

HR/LR Policy 1443

Date Issued: 01/01/2021

Authority: Executive Order 20-07

## Expanded Leave for COVID-19 Related School/Child Care ("Expanded School Leave")

### OVERVIEW

#### Objective

To support employees and their families during the COVID-19 pandemic by providing up to 10 workweeks of partially-paid leave, up to a dollar value cap, to eligible executive branch employees. This leave is available for when employees 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 ("Expanded School Leave").

#### Policy Statement

Beginning Jan. 1, 2021, this policy provides the terms and conditions for eligibility and use of Expanded School Leave.

**HR/LR Policy #1441, Expanded FMLA Leave for COVID-19 Related School /Child Care ("EFMLA") has expired. However, all paid leave taken under the expired EFMLA policy counts toward the amount of leave available under the Expanded School Leave policy.**

#### Scope and Eligibility

This policy applies to all employees who have worked at least 1,044 hours in the 12 months prior to the time the Expanded School Leave commences, for any agency in the executive branch, 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.

The 1,044 hours of work requirement is determined by counting actual hours worked only. Hours the employee is on leave (paid or unpaid) do not count toward hours worked. An employee returning from fulfilling their USERRA-covered service obligation shall be credited with the hours of work that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service.

**Employees who exhausted leave available under the expired EFMLA policy are not eligible for Expanded School Leave under this policy.**

## Duration

This policy is effective beginning on Jan. 1, 2021 and expires upon termination of the COVID-19 peacetime emergency under Minnesota Statutes, section 12.31.

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>Child Care Provider</i> | A provider who receives compensation for providing child care 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. 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>   | <p>An employee who has worked for at least 1,044 hours in the 12 months prior to the commencement of leave, for 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. For purposes of determining eligibility, time spent on paid or unpaid leave, other than USERRA-covered leave, does not count toward the 1,044-hour requirement.</p> <p><b>Employees who exhausted leave available under the expired EFMLA policy are not eligible for Expanded School Leave under this policy.</b></p>   |
| <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</p> |

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|  | <p>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>Health Care Provider</i>              | <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"> <li>• 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).</li> <li>• 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.</li> <li>• 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.</li> </ul> <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>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

Executive Order 20-07; Minnesota Statutes § 12.21, subdivision 3(10).

# GENERAL STANDARDS AND EXPECTATIONS

## I. Expanded School Leave

- 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 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 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 Expanded School Leave if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework while also providing child care, 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 Expanded School Leave if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework while also providing child care, or they are not permitted to telework by their supervisor. Each agency will designate a process for determining when Expanded School Leave will be used in this circumstance.
- b. To use Expanded School Leave, 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. Expanded School Leave is limited to up to 10 workweeks of leave at partial pay as set forth below. **However, all paid leave taken under the expired EFMLA policy counts toward the amount of leave available under this policy.**
- d. Expanded School Leave shall not exceed the employee's normal work schedule.
- e. Expanded 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.
- f. Expanded 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 or accrued compensatory time.

## II. General Provisions

- a. Eligible employees are limited to up to 10 workweeks of Expanded School Leave.
- b. **All paid leave taken under the expired EFMLA policy counts toward the amount of leave available under this policy.** For example, if an employee took two weeks of unpaid EFMLA and one week of paid EFMLA, the employee, if eligible under this policy, would have nine weeks of Expanded School Leave available.

- c. Employees must complete a Paid COVID-19 Leave/Expanded School Leave Request Form and receive approval for use.
- d. 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 Expanded School Leave.
- e. 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 Expanded School Leave.
- f. Eligible employees not assigned to perform Priority 1 or Priority 2 critical services as defined in this policy who request Expanded School Leave 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.
- 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 Expanded School Leave ceases.
- i. All approvals of leave under this policy are subject to change to conform with any future changes to this policy, and all leave approvals under this policy expire when this policy is no longer in effect, except as may be required under law.
- j. Expanded School Leave may be taken on an intermittent or reduced schedule basis with agency permission.
- k. Use of Expanded School Leave does not count as hours worked.
- l. Employees are not entitled to reimbursement or payout for unused Expanded School Leave.
- m. Expanded School Leave may not be used for days on which the school or child care provider is closed for reasons other than COVID-19. This includes, but is not limited to, holiday breaks, in-service days, and other non-COVID-19 related reasons.
- n. Expanded School Leave is unavailable for employees who have opted for distance learning when in-person learning is available. Leave may be used when an employee's child is on a school-imposed hybrid schedule on the days when the child is distance learning.

### III. Payroll Earnings Codes

- a. Eligible employees must use earnings code **CSX Care/School Leave Extended** to track Expanded School Leave.
- b. 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.
- c. Expanded School 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 eligible employees requesting Expanded School 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 Expanded School 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 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/Expanded School Leave Request Form

[Executive Order 20-07](#)

## CONTACTS

MMB Enterprise Human Resources

Expanded School Leave