

HR/LR Policy 1440

Date Issued: 03/18/2020

Paid COVID-19 Leave: REVISED

Date Revised: 04/01/2020, 04/07/2020, 07/22/2020

Authority: Families First Coronavirus Response Act

OVERVIEW

Objective

Pursuant to the federal Families First Coronavirus Response Act, to provide up to 80 hours of paid leave (pro-rated for part-time employees) to eligible executive branch employees who must be absent from work for reasons related to COVID-19 (“Paid COVID-19 Leave”).

Policy Statement

Employees are entitled to a single leave bank of eighty (80) hours of Paid COVID-19 Leave (pro-rated for part-time employees) that can be used when the employee cannot work or telework due to COVID-19, for reasons set forth in this policy. Depending on the reason for use, Paid COVID-19 Leave may be paid at partial pay. In addition, all Paid COVID-19 Leave is subject to specified dollar value caps. This policy sets forth the terms and conditions for use of different types of Paid COVID-19 Leave, including pay rates and specified caps.

Scope

This policy applies to all employees of agencies in the executive branch, as defined in Minnesota Statutes, section 43A.02, subdivision 22, and includes all employees of the 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 has been revised. The July 22, 2020 policy revisions are effective beginning on July 22, 2020 and apply to all Paid COVID-19 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with any changes that may be made to this policy, and all leave approved under this policy expires when this policy is no longer in effect, except as may be required under law.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
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<i>Child</i>	The employee’s biological, adopted, or foster child, stepchild, legal ward, or child via <i>in loco parentis</i> , 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) (“ADA”).
<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 FFCRA, the eligible child care provider need not be compensated or licensed if he or she is a family member or friend, such as a neighbor, who regularly cares for the employee’s child.
<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>
<i>Immediate Family Member</i>	<p>The employee’s:</p> <ul style="list-style-type: none"> • spouse; • child; • adult child; or • parent.
<i>Health Care Provider</i>	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 anyone employed at any 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 other similar employer. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

	<p>This also includes anyone employed by any employer 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.</p> <p>This also includes any individual that is determined to be a health care provider necessary for the State of Minnesota's response to COVID-19.</p> <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>
<i>Individual</i>	<p>For the purposes of Paid COVID-19 Care Leave, 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 the expectation that the employee would care for the person if he or she were quarantined or self-quarantined. Individual does not include persons with whom the employee has no personal relationship.</p>
<i>Place of Care</i>	<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>
<i>Priority 1 or 2 Critical Services</i>	<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>
<i>School</i>	<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 ("FFCRA") and temporary regulations at 29 C.F.R. Part 826; Family and Medical Leave Act ("FMLA").

TYPES OF PAID COVID-19 LEAVE GENERAL STANDARDS AND EXPECTATIONS

Employees are entitled to a single leave bank of eighty (80) hours of Paid COVID-19 Leave (pro-rated for part-time employees) that can be used for the following reasons, and under the following terms and conditions:

I. COVID-19 School Leave

- a. Employees generally are expected to report to work or to telework as directed by their supervisor. If an 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. Employees not assigned to Priority 1 or Priority 2 critical services as defined in this policy may use available Paid COVID-19 Leave 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. 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 Paid COVID-19 Leave 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 Paid COVID-19 Leave will be used in this circumstance.
- b. To use Paid COVID-19 School Leave, 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. Paid COVID-19 School Leave 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.
- d. Paid COVID-19 School Leave 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 leave or accrued compensatory time.
- e. See also the Policy on Expanded FMLA for COVID-19 Related School/Child Care ("EFMLA").

II. COVID-19 Health Leave

- a. Employees generally are expected to report to work or to telework as directed by their supervisor. An employee who is not assigned to Priority 1 or Priority 2 critical services as defined in this policy who must be absent from work and is unable to telework because their job responsibilities cannot be performed through telework, they are too ill to work, or they are not permitted to telework by their supervisor, may use available Paid COVID-19 Leave if they must be absent from work because:
 - i. They have a fever, cough, shortness of breath or any other COVID-19 symptoms identified by the U.S. Centers for Disease Control and Prevention, and are seeking a medical diagnosis of COVID-19 (Paid COVID-19 Leave under this subsection is limited to the time the employee is unable to work because the employee is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a COVID-19 test); or

- ii. A health care provider has advised the employee to self-quarantine based on the health care provider's belief that the employee has COVID-19, may have COVID-19 due to known exposure or symptoms, or is particularly vulnerable to COVID-19; or
 - iii. The employee is subject to a Federal, State, or local isolation or quarantine order related to COVID-19.
- b. Employees who are assigned to Priority 1 or Priority 2 critical services as defined in this policy may use available Paid COVID-19 Leave as set forth in section II.a. above, with authorization by their appointing authority. Each agency will designate a process for determining when Paid COVID-19 Leave will be used in this circumstance.
- c. Paid COVID-19 Leave shall not exceed the employee's normal work schedule.
- d. Paid COVID-19 Health Leave is limited to a daily cap of **\$511 per day**. Employees are permitted to supplement their normal salary above the daily cap with accrued sick leave for sick leave qualifying conditions, accrued vacation leave, or accrued compensatory time.
- e. Nothing contained in this policy interferes with an employee's right to take leave as provided by the FMLA or Americans with Disabilities Act/Minnesota Human Rights Act. Use of Paid COVID-19 Health Leave that also constitutes FMLA leave will run concurrently with FMLA and will be counted against the employee's existing FMLA balance.

III. COVID-19 Care Leave

- f. Employees generally are expected to report to work or to telework as directed by their supervisor. If an employee must be absent from work because the employee is caring for an individual who depends on the employee to care for them and the individual: has been advised by a health care provider to self-quarantine because of the health care provider's belief that the individual has COVID-19, may have COVID-19 due to known exposure or symptoms, or is particularly vulnerable to COVID-19; or is subject to a Federal, State, or local isolation or quarantine order related to COVID-19; the employee:
 - i. Should telework, with supervisor approval, if their job responsibilities can be performed through telework. Employees may telework even if the individual for whom they are caring is 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. Employees not assigned to Priority 1 or Priority 2 critical services as defined in this policy may use available Paid COVID-19 Leave if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework while also providing care, or they are not permitted to telework by their supervisor.
 - iii. 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 Paid COVID-19 Leave if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework while also providing care, or they are not permitted to telework by their supervisor. Each agency will designate a process for determining when Paid COVID-19 Leave will be used in this circumstance.
- g. Paid COVID-19 Leave shall not exceed the employee's normal work schedule.
- h. Paid COVID-19 Care Leave 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, or with accrued sick leave if the reason for leave qualifies for use of sick leave under Minn. Stat. § 181.9413.

- i. Paid COVID-19 Care Leave 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 leave or accrued compensatory time, or with accrued sick leave if the reason for leave qualifies for use of sick leave under Minn. Stat. § 181.9413.
- j. Nothing contained in this policy interferes with an employee's right to use sick leave to care for ill or injured family members as provided in Minn. Stat. § 181.9413, or to take leave as provided by the FMLA. Use of Paid COVID-19 Care Leave that also constitutes FMLA leave will run concurrently with FMLA and will be counted against the employee's existing FMLA balance.

IV. General Provisions

- a. Employees are limited to one single leave bank of eighty (80) hours of Paid COVID-19 Leave (pro-rated for part-time employees).
- b. Beginning on July 22, 2020, all new and continuing Paid COVID-19 Leave is subject to the limits and caps set forth in this policy.
- c. Employees must complete a Paid COVID-19 Leave/EFMLA Request Form and receive approval for use.
- d. Employees who are assigned to perform Priority 1 or Priority 2 critical services as defined in this policy must submit a completed Request Form and receive approval in advance of taking COVID-19 School Leave or COVID-19 Care Leave, and must submit a completed Request Form to take COVID-19 Health Leave as soon as is practicable.
- e. 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 Paid COVID-19 Leave.
- f. Employees not assigned to perform Priority 1 or Priority 2 critical services as defined in this policy who request COVID-19 School Leave must submit a completed Request Form as soon as is practicable if the need for leave is foreseeable; and for all other requests for Paid COVID-19 Leave, the employee is not required to submit the Request Form in advance of the leave, but must submit a completed Request Form as soon as is practicable after the first workday (or portion of the workday) for which the employee takes the leave.
- g. Employees must complete a new Request Form and receive a new approval for use if the reason for their need for leave changes.
- h. Employees must notify the agency promptly once their need for Paid COVID-19 Leave ceases.
- i. 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.
- j. Paid COVID-19 Health Leave and Paid COVID-19 Care Leave that also constitutes FMLA leave may be taken on an intermittent or reduced schedule basis. All other types of Paid COVID-19 Leave may be taken on an intermittent or reduced schedule basis with agency permission.
- k. Use of Paid COVID-19 Leave does not count as hours worked.
- l. Employees are not entitled to reimbursement or payout for unused Paid COVID-19 Leave.

V. Payroll Earnings Codes

- a. Employees must use earnings code **CEH Paid COVID19 Health Leave** to track time when they are using **COVID-19 Health Leave** that is not also FMLA-covered leave (or if the employee's FMLA leave bank is exhausted).

- b. Employees must use earnings code **FEH Paid COVID19 Health Leave-FMLA** to track time when they are using **COVID-19 Health Leave** that is also FMLA-covered leave.
- c. A system generated earnings code, **CHM COVID19 Daily Limit-Health Lve**, will display the amount the employee's pay has been reduced to reflect partial pay and daily caps on pay as described above (earnings codes CEH and FEH).
- d. Employees must use earnings code **CSC Paid COVID19 School Leave** to track time when they are using **COVID-19 School Leave** that is not also FMLA-covered leave (if the employee is not eligible for EFMLA or if the employee's FMLA leave bank is exhausted).
- e. Employees must use earnings code **FSC Paid COVID19 School Leave-FMLA** to track time when they are using **COVID-19 School Leave** that is also FMLA-covered leave (the employee is eligible for EFMLA and the employee's FMLA leave bank is not exhausted).
- f. Employees must use earnings code **CCO Paid COVID19 Care Leave** to track time when they are using **COVID-19 Care Leave** that is not also FMLA-covered leave (or if the employee's FMLA leave bank is exhausted).
- g. Employees must use earning code **FCO Paid COVID19 Care Leave-FMLA** to track time when they are using **COVID-19 Care Leave** that is also FMLA-covered leave.
- h. A system generated earnings code, **CDM COVID19 DailyLimit-Care/SchlLv**, will display the amount the employee's pay has been reduced to reflect partial pay and daily caps on pay as described above (earnings codes CSC, FSC, CCO, and FCO).
- i. Paid COVID-19 Leave 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 employees requesting [Paid COVID-19 Leave](#).
- 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 Paid COVID-19 Leave 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 providing notification of facility closings and other 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 #1441 - Expanded FMLA for COVID-19 Related School/Child Care \("EFMLA"\)](#)

Paid COVID-19 Leave/EFMLA Request Form

[Executive Order 20-07](#)

CONTACTS

MMB Enterprise Human Resources