

**State of Hawai'i**  
**Department of Human Resources Development**  
**Emergency Family and Medical Leave Expansion Act (EFMLEA)**

Families First Coronavirus Response Act of 2020 (FFCRA)

The Families First Coronavirus Response Act requires the State to provide eligible employees: (1) public health emergency leave (PHEL) pursuant to the Emergency Family and Medical Leave Expansion Act (EFMLEA) and/or (2) emergency paid sick leave (EPSL) pursuant to the Emergency Paid Sick Leave Act (EPSLA). The State has issued this policy in a good faith effort to comply with this law and provide eligible employees with any mandated leave.

The FMLA provides eligible employees up to 12 work weeks of unpaid leave for certain family and medical reasons during a 12-month period. The EFMLEA expands the FMLA to provide PHEL to eligible employees. This policy supplements the State's Federal Family and Medical Leave Act (FMLA) policy and provides information concerning PHEL entitlements and obligations that differ from the general FMLA entitlements and obligations.

This policy is effective April 1, 2020 and will remain in effect until December 31, 2020.

APPLICABILITY

All employees (except emergency responders) who have worked for the State at least thirty (30) calendar days are eligible for this leave.

Under U.S. Department of Labor's rules, Health Care Providers and Emergency Responders may be exempted from FFCRA leaves.

Health Care Providers:

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 similar institution, Employer, or entity

Emergency Responders:

An emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to 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, 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 these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual whom 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.

## DEFINITIONS

“Child care provider” is someone who cares for your child. This includes individuals paid to provide child care, like nannies, au pairs, and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.

“Place of care” means a physical location in which care is provided for your child. 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.

“Public Health Emergency” means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

“School or place of care is closed” means that the physical location where your child received instruction or care is now closed. This is true even if some or all instruction is being provided online or whether, through another format such as “distance learning”.

“Son or daughter” 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.

“Son or daughter” is also an adult son or daughter (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.

“Unable to Work, including telework” means you are unable to work if your employer has work for you and one of the COVID-19 qualifying reasons set

forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of telework.

## REQUIREMENTS

- I. Public Health Emergency Leave (PHEL)
  - A. Shall be provided to eligible employees who are unable to work (or telework) due to a need for leave to care for a son or daughter under 18 years of age if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.
  - B. PHEL is a type of FMLA leave and is subject to the same overall entitlement of 12 weeks during the applicable 12-month period as other FMLA leave. While the statute has some provisions that are different for PHEL than for other FMLA leave, the EFMLEA does not expand the amount of FMLA leave an employee is entitled to in the applicable 12-month period.
  - C. Employees shall provide documentation in support of this leave such as a notice that has been posted on a school or day care website, notice published in a newspaper, or an email from an employee or official of the school, place of care or child care. Documentation is not required for the closure of Department of Education public schools.
- II. Leave Entitlement
  - A. The first ten (10) days of EFMLE is unpaid. However, employees may select one of the following two options to receive pay during the first ten days:
    1. Employees may elect to utilize Emergency Paid Sick Leave to receive two-thirds (2/3) of their regular rate of pay, not to exceed \$200 per day. To supplement their two-thirds Emergency Paid Sick Leave, employees may use accrued sick leave (if employee is caring for an individual, a total of 120 hours of sick leave must be maintained in accordance to State of Hawaii TDI policies), vacation leave or CTO. If employees choose this option, the employee will exhaust EPSL.
    2. Employees may use accrued sick leave (if employee is caring for an individual, a total of 120 hours of sick leave

must be maintained in accordance to State of Hawaii TDI policies), vacation leave or CTO. Employees who choose this option will receive their full pay for the first ten days.

- B. After the first two weeks, eligible employees are entitled to two-thirds (2/3) of their regular pay not to exceed \$200 daily and \$10,000 total.
  - 1. Employees may elect to supplement their two-thirds pay with vacation leave or CTO in order to receive their full pay.
  - 2. Departments may require employees to supplement the two-thirds pay with vacation leave or CTO. Contact your departmental Human Resources Office for information.
- C. EPSL for qualifying reason I.D., I.E., or I.F. may be taken in increments as long as the employer agrees and operations allow for intermittent use of EPSL

#### Expanded FMLA Requirements

- I. EFMLE shall be provided to covered employees who are unable to work or telework due to a need for leave to care for a son or daughter whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19 precautions.
- II. EFMLE is a new leave reason under the FMLA. EFMLE leave used will be counted against the 12-week FMLA entitlement. If a covered employee has exhausted 12-weeks of FMLA, the covered employee is not eligible for EFMLE.

#### PROCEDURES

- I. Employee
  - A. Completes Expanded Family & Medical Leave Request form.
  - B. Provides required documentation:
  - C. Notice of closure of school or place of care, or unavailability of child care provider as applicable such as a notice that has been posted on a school or day care website, notice published in a newspaper, or an email from an employee or official of the school, place of care or child care. Documentation is not required for the closure of Department of Education public schools.

- D. Completes Application for Leave of Absence (G-1 request form).
- E. Signs and submits forms to supervisor or designee.
- F. As with FMLA leave, at the end of PHEL, employees shall be entitled to return to the same position or equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

## II. Supervisor

- A. Reviews Expanded Family & Medical Leave Request form and ensures all attachments are enclosed.
- B. Ensures compliance with requirements, including ensuring FMLA does not exceed 12 weeks during calendar year.
- C. Notifies employee of form submission and advises employee they will be notified by HR Office of approval or denial.
- D. Signs and dates Expanded Family & Medical Leave Request form and G-1 then submits to DHRO.

## III. Departmental Human Resources Office

- A. Reviews Expanded Family & Medical Leave Request form and attached documentation.
- B. Determines eligibility and compliance with FFCRA requirements.
- C. Determines approval or denial of Expanded Family & Medical Leave Request form, signs and dates.
- D. Notifies employee.

## ENCLOSURE

Expanded Family & Medical Leave Request

**State of Hawai`i  
Department of Human Resources Development  
Expanded Family & Medical Leave Request**

|                  |  |
|------------------|--|
| Employee Name:   | Department:                              |
| Division/Branch: | Contact Information (phone and/or email) |

Under FFCRA, an employee qualifies for expanded family leave if the employee is unable to work or telework because the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19, when the need for leave goes beyond 10 days.

Under the FFCRA, a “son or daughter” 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. Under the FFCRA a “son or daughter” is also an adult son or daughter (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.

EFMLE utilizes the same 12-week entitlement as FMLA. If an employee has used any of their 12-week entitlement under FMLA this calendar year, the entitlement under EFMLE will be reduced by the amount already used.

**Documentation Required:**

1. Name of child/ren and relationship \_\_\_\_\_
  2. Name of the School, Place of Care, or Child Care Provider that has closed or become unavailable: \_\_\_\_\_
  3. Substantiation is attached\*  Yes
- \*This may include a notice of closure or unavailability from your 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.
4. Dates of requested EFMLE: From: \_\_\_\_\_ To: \_\_\_\_\_
  5. Up to additional ten (10) weeks of **expanded** family and medical leave at two-thirds the employee’s regular rate of pay (up to a maximum) where an employee is employed for at least 30 calendar days is unable to work or telework due to a bona fide need for leave to care for a child whose school is closed or unavailable for reasons related to COVID-19.
  6. I am requesting to take leave intermittently. Date(s) of intermittent leave: \_\_\_\_\_

**10-DAY Unpaid EFMLE Period (Weeks 1 & 2)**

- I elect to participate in the Emergency Paid Sick Leave Act during the first 10 working days of unpaid E-FMLA in order to receive two thirds (2/3) of my regular pay up to \$200 per day. I understand this will fulfill my 80-hours eligibility for EPSLA and I will need to submit an EPSLA form.

- I elect to use leave credits to cover the first ten (10) working days (80 hours total) of unpaid EFMLE in order to receive 100% pay.
  - I elect to use \_\_\_\_\_ hrs. Sick Leave
  - I elect to use \_\_\_\_\_ hrs. Vacation Leave
  - I elect to use \_\_\_\_\_ hrs. CTO
  
- I do not elect to use EPSLA or leave accruals. I understand that my EFMLE leave for the first 10 working days will be unpaid.

**EFMLE Supplementation (Weeks 3-12)**

- I elect to use leave credits to supplement the 2/3 pay or \$200 per day cap in order to receive 100% regular pay.
  - I elect to supplement EFMLE with accrued Vacation Leave
  - I elect to supplement EFMLE with CTO
  
- I do not elect to supplement the EFMLE. I understand that I will be paid 2/3 of my salary, up to \$200 per day up to a total of \$10,000.

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**CERTIFICATION**

I certify that no other suitable person will be caring for my Son and/or Daughter during the period of Paid Sick Leave or Expanded Family and Medical Leave.

|                                      |            |      |
|--------------------------------------|------------|------|
| Employee's Signature                 | Print Name | Date |
| Supervisor's Signature               | Print Name | Date |
| Administrator's Signature (Optional) | Print Name | Date |

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**Departmental Human Resources Section**

- Employee Approved for Expanded FMLA to care for child/ren.

Dates Approved: From \_\_\_\_\_ To \_\_\_\_\_ = \_\_\_\_\_ Weeks

- Employee has used \_\_\_\_\_ weeks of FMLA in the current calendar year. Approved EFMLE (above) will be reduced as follows: From: \_\_\_\_\_ To: \_\_\_\_\_

- Employee is ineligible for EFMLE

○ The employee does not have a qualifying reason under EFMLA.

○ The employee has exhausted 12 weeks of FMLA/EFMLE in the calendar year.

○ Other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Departmental HRO's Signature

Print Name

Date



For Department Use Only

Calculation of FFRA Leave for Part-Time Employees Whose Request is Approved

**For Part-Time Employees Who have Set Weekly Schedules**

| <b>Determination of Available Hours<br/>Part-time Employees who work a Set Weekly Schedule</b> |  |  |
|--|--|--|
| A.   | Enter the Total Number of Hours the Employee is Scheduled to Work Each Week  |  |
| B.   | Multiply A by 2 and Enter that Number Here   |  |
| C.   | If B is greater than 80, enter 80. Otherwise, enter number in B. This is the number of FFCRA Emergency Sick Leave hours available to employee. |  |
| D.   | Multiply C by 5. This is the number of FFCRA Expanded Family Leave hours available to employee.  |  |

**For Part-time Employees Whose Hours Vary**

| <b>Determination of Available Hours<br/>Part-time Employees who work a Variable Schedule</b>   |   |  |
|--|---|--|
| Calculate values for the six (6) months prior to date the FFCRA leave is to start. If employee worked less than six (6) months, calculate from date of hire. |   |  |
| A.   | Total Number of Hours Worked. Include any paid leave time such as Sick, Vacation, Holiday and Admin Leave.  |  |
| B.   | Total Number of Calendar Days in the Period (6 months or less if worked less than 6 months). Include paid leave days such as Sick, Vacation, Holiday and Admin Leave. |  |
| C.   | Divide A by B. This is the average hours worked per day.  |  |
| D.   | Multiply C by 14. This is the average hours worked in a 2-week period.  |  |
| E.   | If D is greater than 80, enter 80. Otherwise, enter number in D. This is the number of FFCRA Emergency Sick Leave hours available to employee.                        |  |
| F.   | Multiply D by 5. This is the number of FFCRA Expanded Family Leave hours available to employee.   |  |

**PAYROLL CALCULATIONS (FOR PAYROLL USE ONLY):**

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