



## **FAMILIES FIRST CORONAVIRUS RESPONSE ACT QUESTIONS & ANSWERS**

**This guidance is intended for State HR Professionals and is not for general distribution.**

If more specific details are warranted, agencies are encouraged to contact DHRM through the policy mailbox ([policy@dhrm.virginia.gov](mailto:policy@dhrm.virginia.gov)); however, agencies may need to exercise discretion based upon their unique business needs. Given the evolving nature of this public health threat and new legislation and guidance, the below responses are subject to change. DHRM encourages HR to review these responses and other posted materials daily until the COVID-19 pandemic has abated.

The following information was shared during the **Families First Coronavirus Response Act teleconference on April 1, 2020** and includes guidance provided by the US Department of Labor's Wage and Hour Division as of the date of publication.

### **1. What is the Families First Coronavirus Response Act (FFCRA)?**

The Families First Coronavirus Response Act (FFCRA) is comprised of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act among other initiatives to address benefits and protections for American workers during the Coronavirus pandemic.

### **2. When is the FFCRA effective?**

The FFCRA is effective from April 1, 2020 through December 31, 2020.

### **3. Who is eligible for FFCRA?**

Salaried and wage employees are eligible for FFCRA Emergency Paid Sick Leave. Salaried and wage employees who have worked for the employer for 30 calendar days are eligible for FFCRA Expanded Family Medical Leave.

### **4. Who is not eligible for FFCRA benefits?**

There is an exclusion for **health care providers** and **emergency responders**. As defined in the Act, these include:

- Health care providers: Anyone employed at any doctor's office, hospital, health care center, clinic, postsecondary 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.
- Emergency responders: 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.

Despite the exclusion, employees in these categories who are displaying symptoms or are known to have been exposed and required to self-quarantine by a public health official or medical care provider should be removed from the workplace and provided the paid emergency sick leave.

We encourage you to provide access to the paid leave for other reasons to employees in health care provider or emergency responder roles as defined under the Act *as staffing levels permit and in a non-discriminatory manner*.

Employees who have not worked for at least 30 calendar days are not eligible for Expanded Family Medical Leave.

#### **5. What are the benefits awarded under FFCRA?**

There are two types of paid leave available:

Emergency Sick Leave: Up to 80 hours (pro-rated for employees who are less than full-time) with dollar amount limits.

Expanded Family Medical Leave: Up to 480 hours (12 weeks) of leave. First two weeks unpaid, next 10 weeks paid at 2/3 of normal salary rate with dollar amount limits. (The leave is pro-rated for employees who work less than full-time.)

#### **6. How is this paid leave funded?**

This leave will be paid from agencies' current budgets for employees' salaries. At this juncture, it is not known if any funding will be provided by the federal government to offset some of these expenditures. Agencies should plan to absorb the costs.



## FFCRA EMERGENCY PAID SICK LEAVE

### 7. What is the Emergency Paid Sick Leave Act part of the FFCRA?

Similar to our Public Health Emergency Leave (PHEL) applications, this paid leave expands the reasons for usage and is available **ONLY** if the employee is **unable to work or telework** due to one of six (6) reasons. The reason for the usage drives the pay formula that is applied.

### 8. What are the six Emergency Paid Sick Leave Act Reasons?

1. If the employee has been diagnosed with COVID-19 and must self-isolate for treatment.
2. If the employee has displayed symptoms of COVID-19 and is seeking a medical diagnosis or care which also requires self-isolation.
3. If a health care provider or public health official has recommended that the employee self-isolate due to COVID-19 concerns. This could be due to the employee's symptoms and/or a likely or known exposure.

#### **Pay Formula (Compensation) for Reasons 1 - 3**

When compensating for the 80 hours of paid leave for one of the first three reasons above, the leave is paid at 100% of the employee's regular rate of pay, including nondiscretionary compensation.

There are dollar maximums for paying this leave. The maximum paid leave is set at \$511 per day and \$5,110 in the aggregate over the two-week period (or ten workdays.) If an employee's salary exceeds ~\$132,860 annually, the maximum required pay may be exceeded.

Supplementing pay: Personal leave (**including** sick leave) may be charged to provide for the 10 workdays of full pay. This will be handled similarly to the process used during periods of short-term disability when employees use their leave balances to supplement income replacement percentages to receive 100% of pay.

4. If an employee has to care for an individual who is quarantined or advised to self-isolate. The individual does not have to be a family member.
5. If the employee has to care for a son or daughter because the schools/child care facilities have closed or because the child care provider is not available due to COVID19.
6. If the employee is experiencing substantially similar conditions as specified by the federal Secretary of Health and Human Services. (*This is not currently defined.*)



**Pay Formula (Compensation) for reasons 4 - 6**

The leave is paid at 2/3 of the regular rate up to \$200 per day and \$2,000 total for the two week period (10 workdays). These maximums will impact employees having annualized salaries of approximately \$77,961 or more.

Supplementing pay: When these monetary limits are met, employees may charge personal leave (**excluding** sick leave<sup>1</sup>) to supplement and be paid their full salaries.

**9. Do the usual leave request procedures apply for FFCRA?**

Yes, the usual leave request procedures should be followed by employees seeking FFCRA Emergency Paid Sick Leave. Employees must still inform their supervisors that they will be absent and update their status periodically. Agencies should use the DHRM Emergency Sick Leave form or facsimile to capture needed information for the use of this leave.

[Emergency Sick Leave Form \(FFCRA\)](#)

**10. How should wage employees request leave under FFCRA?**

Wage employees should request leave in advance whenever possible and have it approved before using the leave. Your agency should establish a procedure for requesting this leave and communicate it to wage employees and their supervisors. Wage employees do not typically receive paid leave and are not accustomed to related procedures.

Wage employees should also use the FFCRA Leave forms or a facsimile to capture needed information for the use of this leave.

**11. How should emergency leave hours for wage employees be recorded in timekeeping/leave systems?**

Most systems do not include leave categories for wage employees. It is important to remember that any leave hours paid must be counted toward the 1500 hour threshold for wage employees to comply with the Manpower Control Program and the Affordable Care Act (ACA). Carefully monitor and track the hours awarded as the end of the look-back measurement period for ACA is rapidly approaching (April 30th). *Please see the response to Question #12.*

**12. How should emergency leave hours for salaried employees be recorded in timekeeping/leave systems?**

Instructions for recording hours for Time, Attendance, & Leave (TAL) system users were issued on April 16<sup>th</sup>. The Department of Accounts has also issued instructions for those agencies using other timekeeping systems. Please consult with your payroll office or the Payroll Service Bureau if you are in a non-TAL agency.

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<sup>1</sup> If in reason #4, the individual being cared for is a family member, up to 33% of the employee's traditional or VSDP sick leave may be used to supplement.



**13. Are employees required to have medical documentation to use FFCRA emergency paid sick leave?**

The law notes that documentation should be requested. Due to the current pandemic state and the burden on healthcare facilities, you may need to make allowances for or waive any requirement for medical documentation.

**14. Are employees required to have proof of school and childcare closures?**

Currently, all of Virginia's public and private schools are closed for the remainder of the school year. This has been announced via the Governor's Executive Order and the media. No formal documentation is required for school closures. Some daycare centers are still operating but for those that have closed, the centers may have texted employees or provided other notifications to them when they closed.

**15. How is the leave applied if an employee works a schedule other than five eight-hour days (e.g., four ten-hour days or twelve-hour shifts)?**

If an employee works a schedule other than five eight-hour days, you will need to convert them to five 8-hour day schedules to apply the leave. This is similar to what we do with VSDP claims. This also ensures that the 80 hours represents 10 days off and two weekends, constituting a 14-calendar day span.

**16. May Emergency Sick Leave be taken intermittently?**

It depends on why the leave is being used. Emergency Sick Leave must be used in full 8 hour increments per work day if the leave is being taken because the employee:

- is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- is advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- is caring for an individual<sup>2</sup> 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
- is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services. *(Note: This reason has not yet been defined by the Department of Labor.)*

Employees who are quarantining or symptomatic are expected to use the 80 hours of sick leave in one block of time to equate to the recommended incubation period or to treat the illness.

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<sup>2</sup> Per DOL "Such an individual includes an immediate family member or someone who regularly resides in your home. You may also take paid sick leave to care for someone if your relationship creates an expectation that you would care for the person in a quarantine or self-quarantine situation, and that individual depends on you for care during the quarantine or self-quarantine."



If an employee is prevented from teleworking their normal schedule of hours because of the need to care for a child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the agency may agree to use Emergency Sick Leave intermittently while teleworking.

Employees may take intermittent leave in any increment that is agreeable to both the agency and the employee. For example, the employee may telework a normal schedule on Monday, Wednesday and Friday and take Emergency Sick Leave to care for their child on Tuesday and Thursday.

#### **17. When does compensation end with the Emergency Paid Sick Leave?**

The compensation for leave ends with the next scheduled shift after the sick leave has been awarded. There is no continuation or carryover of any unused leave.

This not to be considered a “use it or lose it” form of leave nor should it be construed as “free” leave provided by the federal government. It is paid from agencies’ budgets for salaries. **Please remember that it is available only to those employees who are unable to work or telework while meeting the criteria for using the leave.**

#### **18. What does “unable to work or telework” mean?**

If the agency has work for the employee to perform but one of the COVID-19 qualifying reasons set forth in the FFCRA prevents them from being able to perform that work, either at the assigned worksite or remotely via telework.

Agencies may permit employees to work alternate work schedules or adjust schedules providing the employee agrees to work their normal number of work hours (for instance early in the morning or late at night). These schedule adjustments will permit employees to continue working and FFCRA leave is not necessary unless a COVID-19 qualifying reason prevents the employee from working.

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## FFCRA EXPANDED FAMILY MEDICAL LEAVE

### 19. What is the Family Medical Leave (FML) Expansion Act?

This Act creates a new category of FML. State government, as a public entity, is a covered employer. Similar to other categories of FML, the Act provides up to twelve weeks of job-protected absence from work during a twelve-month period. It also conveys protection against discrimination in the administration of the leave or retaliation against employees who access the leave.

References in the act to tax credits for this leave apply to private sector.

### 20. What are the differences between other categories of Family Medical Leave (FML) and the Family Medical Leave expansion category?

- The eligibility criteria are different.
- Eligible employees may receive **paid** leave time instead of **unpaid** leave time.
- While wage employees occasionally qualify for FML for the existing categories, this paid leave for FML applies to wage employees if they meet other criteria.

### 21. How is eligibility determined for the Family Medical Leave (FML) Expansion Act?

- An employee must have worked for at least thirty calendar days to be eligible for emergency FML.
- The calendar days do not need to be consecutive.
- There are no requirements for an employee to have worked a minimum number of hours.

### 22. What are the reasons for using Expanded Family Medical Leave (FML)?

The criterion for expanded FML eligibility applies to an employee who is **unable to work or telework** due to the need to care for a son or daughter under 18 years old\* because:

- 1) The school or child care facility has been closed and/or
- 2) The childcare provider is unavailable due to a declared COVID-19 public health emergency.

*\* If the child is 18 years of age or older with a disability and cannot care for him or herself due to that disability, the employee may take paid sick leave and expanded family and medical leave to care for him or her if his or her school or place of care is closed or his or her child care provider is unavailable, due to COVID-19 related reasons, and the employee is unable to work or telework as a result.*

### 23. Can a supervisor request documentation from an employee for using leave under the Family Medical Leave (FML) Expansion Act?

As noted in #14: Currently, all of Virginia's public and private schools are closed for the remainder of the school year. This has been announced via the Governor's Executive Order and the media. No formal documentation is required for school closures. Some daycare centers are still operating but for those that have closed, the centers may have





texted employees or provided other notifications to them when they closed.

Remember that documentation may not be in a format that you typically see. A few examples of alternate documentation may include:

- 1) The employee may present a text message from the daycare noting its closure.
- 2) You may need to accept a note from a daycare provider who cannot provide care to the employee's children due to COVID-19.

#### **24. What documentation is required for requesting Expanded FML?**

- While the law provides for employers to require documentation, in the current pandemic situation, such documentation may not be immediately available
- Do not use the Department of Labor FMLA certification forms for this category of Family Medical Leave. A template leave request form is available.

[Expanded Family Medical Leave Form \(FFCRA\)](#)

#### **25. What are the Family Medical Leave (FML) Expansion Act Benefits?**

- The first 10 workdays of FML may be unpaid or the employee may substitute Emergency Sick Leave or personal leave for the unpaid time (the first 10 workdays) if eligible for ESL.
- After the first 10 workdays, employees will be paid for 2/3 of their regular rate of pay.
- Maximum dollar amounts are placed on this paid leave: Up to \$200 per day and \$10,000 in aggregate for the 10 weeks of paid Expanded FML
- Employees may charge other leave (excluding sick leave) to supplement these payments.

#### **26. How is pay calculated for the Family Medical Leave Expansion Act for variable hour employees?**

When calculating pay for variable hour employees, the employer must use the preceding six-month period to determine the average hours. If no work was performed during that period, use the average number of hours per day that the employee would normally be scheduled to work. This formula is specified in the Act.

#### **27. How does the Family Medical Leave (FML) Expansion Act apply for employees who have already used some or all of their FMLA period since January 10<sup>th</sup> for any reason?**

- Employees may be eligible for only one 12-week<sup>3</sup> period for all FML reasons during one leave year.
- If an employee has used other categories of FML since January 10<sup>th</sup>, those weeks are subtracted from the total of 12 weeks allotted for FML including expanded FML during the leave year. *Example: The employee was on FMLA from Jan. 13<sup>th</sup> through Feb. 12<sup>th</sup> for a medical procedure and recovery and used 160 hours of FML. The employee has only a maximum of 320 hours remaining that may be charged to EFML during this leave year.*

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<sup>3</sup> 26 weeks for military exigencies





- Similarly, if an employee uses weeks of the expanded FML, those weeks must be subtracted from the allotment for this leave year if the employee becomes eligible for additional FML.
- The original categories of FML do not require paid leave and this Act does not change that.
- If an employee is ill with COVID-19, they may qualify for Emergency Sick Leave and for traditional sick leave or Virginia Sickness and Disability (VSDP) benefits to cover the time of the illness.
- An employee who is caring for their child who is ill with COVID-19 may qualify for standard FML during the period of the illness and may also be eligible for Expanded FML for caretaking due to school closures when the child has recovered. The total time for FMLA (for all reasons combined) is still limited to 12 weeks within a leave year.

**28. Can the Family Medical Leave (FML) Expansion Act Benefits be used intermittently?**

- For Expanded FML, employers may allow employees to take the leave intermittently or on a reduced leave schedule.
- This is an option that employers may permit but are **not required** to offer.

**29. May employees use personal leave to supplement the Family Medical Leave Expansion Act Benefits?**

- When employees are paid at 2/3 their regular rate but wish to receive full pay, they may charge their personal leave balances (excluding sick leave unless caring for a family member who is ill with the virus) to supplement.
- Likewise, when they reach the monetary limits, they may supplement by charging personal leave balances (excluding sick leave unless caring for a family member who is ill with the virus) to receive full pay.
- Personal leave may be used in accordance with existing DHRM leave policies.

**30. What is the agency's obligation to inform employees about the Families First Coronavirus Response Act?**

Agencies are required to post the [Department of Labor FFCRA Poster](#) onsite and on their Intranet, via email, or using other usual employee communication tools. Remember that some employees may be working at the usual worksite but many others may be teleworking.

**31. What happens if the agency violates or does not comply with the Family Medical Leave Expansion Act?**

Failure to comply with the Act will be treated as a violation of the minimum wage provisions of the Fair Labor Standards Act (FLSA).

**32. What protections are provided to the employee upon return to work?**

Employees returning to work from emergency Family Medical Leave have job protection in the same manner as any other Family Medical Leave Act period would afford them.



## **ADDITIONAL QUESTIONS/ANSWERS RELATED TO FFCRA, PHEL, TWFR, COVID-19**

### **EMPLOYEE CONCERNS/AGENCY RESPONSIBILITIES**

#### **33. What if employees are concerned about whether another employee has the Coronavirus (COVID-19)?**

- Many of the symptoms of COVID-19 replicate symptoms of seasonal influenza, allergies, sinus infections, and colds, etc. While the safety of our employees is always a priority, be mindful that employees may have other illnesses that do not require the same precautions as COVID-19. The fact that an employee is presenting certain symptoms does not necessarily mean that the employee is infected with COVID-19.
- Agencies should remind employees about the hygiene and safety guidelines provided by the Centers for Disease Control and Prevention and the Va. Department of Health and inform them of the actions the agency is taking to ensure their safety.
- Agencies should attempt to provide work assignments that can be performed remotely or can be done through social distancing if doing so meets the business needs.
- When employees are known to have contracted the virus, the agency must ensure that the office/work area is appropriately disinfected in accordance with guidance issued by the Department of General Services. [Facility Preparations Guidance Issued by Department of General Services](#) Agencies working in buildings outside of DGS's purview should follow this guidance or that of their local health districts.

#### **34. If you discover that an employee or visitor to your office has had the virus or been exposed to the virus and is required by public health officials to self-quarantine, must you inform employees?**

Depending upon when and for how long the infected employee was in the office and had potential exposure to others, you may need to inform co-workers and have offices disinfected. Your local health district may be able to assist you in determining this. Guidance and templates for informing employees are available on the COVID-19 section of DHRM's website.

[Guidance for Handling Notifications of Potential Exposure to COVID-19](#)

[Notification of Potential Exposure to COVID-19](#)

[Notification of Actual Exposure to COVID-19](#)

#### **35. Some employees continue to be extremely fearful of coming into the office. What should we do?**

All of us have different tolerances for the types of changes and fears that this pandemic has brought. Daily lives and routines have been disrupted in countless ways. Agencies should continue to find ways to practice social distancing, to assure employees that their safety is important and that you are taking steps to make offices as safe as possible, to remind them



of CDC recommendations for hygiene and safety, and to keep employees engaged through regular communication. If an employee is having a particularly difficult time adjusting, you may need to refer them to the Employee Assistance Program. It is important to emphasize that you are adhering to the CDC guidelines and expect all employees to follow COVID-19 hygiene and social distancing protocols.

**36. When are we obligated to notify employees about positive COVID-19 cases among co-workers or likely exposure? How do we convey that message?**

We have provided guidance and template letters to send to employees. Refer to Guidance for Handling Notification of Actual or Potential Coronavirus Exposure in the Workplace. (See #33.)

## **EMERGENCY CLOSINGS**

**37. We had to close the building for two days to disinfect the offices. We required our employees who could telework to continue to work. Should they be awarded compensatory leave for the time they were required to work each day?**

No. Teleworking employees are not eligible for compensatory leave for working during an emergency closure of a building as their assigned workplace is their home location during such as closure.

Employees who could not telework or were not assigned work they could do remotely should not be penalized; they should receive their regular pay.

Employees who were required to come into the building (buildings and grounds or administrative staff) to coordinate the cleaning effort, unlock and relock doors, etc., could be considered designated as essential for this event and may be eligible for compensatory leave for hours worked.

**38. Some agencies have stopped permitting access to the general public or visitors. Are these considered emergency closings? Are employees entitled to compensatory leave if they are required to work?**

In most cases, the business operations have continued. Students have been sent home from colleges and universities but remote/on-line learning has continued. These are not emergency closings in the traditional ways that the Emergency Closings policy has addressed.

## **“VULNERABLE POPULATION”**

**39. The Governor noted in a press conference on March 17<sup>th</sup> that those with chronic health conditions or age 65 and older should self-quarantine. Some of our employees have taken this very seriously and feel they have been mandated to stay home while continuing to be paid. What do we do if they have used all allocated PHEL and are asymptomatic?**

The Governor's guidance is important but has to be balanced against a need for continuity of government operations. The guidance did not infer that state employees would be permitted to stay home and not work for an indefinite period of time while continuing to be paid. The allocation of 160 hours (four full workweeks) of paid leave has been very



generous and allowed employees to stay home during a significant period of community spread.

Some positions require a physical presence at the job site. If you have employees who still cannot perform their jobs or other tasks remotely despite your attempts, they have exhausted their PHEL, and they are not eligible for FFCRA leave, there are options.

- Reconsider social distancing options available. Remember that, since so many employees ARE currently teleworking, effective social distancing may be more feasible now than it was a month ago.

If these employees continue to be asymptomatic and are not eligible for FFCRA, they may:

- Return to work  
*It's important to encourage these workers to wear face masks, gloves, or any other equipment that may make them feel safe. Ensure the best social distancing practices possible.*
- Request use of personal leave  
*Agencies are encouraged to approve such leave if at all possible. However, if employees have already been out of the office for a month and, depending upon the type of job they hold, agencies may be unable to approve such leave based on business needs.*
- Request an unconditional leave without pay  
*Be sure to carefully explain the impact on benefits and pay for such a leave.*
- If the employee is eligible *and expresses interest*, consider retirement options.

**40. One of our employees provided a doctor's note that states that the employee has a health condition that makes him vulnerable for a serious case of COVID-19 and says that he must self-quarantine for two weeks. There is no notation of a potential or known exposure, the employee is asymptomatic and is not being treated for anything related to COVID-19. What should we do?**

- If the employee can work remotely, permit him to do so.
- If not, s/he may be eligible for PHEL or FFCRA Emergency Sick Leave.
- If PHEL/Emergency Sick Leave has been exhausted, the employee has the same options as noted above.

**41. We have an employee who is over 65 and has underlying health conditions. She is extremely nervous about the potential to be exposed. Her work is not really conducive to telework and, due to her lack of technical savvy, our efforts to try to allow her to telework have been unsuccessful. Most of our staff are working in the office during the pandemic. In this case, do we allow her to utilize the PHEL benefit to stay home since telework is not a suitable option and most of our staff continue to report to work?**



You should first consider options that provide for social distancing:

- Teleworking – includes performing normal job duties and special projects.
  - Examples of special projects may include policy/procedure review and development, capturing knowledge to help new employees, electronic record review and clean up for compliance with records retention policies, reviewing past audit findings and ensuring actions are taken to address, etc.
- Look for opportunities to cross train employees and grow skills.
- Establish alternate work schedules or shifts that minimize the numbers of employees in a location at any given time. You may have staff rotate the days they work in the office vs. the days they work elsewhere, minimizing potential contact.
- Relocation to areas within an office or facility that are more isolated or have less foot traffic.

The use of Public Health Emergency Leave may be necessary and is an option if you are unable to accomplish social distancing through other means. Employees may always request to use their personal leave or take a leave without pay.

#### **NO MEANINGFUL WORK TO BE ASSIGNED THAT CAN BE DONE REMOTELY**

#### **42. We have assigned work and projects that could be done remotely to employees who cannot telework but we simply have no more meaningful work to assign until we resume normal operations. What are our options for these employees?**

**Wage employees:** If you have no work that you can schedule for them, you should release them and provide them with information related to filing for unemployment claims. Remember that the Commonwealth is self-insured for unemployment benefits.

Provide as much notice as you can, but employees should not be retained on the payroll when you have no work to assign. Refer them to any job opportunities in your agency or other agencies.

**Salaried employees:** Classified employees may be furloughed for up to 690 hours within a 365-day period. See information about Temporary Workforce Reductions on the COVID-19 section of the DHRM website.

[Temporary Workforce Reduction Policy](#)

[Temporary Workforce Reduction Policy Guide \(Summary\)](#)

[Temporary Workforce Reduction FAQs](#)

#### **43. If your agency is operational, but furloughs an employee on or after April 1, 2020 (the effective date of the FFCRA), can the employee still receive paid sick leave or expanded family and medical leave?**

- No. If an employee is furloughed because the agency doesn't have enough work for the employee to perform on-site or to do remotely, the employee is no longer scheduled to work. Consequently, paid leave is not substituted for unworked hours.



- If the employee is assigned a reduced schedule, they may be eligible for paid leave only during scheduled work hours.
- Employees in non-working or reduced schedule/pay status may be eligible for unemployment insurance benefits. The Virginia Employment Commission should be contacted for specific questions about eligibility. For additional information, please refer to [Careeronestop](#).

Remember that FFCRA is not intended to be used if the agency no longer has work for the employee to perform and is no longer scheduling any work for that employee.

#### **VIRGINIA SICKNESS & DISABILITY PROGRAM (VSDP)**

##### **44. Should an employee file a Virginia Sickness and Disability (VSDP) claim for COVID-19?**

###### **When to File a VSDP Claim:**

- Employees should file VSDP claims **ONLY** when they are symptomatic, ill, or injured and expect the illness/injury to last seven calendar days or more.
- If an employee has SYMPTOMS of COVID-19, has been in touch with their physician and advised to self-isolate DUE TO THE SYMPTOMS, the employee or HR should file a short-term disability claim.
- Should the claim be APPROVED for a COVID-19 illness, the employee may charge PHEL for the STD waiting period and to supplement any income replacement levels below 100%.

###### **When NOT to File a VSDP Claim:**

- If an employee who has an underlying medical condition and/or is in the vulnerable population and has been advised by their physician to self-isolate, the employee should contact HR.
  - HR should communicate with the supervisor to determine if the employee can telework or perform any work remotely or through social distancing methods.
- If NOT, PHEL may be used to cover an employee's absence. The employee may also request personal leave.
- ***This is not a presenting medical condition that would qualify for disability benefits so no STD claim should be filed.***

##### **45. If an employee is ill with COVID-19 and has an approved STD claim, may she use PHEL as a supplement to bring her income replace level to 100%?**

PHEL may be used to cover the waiting period for such an STD claim and may be used to supplement the disability benefits.

##### **46. If an employee is ill with COVID-19 and has an approved STD claim, may she use disability credits to supplement the income replacement levels below 100%?**

Yes. The VSDP policy has not changed for COVID-19. Remember that disability credits must be used in increments of 8-hours. If the income replacement level is 60% and the employee needs 3.2 hours of leave to bring the replacement level up to 100% for a day, 8 hours of disability credits are charged.

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## **WAITING PERIODS/USE OF LEAVE/INTERMITTENT USE**

Prior supervisory approval is required for all leave usage. Employees must maintain communications with a supervisor (or their Agency HR representative) during their absences as instructed by Agency management.

### **47. What is required to request FFCRA Emergency Sick Leave?**

- Employees must complete and submit a FFCRA Emergency Sick Leave request to take leave. Link to form in Question #9.
- There is no waiting period for FFCRA Emergency Paid Sick Leave.

### **48. What is required to request FFCRA Family Medical Leave?**

- The standard Dept. of Labor FMLA Certification form should not be used for FFCRA Expanded Family Medical Leave. The FFCRA Expanded Family Medical Leave form should be used. A link to form is in the response to Question #22.
- An employee must have been employed for 30 calendar days to be eligible for Expanded FML

### **49. How long must an employee have been employed before using PHEL?**

- There is no waiting period for PHEL.

### **50. What is the best procedure for requesting this leave?**

- It is **strongly** recommended that requests for PHEL, FFCRA Emergency Sick Leave, and FFCRA Expanded Family Leave be coordinated through the HR office to ensure eligibility and appropriate recordation in timekeeping/leave systems. These categories of leave must be carefully recorded and tracked in a manner unlike other types of leave.
- Alternate work schedules must be converted to five 8-hour days for recording and pay purposes – similar to the process followed for VSDP claims.

### **51. May employees use these types of leave intermittently?**

Intermittent leave is **not** permitted if the reason for the leave is:

- Due to the employee's quarantine or isolation order by a government/public health official related to COVID-19
- Due to the employee's health care provider's order to self-quarantine due to COVID-19
- Due to the employee's COVID-19 type of symptoms while the employee is seeking medical diagnosis
- Due to the employee's caretaking of an individual who has been ordered to self-quarantine or isolate
- Or due to other substantially similar conditions specified by the U.S. Sec. of health and Human Services





Agencies are **not required** to but **may** permit intermittent use of leave for parents caring for their child/ren due to the closing of schools/day care centers. *Agencies should determine if such voluntary arrangements will be permitted.*

*Five of the FFCRA leave categories are to be charged in a minimum of one-day increments based on the employee's schedule. (Alternate schedules should be converted to five 8-hour day schedules when administering this leave.)*

*Expanded Family Medical Leave MAY be charged in lesser increments If the agency agrees to allow intermittent leave for an employee to care for his/her child due to school/daycare closings. This must be in accordance with a voluntary agreement between the employee and the agency. (Example: A full-time employee is caring for his/her children half of the day and working full-time the other half of the day. If the agency permits intermittent use of Expanded Family Medical Leave, the employee may receive 2/3 pay for half of the day and 100% pay for the other half of the day while the employee is teleworking.)*

## **PUBLIC HEALTH EMERGENCY LEAVE (PHEL)**

### **52. Is PHEL available on an ongoing basis or is there an expiration date identified at this point?**

No end date has been cited but the need for the leave should subside as the COVID-19 danger has lessened. The leave is intended to be available for the duration of the pandemic. If additional incidents should surface at a later date, the activation will be reconsidered. The limits of the 80 hours plus 80 hours at the agency's discretion are still in place.

### **53. We've already allotted all of the PHEL hours to our wage and salaried employees who qualified for it. Will additional PHEL hours be available?**

It is not anticipated that there will be additional PHEL hours available. If your wage or salaried employees are eligible for FFCRA leave for the reasons provided, they may charge that leave time whether or not they have accessed the PHEL. FFCRA is in addition to any PHEL.

### **54. What is the waiting period for PHEL availability for new employees that are just starting now since it was implemented on March 12th?**

There is no waiting period for PHEL. It was activated when the public health emergency was declared.

## **PARENTAL LEAVE**

### **55. How do FFCRA Emergency Paid Sick Leave and FML interface with Paid Parental Leave (PPL)? We have an employee out on PPL following the birth of her newborn. Should we advise her to use all her PPL first, and then start using PHEL when she runs out of it?**

In most cases, she should continue to use the parental leave. Parental leave is payable at 100% up to a maximum of 8 weeks (320 hours). If she is eligible for PHEL following the



parental leave period, it may be awarded afterwards. Evaluate whether she is eligible for Emergency Paid Sick Leave or expanded FMLA at that time. Remember that most employees on parental leave for bonding with newborns may have already used most if not all of their FMLA allotment for the year.

#### **MISCELLANEOUS RELATED QUESTIONS:**

**56. Employees have asked if there will be an exception to the leave carryover policy this year since many planned vacations have been canceled due to COVID-19 and employees are not going to be able to use their excess leave when the agencies are back in operation.**

- Most agencies are in operation, albeit remotely, and still providing essential services.
- Employees may still request and use approved leave.
- There are no plans to expand the carryover amounts for annual leave or to provide additional carryover time.

**57. May both *classified* and *wage* staff use PHEL to supplement their pay FFCRA pay to bring them up to 100%?**

- Classified staff and wage staff may use PHEL to supplement pay for Emergency Sick Leave and may use the discretionary PHEL to supplement Expanded Family Medical Leave.
- For classified staff who are in less than 100% FTE jobs and wage staff, the maximum paid leave awarded will be the pro-rated based on the hours worked.
- The maximum amount of PHEL to be awarded is also pro-rated based on the number of hours typically worked.

Remember that FFCRA Expanded Medical Leave is awarded only if the employee is unable to work or telework during the period of time being requested.

“Unable to work” means that work is assigned and scheduled but the employee cannot perform the work remotely. It does not mean that there is no work to be assigned. *(Example: A wage employee is assigned to sell tickets to events in a box office. There are no events being held and there are no tickets to be sold. This employee has no work assigned and is not scheduled to work.)*

**58. May classified staff use sick leave balances to supplement their pay to bring them to 100%?**

- Traditional and VSDP Sick Leave should be awarded based on those related sick leave policies.
- If an employee is accessing Expanded Family Medical Leave to provide care-taking for children whose schools/day cares have closed, sick leave may not be used to supplement.
- If they are accessing Emergency Sick Leave to care for an individual who is not a family member, they may not use personal sick leave balances to supplement.
- If they are accessing Emergency Sick Leave to care for an individual who is a family member (as defined in DHRM FMLA policy), they may use up to 33% of their Traditional or VSDP Sick leave balances to supplement.