

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT POLICY

### I. PURPOSE

To ensure a clear and uniform understanding and administration of leave and pay under the federal Families First Coronavirus Response Act (FFCRA) for employees affected by the COVID-19 pandemic. Paid sick time provided under this Act does not carry over from one year to the next. Employees are not entitled to reimbursement for unused leave upon dismissal, resignation, retirement, or other separation from employment.

### II. DEFINITIONS

- A. Appointing Authority. — the executive or head of a department or agency who is authorized by statute to appoint employees in the classified or classified-exempt service.
- B. Child Care Provider. - a provider who receives compensation for providing child-care services on a regular basis, including an 'eligible child care provider' (as defined in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n)).
- C. Public Health Emergency. - an emergency with respect to COVID-19 declared by a Federal, State, or local authority
- D. School. - 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).

### III. POLICY

It is the policy of the State of West Virginia that all eligible employees receive their full benefits under FFCRA. The State shall consider employees to be entitled to FFCRA benefits according to the provisions set forth in the Act. For purposes of applying the FFCRA, the State is considered one employer, but each Appointing Authority shall administer benefits for their respective employees.

- A. In addition to the FFCRA, the *Administrative Rule of the West Virginia Division of Personnel*, W. Va. Code R. §143-1-1 *et seq.*, also provides for leave, both paid and unpaid, if an employee meets eligibility requirements, and requests the leave for a qualifying event. Due to the complexity of the law and rule, and their differing eligibility requirements, as well as their differing entitlement provisions, it is necessary that each request for leave be individually evaluated, and guidance provided on a case-by-case basis.
- B. Emergency Family Medical Leave Expansion Act (EFMLEA) - Eligible employees are entitled to take up to twelve (12) weeks of Emergency FMLA leave for "a qualifying need related to a public health emergency." The Act applies to employees who have been employed for at least 30 calendar days prior to taking the EFMLEA. The existing federal Family and Medical Leave Act (FMLA) requirements that the employee has been employed for a year, worked for 1,250 hours will not apply.

Eligibility is limited to circumstances where an employee is unable to work (or telework) to care for a minor child if the child's school or place of child care has been closed or is unavailable due to a public health emergency as follows:



1. Eligible employees shall be granted unpaid leave or may take available accrued sick or annual leave during the first ten (10) days of leave.
  2. The remaining ten (10) weeks are paid at not less than 2/3 of the employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. The maximum payment is \$200 a day and a \$10,000 total.
  3. For employees with variable hours each week, paid leave would be equal to the average number of hours worked per day over the previous six (6) months.
  4. An eligible employee is entitled to twelve (12) weeks of Emergency FMLA leave.
  5. Emergency FMLA leave is job-protected, and the employer would restore an employee to the same or equivalent position upon their return to work.
- C. Emergency Paid Sick Leave Act (EPSLA) - Full-time employees who are unable to work or telework are eligible for up to eighty (80) hours of paid sick leave at their regular rate of pay 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 because of COVID-19.
  3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

Full-time employees who are unable to work or telework are eligible for up to eighty (80) hours of paid sick leave (part-time employees are eligible to take the number of hours they would normally work during a two-week period) at two-thirds (2/3) of the employee's regular rate or minimum wage, whichever is greater when caring for an immediate family member because:

1. The employee is caring for an individual subject or advised to quarantine or isolation.
2. The employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions.
3. The employee is experiencing substantially similar conditions as specified by the Secretary of the United States Department of Health and Human Services.

The law limits paid leave to \$511 per day (\$5,110 in total) where leave is taken for an employee's own illness or quarantine; and \$200 per day (\$2,000 in total) where leave is taken for reasons to care for others or school closures.

#### IV. RESPONSIBILITIES

- A. It shall be the responsibility of the Division of Personnel to prescribe forms necessary for compliance with the provisions of FFCRA.



- B. It shall be the responsibility of each Appointing Authority to comply with the provisions of the FFCRA including, but not limited to the following:
1. Post the federal FFCRA poster in a central location of the agency, and at all satellite offices and to disseminate this policy and poster to all staff through electronic measures due to the nature of the crisis requiring many staff to work from home.
  2. Only require a physician/practitioner certification when necessary (e.g., to address suspected fraud or when an employee is returning to work after exposure or illness related to COVID-19).
  3. Continue applicable benefits.
  4. Restore eligible employees to his or her same or equivalent position at the conclusion of the period of leave.
  5. Not interfere with, restrain, or deny the exercise of any right provided by FFCRA.
- C. It shall be the responsibility of each employee to comply with the provisions of FFCRA including, but not limited to the following:
1. Provide notice of the need for leave.
  2. Complete request forms and submit required documentation for determination of eligibility.
  3. Comply with procedural requirements for requesting leave established by the Appointing Authority.

**V. REFERENCES**

- A. Family and Medical Leave Act, 29 UC 2601 et seq.
- B. Families First Coronavirus Response Act, Pub.L. 116-127.
- C. Administrative Rule of the West Virginia Division of Personnel, W. Va. Code R. § 143-1-1 et seq.

**VI. EFFECTIVE DATE:** April 1, 2020, through December 31, 2020.

**VII. POLICY NUMBER:** DOP-P25.

Approved and Issued By:

Sheryl R. Webb, Director of Personnel

Date Signed: 3/26/2020