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GENERAL CIRCULAR NUMBER 2020-023

DATE: April 8, 2020

TO: Heads of State Agencies and Human Resources Directors

SUBJECT: COVID-19 – No. 16: Revised Workforce Guidance on Families First Coronavirus Response Act

**This General Circular replaces guidance provided in
General Circular 2020-020: COVID-19 – No. 13**

This General Circular provides updated information on the Families First Coronavirus Response Act (FFCRA) and possible impacts on previously issued workforce guidance. The following information is a high-level overview based on review of the FFCRA, implementing regulations and compliance assistance from the Department of Labor: <https://www.dol.gov/coronavirus>. Unfortunately, as inquiries arise, the DOL compliance guidance is changing to fit various scenarios and this very much remains a fluid situation. Each Agency should rely upon its own legal counsel for legal advice in addressing FFCRA matters relating to specific situations within your Agency.

The Families First Coronavirus Response Act (FFCRA) is effective prospectively on April 1, 2020. While multiple parts of the Act will impact State government, our focus is on the Emergency Family and Medical Leave Expansion Act (EFMLA), and the Emergency Paid Sick Leave Act (EPSL), both of which sunset on December 31, 2020. The FFCRA requires that Agencies notify all employees of its provisions by April 1, 2020. The DOL has posters available on its website, which may be used for this purpose. SCS suggests that notification be emailed to all employees since many are currently not working in traditional workplaces.

[Emergency Paid Sick Leave](#)

Eligibility. Subject to the exemptions set forth below, employees are entitled to up to 80 hours of paid sick leave, separate and apart from any accrued sick leave balance they may carry, for the following reasons:

- 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 healthcare provider to self-quarantine due to concerns related to COVID-19;
- 3) The employee is experiencing symptoms of COVID-19 and is seeking medical diagnosis
- 4) The employee is caring for an individual who is subject to a Federal, State or local quarantine or isolation order related to COVID19 or an individual who has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
- 5) The employee is caring for his child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or
- 6) The employee is experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services. No such specification has been made as of this date; however, may be made by December 31, 2020.

Payment Amount. Employees needing leave for reasons 1 – 3 above are entitled to their regular hourly rate of pay, capped at \$511 per day or an aggregate of \$5110 over the two-week period.

Employees needing leave for reasons 4 – 6 above are entitled to two-thirds of their regular rate of pay, capped at \$200 per day or an aggregate of \$2000 over the two-week period.

Limitations. Employees may only take a single two-week period of paid sick leave, even if they are subject to multiple qualifying events.

[FMLA Expansion Act](#)

Eligibility. Subject to the exemptions set forth below, an employee employed for at least thirty calendar days who is unable to work or telework because he needs leave to care for a son or daughter under age eighteen¹ due to a school/daycare closing or a place of care becoming unavailable due to reasons related to COVID-19 is entitled to *up to* twelve weeks of leave.

Duration of Leave. EFMLA is not a new leave allotment added to the twelve weeks already available under the “original” Family and Medical Leave Act; rather, it is the same twelve-week allotment with the expansion being in terms of who can take leave, for what purposes leave may be taken, and pay. If an employee has already taken FMLA leave under the Agency’s FMLA policy pre-dating April 1, 2020, only the balance of the leave is available for EFMLA purposes. Also, recall that EFMLA expires on December 31, 2020, so the FMLA expansion is limited in duration.

[Exemptions](#)

The FFCRA provides that healthcare providers and emergency responders may be exempted from the Act’s provisions. Pursuant to the Governor’s [Proclamation No. 43 JBE 2020, Section 4](#), the following state employees are excluded from receiving paid sick leave under the EPSL or EFMLA:

Healthcare providers, defined as any employee of the State of Louisiana employed at a hospital, veterans’ home, health care center, clinic, local health department or agency, or

any facility that performs laboratory or medical testing, as well as those employees who work in such facilities whose work is necessary to maintain the operation of the facility; and

Emergency responders, defined as any employee of the State of Louisiana 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 personnel, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics and emergency management personnel, as well as those employees who work in such facilities whose work is necessary to maintain the operation of the facility.

The preamble of the Proclamation states that exclusion from these benefits “does not impact an employee’s earned or accrued sick, annual, compensatory, or other employer-provided leave under the employer’s established policies and further does not prevent an employee who is a health care provider or emergency responder from taking earned or accrued leave in accordance with established employer policies.”

[Interaction between EFMLA, Emergency Paid Sick Leave and the Civil Service Rules](#)

First Ten Work Days of Leave. The first ten work-days during which an employee utilizes EFMLA may be, at the employee’s option:

- Unpaid
- Or the employee may use EPSL
- Or an employee may elect to delay use of EPSL and use accrued leave
- Or an employee may use EPSL and supplement it with accrued annual leave (or sick leave as long as permissible under Chapter 27) to make himself whole. An Agency may not deny such a request.

Expanded FMLA (10 weeks of leave beyond the first ten days):

- With the exception of the first ten days of EFMLA, which may be unpaid, an employee may elect or an Agency may require that the employee use accrued annual leave (and may allow – but not require – the use of accrued paid sick leave as long as permitted under Chapter 27) to make himself whole for days during which EFMLA is utilized. Accrued leave, which may be elected or required, will be leave beyond the \$200/day cap.
 - ~~Example: An employee who makes \$200/day or less will not be charged accrued leave because he is owed up to \$200/day under the FFCRA.~~
 - ~~Example: An employee who makes \$300/day will be paid \$200/day without charging his accrued leave and additionally may be allowed or required to use accrued leave equivalent to \$100/day to make himself whole. He will only be charged for accrued leave equivalent to \$100/day.~~

Special Leave. Due to the fact that Special Leave (Act of God) is not an accrued leave type, neither Special Leave (Act of God) under Rule 11.23 nor Rule 27.2 may be used to compensate an employee beyond the daily caps under the FFCRA to make himself whole.

[Additional Guidance Applicable to Both EFMLA and Emergency Sick Leave](#)

Part-Time Employees. The FFCRA applies to WAEs and part-time employees. The Act sets forth the method for calculating leave and pay requirements for these employees. Your Agency's legal counsel should be consulted to ensure these employees are appropriately addressed.

FFCRA Documentation. Employees should provide and Agencies should keep documentation related to FFCRA leave, whether granted or denied, for four years.

- Paid Sick Leave Requests: Agency must document/obtain documentation of the name of the employee making the request, the dates for which leave is requested, the reason for leave and a statement from the employee that he or she is unable to work.
- For an employee unable to work due to a quarantine or isolation order, the Agency should document/obtain documentation of the name of the government entity that issued the order or the name of the healthcare provider who gave the advice.
- For school/child care closures or child care provider unavailability, Agencies should document/obtain documentation of the name of the child being cared for, the name of the school, place of care or provider that is closed or unavailable and a statement that the employee has no other suitable person available to care for the child.
- Existing certification forms available for "original FMLA" should be used to support EFMLA requests for employee COVID-19 illness or to care for a parent, spouse, or child with a COVID-19 related illness.

Please continue to monitor our website and social media platforms for updates and/or changes to the situation.

s/Byron P. Decoteau, Jr.
State Civil Service Director

ⁱ "Son or daughter" means a biological, adopted or foster child, step-child, legal ward or child for whom a person is standing *in loco parentis*. Further, DOL has indicated that a "son or daughter" is also a child eighteen years of age or older who has a mental or physical disability and is incapable of self-care because of that disability.