

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.

Employers may exclude emergency responder employees (e.g., law enforcement officers, correctional institution personnel, fire fighters, physicians, nurses, child welfare workers, etc.). In addition, the Governor (highest official of a State) may determine an emergency responder necessary for the State's response to COVID-19.

DEFINITIONS

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

"School" means an elementary school or secondary school. The term does not include any education beyond grade 12.

"Son or Daughter" means a biological, adopted or foster child, stepchild, legal ward or a child whom the employee is standing in loco parentis.

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 PHEL will be unpaid leave.
 1. However, EFMLEA allows an employee to use any accrued vacation leave, EPSL, sick leave or compensatory time during the initial 10-day period.
 - B. If additional PHEL is needed, paid leave will be provided and will be calculated based on an amount that is not less than two-thirds (2/3) of the employee's regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work.
 1. In no event shall such paid leave exceed \$511 per day and \$5,110 in the aggregate.
 2. An employee may elect to use accumulated vacation, sick leave or compensatory time to cover the remaining one-third (1/3) leave time, or other amount necessary

to ensure 100% pay if 2/3 of the employee's regular rate exceeds the \$511 per day cap.

- C. In any case where the necessity for leave under this policy is foreseeable, the employee shall provide the appointing authority or designee with notice of the need for leave as soon as practicable.

PROCEDURES

I. Employee

- A. Completes Public Health Emergency Leave Request form.
- B. Submits documentation 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.
- C. Completes Application for Leave of Absence (G-1 request form).
- D. Submits forms to appointing authority or designee.
- E. 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 Public Health Emergency Leave Request form.
- B. Ensures compliance with requirements, including ensuring FMLA does not exceed 12 weeks during calendar year.
- C. Signs and dates approved Public Health Emergency Request form.

ENCLOSURE

Public Health Emergency Leave Request

