Leave Act.

**Expanded family and medical leave** – means paid leave under the Emergency Family and Medical Leave Expansion Act.

**Full-time employee** – For the purpose of providing benefits under the Emergency Paid Sick Leave Act, the U.S. Department of Labor defines a full-time employee as an employee who works at least 80 hours over two workweeks, or at least 40 hours each workweek. As such, employees who are in a position with a thirty-five (35) hour work week are considered Part-time employees for purposes of this Policy.

**Health care provider** – For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave under the FFCRA, and are hereby excluded under this policy, a health care provider is anyone employed at a doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19



related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19.

**Part-time employee** – For the purpose of providing benefits under the Emergency Paid Sick Leave Act, a part-time employee is an employee who is normally scheduled to work fewer than 40 hours each work week or, if the employee lacks a normal weekly schedule, who is scheduled to work on average, fewer than 40 hours each workweek.

**Subject to a Quarantine or Isolation Order** - For purposes of the Emergency Paid Sick Leave Act, a quarantine or isolation order includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government that cause the employee to be unable to work even though his or her employer has work that the employee could perform but for that order. This also includes when a Federal, State, or local government authority has advised categories of citizens (*e.g.* of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of employees to be unable to work even though their employers have work for them.

**Telework** – Being able to telework means that an employee's request to telework has been approved under the State's [Teleworking Policy](#) in effect at the time the request was made and there are no extenuating circumstances, such as serious COVID-19 symptoms, that prevent the employee from working.

## 5. General

The Families First Coronavirus Response Act (the "FFCRA"), effective April 1, 2020, provides State employees with additional emergency paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply to leave taken between April 1, 2020 and December 31, 2020.

Pursuant to the FFCRA, the emergency paid sick leave is over and above pre-existing sick leave accrued in accordance with the Personnel Rules or an applicable collective bargaining agreement. The FFCRA also amends the State's existing Family, Medical, Parental Leave Policy dated June 5, 2017 ("State's Existing FMLA Policy").

### I. Emergency Paid Sick Leave Act

- A. Full time eligible employees may discharge up to eighty (80) hours of emergency paid sick leave, at the employee's regular rate of pay (part-time employees may discharge sick leave in an amount equal to the number of hours that he or she works, on average, over a two (2) week period – this includes employees who are scheduled to work 35 hours per week as they are considered to be part-time under the FFCRA) **if the employee is unable to work, or telework** under the State's [Teleworking Policy](#), due to a need for leave because the employee:



- (1) is subject to a Federal, State or local quarantine or isolation order related to COVID-19;
- (2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (3) is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (4) is caring for an individual who (a) is subject to a Federal, State or local quarantine or isolation order related to COVID-19 or (b) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (5) is caring for his or her son or daughter if the child's school or place of care has been closed, or if the childcare provider is unable, due to COVID-19 precautions;
- (6) is experiencing any other substantially similar condition specified by the United States Secretary of Health and Human Services.

- B. An employee may take emergency paid sick leave under a quarantine or isolation order only if being subject to one of these orders prevents the employee from working or teleworking. Therefore, if State government remains open and the employee can perform work on site or by telework, only if circumstances exist that prevent the employee from performing such work can employees use leave, e.g., serious COVID-19 symptoms.
- C. As relates only to health care providers and emergency responders, who are otherwise excluded from all application of this policy, the State will permit requests for emergency paid sick leave (only) if the need for paid emergency sick leave arises under I.A.(1), (2) or (3).
- D. An employee may take emergency paid sick leave to care for his or her child only when the employee needs to, and actually is, caring for his or her child because the child's school or place of care has been closed, or if the childcare provider is unable, due to COVID-19 and there is not another suitable individual – such as a co-parent, co-guardian or the usual child care provider – available to provide the care the employee's child needs.
- E. All emergency paid sick leave provided under the FFCRA is in addition to any sick leave an employee may have accrued under Personnel Rule 5.062 or an applicable collective bargaining agreement. Unless an employee elects otherwise, emergency paid sick leave made available under the FFCRA must be discharged prior to the discharge of other forms of paid leave that may be available to the employee.
- F. Employees who discharge emergency paid sick leave under the terms of the FFCRA shall be paid as follows:
- (1) employees who discharge emergency paid sick leave pursuant to paragraphs A(1),(2) or (3) will be paid at their regular rate of pay, up to \$511 per day, provided that in no



circumstances will an employee be paid more than \$5,110 for emergency paid sick leave discharged pursuant to this Policy.

(2) employees who discharge emergency paid sick leave pursuant to paragraphs A(4), (5) or (6) will be paid at two-thirds (2/3) of their regular rate of pay up to \$200 per day, provided that in no circumstances will an employee be paid more than \$2,000 for emergency paid sick leave discharged pursuant to the FFCRA.

- G. Employees may elect to use accrued paid leave (sick, vacation, personal, etc.) to supplement pay under emergency paid sick leave pursuant to paragraphs A(4), (5), or (6) so that the employee receives the full amount of their bi-weekly wages. Unless otherwise extended or modified, this provision applies only to leave taken between April 1, 2020 and June 26, 2020.
- H. Emergency paid sick leave provided to an employee under the FFCRA ends beginning with the employee's next scheduled work shift immediately following the end of the need for leave under the terms of this Policy.
- I. If the employee no longer has a qualifying reason for taking paid emergency sick leave before he/she exhausts paid sick leave, the employee may take any remaining paid sick leave, at a later time until December 31, 2020, if another qualifying reason occurs.
- J. Emergency paid sick leave available under this Policy does not carry over from year to year and has no cash value.
- K. Employees out of work due to FMLA leave under the State's Existing FMLA Policy, leave without pay (LWOP), Administrative Leave, or who are on leave of absence or receiving Workers' Compensation wage replacement benefits because they are unable to work due to a work-related injury, are not eligible for emergency paid sick leave.

## II. Emergency Family and Medical Leave Expansion Act

### A. Eligibility Requirements

Notwithstanding the requirement in the State's Existing FMLA Policy that employees must have been employed by the State for twelve (12) months, and have worked for 1,250 hours in order to be eligible for FMLA leave, employees are eligible for benefits under the terms of the Emergency Family and Medical Leave Expansion Act (EFMLEA) if he or she has worked for the State for at least thirty (30) calendar days as of the first day of leave.

Under EFMLEA employees who have been employed for at least thirty (30) days prior to their leave request, may be eligible for up to two (2) weeks of unpaid and ten (10) weeks of partially paid expanded family and medical leave **where an employee is unable to work, or telework** under the State's [Teleworking Policy](#), due to a bona fide need for



leave to care for a child (as defined above) if the child's school or place of care has been closed, or the child care provider of such child is unavailable, due to a public health emergency declared by a Federal, State or local authority as a result of COVID-19.

An employee may take EFMLEA to care for his or her child only when the employee needs to, and actually is, caring for his or her child and there is not another suitable individual – such as a co-parent, co-guardian or the usual child care provider – available to provide the care the employee's child needs.

#### B. Relationship to Other Leave

Notwithstanding the provisions in the State's Existing FMLA Policy related to paid and unpaid leave, employees who are eligible for partially paid expanded family and medical leave under EFMLEA will not be required to discharge accrued paid leave for the first ten (10) days. Employees may, however:

- (1) request to discharge emergency paid sick leave in accordance with section I.A.(5) above; or,
- (2) elect to discharge any applicable accrued paid leave (sick, vacation, personal, etc.) during the first ten (10) day period.

For all leave taken under EFMLEA beyond ten (10) days, employees will be paid an amount equal to two-thirds (2/3) their regular rate of pay, up to \$200 per day. In no event, however, will an employee be paid more than Ten Thousand Dollars (\$10,000) over the ten (10) weeks for EFMLEA and more than a combined total of Twelve Thousand Dollars (\$12,000) for Emergency Paid Sick Leave and EFMLEA over the twelve (12) weeks.

Employees may elect to use accrued paid leave (sick, vacation, personal, etc.) to supplement pay under EFMLEA so that the employee receives the full amount of their bi-weekly wages. Unless otherwise extended or modified, this provision applies only to leave taken between April 1, 2020 and June 26, 2020.

#### C. Relationship to Other Policies

All provisions in the State's Existing FMLA Policy that do not conflict with the provisions of the EFMLEA remain in effect and shall apply to FMLA Leave taken pursuant to this Policy. In the event of a question with respect to the existence of a conflict, the provisions of the EFMLEA or this Policy shall prevail.

Leave taken pursuant to the terms of the EFMLEA does not provide additional FMLA leave beyond the twelve (12) weeks authorized by the FMLA and the State's Existing FMLA Policy. As such, employees who have already discharged, or who will discharge, FMLA leave will not be entitled to full twelve (12) weeks of FMLA leave provided by the EFMLEA.



Nothing in the EFMLEA shall interfere with or limit the rights of employees to paid leave under the terms of the Emergency Paid Sick Leave above. If employees are eligible for leave under both the Emergency Paid Sick Leave Act and the EFMLEA, both leaves shall run concurrently. The total weeks of Emergency Paid Sick Leave and EFMLEA is not to exceed twelve (12) weeks.

- D. Employees out of work due to FMLA under the State's Existing FMLA Policy, leave without pay (LWOP), Administrative Leave, or who are on leave of absence or receiving Workers' Compensation wage replacement benefits because they are unable to work due to a work-related injury, are not eligible for EFMLEA.

## **6. Intermittent Leave**

- A. Paid sick leave for qualifying reasons related to COVID-19 must be taken continuously if the employee is not teleworking and leave is being taken 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 either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
  - (5) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
- B. Once an employee who is not teleworking begins taking paid emergency sick leave for one or more of these qualifying reasons, the employee must continue to take paid sick leave each day until he/she either (1) uses the full amount of paid sick leave or (2) no longer has a qualifying reason for taking paid sick leave. This limit is imposed because if the employee is sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep the employee from spreading the virus to others.
- C. In contrast, if the employee and the agency agree, the employee may take paid emergency sick leave intermittently in full-days if the employee is taking paid sick leave to care for their child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if an employee's child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the employee may take paid sick



leave on Mondays, Wednesdays, and Fridays to care for the child, but work at the normal worksite on Tuesdays and Thursdays.

- D. If an employee is teleworking and becomes unable to telework his or her normal schedule of hours due to a need for leave because of COVID-19 related reasons, and the employee and the agency agree, the employee may take such leave intermittently in full-days while teleworking.

## 7. Requesting Leave

- A. An eligible employee requesting emergency paid sick leave and/or emergency paid family and medical leave must notify his or her supervisor of the request and submit to his or her [Human Resources Disability Management Unit Representative](#) the [Families First Leave Request form](#) along with required documentation for approval and processing.
- B. Acceptable documentation of the reason for the leave under this policy includes:
  - (1) a copy of the Federal State or local quarantine or isolation order related to COVID-19;
  - (2) written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19;
  - (3) written documentation by a health care provider or the Department of Health that the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
  - (4) a copy of the isolation order or written documentation by a health care provider for an individual the employee is caring for who (a) is subject to a Federal, State or local quarantine or isolation order related to COVID-19 or (b) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
  - (5) a notice of closure or unavailability from the child's school, place of care, or child care provider, including a notice that may have been posted on a government, school or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider.
- C. Upon receipt of the completed FFCRA form and documentation, employees will be informed whether the request for leave has been approved or denied, whether additional information or clarification is needed, and the duration of his or her leave.

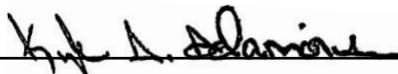


D. Please note that all existing certification requirements under the Existing Policy remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to provide medical certifications under the FMLA.

**8. Policy Expiration**

Unless otherwise extended or modified, this Policy shall expire on December 31, 2020.

**9. Signatures**

 _____	<b>4/10/20</b> _____
<b>Division Director</b>	<b>Date</b>
 _____	 _____
<b>Director of Administration</b>	<b>Date</b>

