

Human Resources Policy

Emergency Paid Sick and Expanded Family and Medical Leave

HRP Number HR-WS002	Effective Date August 17, 2020
Category Workforce Support	Supersedes None
Contact 717.346.4667	Scheduled Review December 2020

This Human Resource Policy (HRP) provides guidance on the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA).

1. Purpose

This Human Resources Policy (HRP) is issued to set forth Commonwealth-wide guidance on the use of leave pursuant to the EPSLA and the EFMLEA.

2. Scope

This Human Resources Policy (HRP) applies to all departments, offices, boards, commissions, and councils (hereinafter referred to as “agencies”) under the Governor’s jurisdiction for human resources management. Agencies not under the Governor’s jurisdiction are strongly encouraged to follow this HRP.

3. Background

On March 6, 2020, pursuant to Section 7301(c) of Pennsylvania’s Emergency Management Services Code, 35 Pa.C.S. § 7301(c), Governor Wolf issued a Proclamation of Disaster Emergency (“Proclamation”) related to the novel coronavirus disease (COVID-19) outbreak. On March 13, 2020, President Trump declared a national emergency in response to the COVID-19 outbreak. On March 18, 2020, the Families First Coronavirus Response Act (FFCRA), P.L. 116-127, which provides emergency paid sick leave under EPSLA and expanded family and medical leave under EFMLEA for certain employees impacted by COVID-19, was signed into law. The Commonwealth, as an employer, is subject

to EPSLA and EFMLEA. The Commonwealth is committed to supporting employees who are impacted by this pandemic while continuing to support the operational needs of agencies to provide services to Pennsylvania citizens.

4. Policy

a. Eligibility

- (1) Pursuant to EPSLA or EFMLEA, leave is available to an eligible employee if the employee is unable to work or telework due to the qualifying events as outlined below, and the employee is able to provide documentation, as soon as practicable, to establish the qualifying event.
- (2) Pursuant to EPSLA and EFMLEA, leave is not available if the employee's worksite is closed and the employee is unable to work or telework.
- (3) Permanent ('P'), Nonpermanent ('N'), Official Board Members ('E') and Per Unit ('U') employees are eligible employees under EPSLA and EFMLEA, except as otherwise provided for in this HRP.
- (4) Emergency paid sick leave, pursuant to EPSLA, is available to an otherwise eligible employee on their first day of employment with the Commonwealth.
- (5) Expanded Family and Medical Leave Act (FMLA) leave, pursuant to EFMLEA, is available to an otherwise eligible employee on the 31st day after the date of employment with the Commonwealth. An eligible employee may take a total of twelve (12) workweeks for FMLA **and** Expanded FMLA in a twelve (12) month period.
- (6) Benefit eligibility varies for full-time and part-time employees.
 - i. Full-time employees, defined as those who work forty (40) hours per week, are eligible for up to ten (10) days (80 hours) of emergency paid sick leave and up to twelve (12) work weeks of Expanded FMLA.

- ii. Part-time employees, defined as those who work less than forty (40) hours per week, are eligible for up to ten (10) days of emergency paid sick leave and twelve (12) work weeks of emergency family and medical expansion leave. Part-time employees are entitled to leave for their average number of normally worked hours in a two-week period. If the normal scheduled hours are unknown, or vary in a two-week period, the number of hours of leave to which a part-time employee is entitled shall be determined based on a six (6)-month average of daily hours. If the employee has been employed for less than six (6) months, the number of hours shall be determined based on the average daily hours from the date of hire through the last workday prior to the first day of EPSLA/EFMLEA leave.
- b. Qualifying Events – Pursuant to EPSLA, emergency paid sick leave is capped at ten (10) days total regardless of whether the employee has one (1) or more qualifying events.
 - (1) Employee is subject to a Federal, State, or local quarantine or isolation order, issued by a governmental entity, related to COVID-19.
 - i. Employee shall receive up to ten (10) days of emergency paid sick leave pursuant to EPSLA.
 - ii. Employee shall receive their regular hourly rate of pay, up to \$511 per day or \$5,110 in total.
 - iii. Leave under section 4.b.(1) must be used in full consecutive workdays until the qualifying event no longer exists, except when an employee is required to leave the worksite prior to the end of their work shift, leave may be used to cover the hours remaining in the work shift.
 - iv. Under 4.b.(1), employees who are determined by their agency to be emergency responders or health care providers are excluded from eligibility for emergency paid sick unless the employee receives an individualized quarantine or isolation order from a federal, state or local governmental entity.

- (2) Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
 - i. Employee shall receive up to ten (10) days of emergency paid sick leave pursuant to EPSLA.
 - ii. Employee shall receive their regular hourly rate of pay, up to \$511 per day or \$5,110 in total.
 - iii. Leave under section 4.b.(2) must be used in full consecutive workdays until the qualifying event no longer exists, except when an employee is required to leave the worksite prior to the end of their work shift, leave may be used to cover the hours remaining in the work shift.
 - iv. Employees who are determined by their agency to be emergency responders or health care providers are eligible for emergency paid sick leave if they have been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) Employee is experiencing symptoms of COVID-19 and is affirmatively seeking a medical diagnosis.
 - i. Employee shall receive up to ten (10) days of emergency paid sick leave pursuant to EPSLA.
 - ii. Employee shall receive their regular hourly rate of pay, up to \$511 per day or \$5,110 in total.
 - iii. Employees who are determined by their agency to be emergency responders or health care providers are eligible for emergency paid sick leave if they are experiencing symptoms of COVID-19 and are seeking a medical diagnosis.
- (4) Employee is caring for an individual who is subject to an order as described in 4.b.(1) or advised to self-quarantine as described in 4.b.(2), above.
 - i. Employee shall receive up to ten (10) days of emergency paid sick leave pursuant to EPSLA.

- ii. Employee shall receive 66.67% of their regular hourly rate of pay, up to \$200 per day or \$2,000 in total.
 - iii. Leave under section 4.b.(4) must be used in full consecutive workdays until the qualifying event no longer exists, except when an employee is required to leave the worksite prior to the end of their work shift, leave may be used to cover the hours remaining in the work shift.
 - iv. Employees who are determined by their agency to be emergency responders or health care providers are eligible for emergency paid sick leave if they are caring for an individual who is advised to self-quarantine as described in 4.b.(2) but are excluded from eligibility for emergency paid sick leave to care for an individual subject to a federal, state, or local quarantine or isolation order, issued by a governmental entity, related to COVID-19.
- (5) Employee is caring for the employee's son or daughter because the school or daycare is closed, or the childcare provider is unavailable due to COVID-19 related reasons.
- i. Employee is eligible for up to twelve (12) weeks of leave pursuant to EFMLEA, the first two (2) weeks of which are unpaid.
 - ii. For the first two (2) otherwise unpaid weeks of leave, an employee may elect to substitute the ten (10) days of emergency paid sick leave pursuant to EPSLA, or their own accrued or anticipated annual, or any accrued compensatory leave.
 - iii. If the employee elects to use emergency paid sick leave, the employee shall receive 66.67% of their regular hourly rate of pay, up to \$200 per day or \$2,000 in total.
 - iv. For the remainder of the ten (10) weeks, the employee shall receive Expanded FMLA leave at 66.67% of their regular hourly rate of pay, up to \$200 per day or \$10,000 in total.

- v. If the employee elects to use accrued or anticipated annual, or any accrued compensatory leave instead of Expanded FMLA leave, such leave will run concurrently with and reduce the employee's overall twelve (12) workweek FMLA/EFMLEA entitlement.
 - vi. Leave under 4.b.(5) may be taken in full day increments, or on an intermittent basis subject to management's responsibility to maintain efficient operations. Retroactive requests for intermittent use prior to August 17, 2020 will not be approved.
 - vii. Employees who are determined by their agency to be emergency responders or health care providers are excluded from eligibility for emergency paid sick leave or Expanded FMLA leave in order to care for a son or daughter whose school or place of childcare has been closed, or whose childcare provider of such son or daughter is unavailable, due to COVID-19 related reasons under the EFMLEA.
- (6) Employee is experiencing any other substantially similar condition specified by the U.S. Secretary of Health and Human Services, in consultation with the U.S Secretaries of Labor and Treasury.
- i. Employee shall receive up to ten (10) days of emergency paid sick leave pursuant to EPSLA.
 - ii. Employee shall receive 66.67% of their regular hourly rate of pay, up to \$200 per day or \$2,000 in total.
 - iii. Leave under section 4.b.(6) must be used in full consecutive workdays until the qualifying event no longer exists, except when an employee is required to leave the worksite prior to the end of their work shift, leave may be used to cover the hours remaining in the work shift.
 - iv. Employees who are determined by their agency to be emergency responders or health care providers are eligible for emergency paid sick leave if they are experiencing any other substantially similar condition

specified by the U.S. Secretary of Health and Human Services in consultation with the U.S. Secretaries of Labor and Treasury.

- c. Forfeiture of Leave
 - (1) Employees are not entitled to reimbursement for any unused leave available under EPSLA or EFMLEA upon their termination, resignation, retirement, or other separation from employment.
 - (2) Paid leave under EPSLA does not carry-over from one year to the next and expires on December 31, 2020.
 - (3) Paid leave under EFMLEA ends upon the expiration of the twelve (12) week entitlement or when the qualifying need related to the public health emergency ends, whichever is earlier, and expires on December 31, 2020.
- d. Retirement-Covered Earnings. Any wages paid pursuant to EPSLA and EFMLEA are not covered under the State Employees Retirement Code.
- e. Administrative Leave. To the extent any administrative leave was approved for an employee due to COVID-19 related reasons, prior to April 11, 2020, that administrative leave is capped at and will end after ten (10) workdays.
- f. Paid and Unpaid Absences. Employees on an approved paid or unpaid absence on April 1, 2020, shall not be entitled to utilize leave pursuant to EPSLA or EFMLEA until such time that they were normally scheduled to return to work.

Should you have any questions, see additional information on the U.S. Department of Labor website: <https://www.dol.gov/agencies/whd/pandemic> and the Office of Administration COVID-19 website: www.oa.pa.gov/covid-leave.

If you require additional assistance related to the implementation of this policy, please contact the HR Service Center, Absence Services at 717.346.4667.

Nothing in this HR Policy shall be construed to impair or otherwise affect the authority by law to an executive department, agency, or the head thereof.

This HR Policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the Commonwealth of Pennsylvania, its departments, agencies, or entities, its officers, employees, or agents or any other person.

5. Effective Date

The Effective Date of this HR Policy is August 17, 2020.

6. Related References

Commonwealth policies, including Executive Orders, Management Directives, IT Policies, and HR Policies are published on the Office of Administration’s public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

7. Publication Version Control

It is the user’s responsibility to utilize the latest version of this publication, which appears on <http://hrm.oa.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to 717.346.4667.

This chart contains a history of this publication’s revisions:

Version	Date	Purpose of Revision
Original	4/3/2020	Base Document
Revised	8/17/2020	Provide for use of EPSLA and Expanded FMLA in less than full day increments where noted.