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TO: Appointing Authorities
Agency General Counsel
Agency Personnel Managers/Officers

FROM: Jackie Graham, State Personnel Director

DATE: April 2, 2020

RE: Families First Coronavirus Response Act (FFCRA) - UPDATE 1

UPDATE AS OF 2:00 P.M. APRIL 2, 2020

This memorandum has been updated to reflect the Temporary Rules issued by the U.S. Department of Labor on April 1, 2020 regarding the Families First Coronavirus Response Act (FFCRA) that was enacted on March 18, 2020. This law is designed to provide relief to American workers affected by the COVID-19 (Coronavirus) pandemic. Although the FFCRA covers various issues, this memorandum addresses the key components of the **Emergency Paid Sick Leave Act (EPSL)** and the **Family and Medical Leave Expansion Act (FMLA+)**. Detailed procedures for personnel/payroll staff, including forms for leave requests, are forthcoming in a separate communication.

As a reminder, Governor Kay Ivey has instructed that all essential and non-essential employees, if possible, be allowed to telework. Non-essential employees whose jobs do not allow for teleworking will remain on the Governor's authorized paid emergency leave, which has been extended through April 17, 2020.

[FEDERAL] EMERGENCY PAID SICK LEAVE ACT (EPSL)

Applies to **ALL STATE EMPLOYEES** regardless of length of service; however, a Health Care Provider or Emergency Responder may be exempted from coverage of the FFCRA by the employer as described in more detail below. Depending on the reason for the absence, an eligible employee may receive up to 80 hours of full pay or two-thirds pay, subject to a statutory cap.

This law was effective April 1, 2020 and expires on December 31, 2020. Employees who have been deemed essential, meet the eligibility criteria, **but are unable to telework**, will be able to utilize the paid sick leave provisions of this Act on April 1, 2020. Agency heads have the authority

to allow these employees to utilize the Governor authorized paid emergency leave through April 17, 2020.

All other employees may remain on the Governor authorized paid emergency leave through April 17, 2020 and, if eligible, may access FFCRA paid sick leave beginning April 18, 2020. **Agencies may not count an employee's time on the Governor authorized paid emergency leave against any FFCRA entitlement.**

The eligibility criteria for receiving this leave is as follows:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.

- **Full-time employee:** Employee is entitled to 80 hours of paid sick leave at his or her rate of pay, however, the amount of paid leave under this provision shall not exceed \$511.00 per day (\$5,110.00) from April 1, 2020 to December 31, 2020. An employee may choose to use his or her accrued leave and therefore not be subject to the statutory cap.
- **Part-time employee:** Employee is entitled to the number of hours that is worked, on average, over a 2-week period. The amount of paid leave under this provision shall not exceed \$511.00 per day (\$5,110.00) from April 1, 2020 to December 31, 2020. An employee may choose to use his or her accrued leave and therefore not be subject to the statutory cap.

2. The employee has been advised by a provider to self-quarantine because of COVID-19.

- **Full-time employee:** Employee is entitled to 80 hours of paid sick leave at his or her rate of pay, however, the amount of paid leave under this provision shall not exceed \$511.00 per day (\$5,110.00) from April 1, 2020 to December 31, 2020. An employee may choose to use his or her accrued leave and therefore not be subject to the statutory cap.
- **Part-time employee:** Employee is entitled to the number of hours that is worked, on average, over a 2-week period. The amount of paid leave under this provision shall not exceed \$511.00 per day (\$5,110.00) from April 1, 2020 to December 31, 2020. An employee may choose to use his or her accrued leave and therefore not be subject to the statutory cap.

3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

- **Full-time employee:** Employee is entitled to 80 hours of paid sick leave at his or her rate of pay, however, the amount of paid leave under

this provision shall not exceed \$511.00 per day (\$5,110.00) from April 1, 2020 to December 31, 2020. An employee may choose to use his or her accrued leave and therefore not be subject to the statutory cap.

- **Part-time employee:** Employee is entitled to the number of hours that is worked, on average, over a 2-week period. The amount of paid leave under this provision shall not exceed \$511.00 per day (\$5,110.00) from April 1, 2020 to December 31, 2020. An employee may choose to use his or her accrued leave and therefore not be subject to the statutory cap.

4. The employee is caring for an individual subject to or advised to quarantine or isolation.

- **Full-time employee:** Unlike the absences in paragraphs 1-3, an employee who is absent for caring for an individual subject to quarantine or isolation is entitled to 80 hours of paid sick leave but is **limited to no greater than two-thirds of his or her rate of pay.** However, the amount of paid leave shall not exceed \$200.00 per day (\$2,000.00) from April 1, 2020 to December 31, 2020. An employee, however, may choose to use his or her accrued leave and therefore not be limited to two-thirds pay or subject to the statutory cap.
- **Part-time employee:** Unlike the absences in paragraphs 1-3, an employee who is absent for caring for an individual subject to quarantine or isolation is entitled to be paid for the number of hours that the employee works, on average, over a 2-week period but is **limited to no greater than two-thirds of his or her rate of pay.** However, the amount of paid leave shall not exceed \$200.00 per day (\$2,000.00) from April 1, 2020 to December 31, 2020. An employee, however, may choose to use his or her accrued leave and therefore not be limited to two-thirds pay or subject to the statutory cap.

5. The employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions.

- **Full-time employee:** Unlike the absences in paragraphs 1-3, an employee absent for caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions is entitled to 80 hours of paid sick leave but is **limited to no greater than two-thirds of his or her rate of pay.** However, the amount of paid leave shall not exceed \$200.00 per day (\$2,000.00) from April 1, 2020 to December 31, 2020. With the approval of the appointing authority, this leave MAY be taken on an intermittent basis. An employee, however, may choose to use his or her accrued leave and therefore not be limited to two-thirds pay or subject to the statutory cap.

- **Part-time employee:** Unlike the absences in paragraphs 1-3, an employee absent for caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions is entitled to the number of hours that the employee works, on average, over a 2-week period **but is limited to no greater than two-thirds of his or her rate of pay.** However, the amount of paid leave shall not exceed \$200.00 per day (\$2,000.00) from April 1, 2020 to December 31, 2020. With the approval of the appointing authority, this leave MAY be taken on an intermittent basis. An employee, however, may choose to use his or her accrued leave and therefore not be limited to two-thirds pay or subject to the statutory cap.
- The **employee alone** must be providing care for the child during the period for which the employee is receiving this type of leave. For example, if there is a co-parent, co-guardian, or another individual who is present to care for the child, the EPSL is not available.

6. The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

- **Full-time employee:** An employee absent for this reason is entitled to 80 hours of paid sick leave but is **limited to no greater than two-thirds of his or her rate of pay.** However, the amount of paid leave shall not exceed \$200.00 per day (\$2,000.00) from April 1, 2020 to December 31, 2020. An employee, however, may choose to use his or her accrued leave and therefore not be limited to two-thirds pay or subject to the statutory cap. These similar conditions have not been specified by the Secretary of Health and Human Services.
- **Part-time employee:** An employee absent for this reason is **limited to no greater than two-thirds of his or her rate of pay** for the number of hours that the employee normally works, on average, over a 2-week period. However, the amount of paid leave shall not exceed \$200.00 per day (\$2,000.00) from April 1, 2020 to December 31, 2020. An employee, however, may choose to use his or her accrued leave and therefore not be limited to two-thirds pay or subject to the statutory cap. These similar conditions have, as yet, not been specified by the Secretary of Health and Human Services.

Additional Notes:

This law requires that the employer allow the **employee** to choose whether to first use the EPSL leave provided by this law, and then use any remaining accrued sick, personal, compensatory, or annual leave. **In any case, the employer cannot require the employee to use accrued leave prior to utilizing this sick leave provision.**

For employees unable to telework, EPSL taken for reasons 1, 2, 3, 4, or 6 above must be taken in full-day increments until the need for the leave no longer exists. If you no longer have a qualifying reason for taking paid sick leave, you may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs. For example, an employee uses 40 hours of EPSL to care for an individual who is quarantined. If the employee returns to work after the quarantine ends, the employee has 40 hours remaining of EPSL. An employee, however, cannot receive more than 80 hours of EPSL regardless of the number of qualifying reasons.

If the employee is unable to telework, EPSL taken for reasons 1, 2, 3, 4, or 6 cannot be taken on an intermittent basis. For those able to telework, this leave may be taken intermittently for any qualifying reason with the approval of the appointing authority. This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from returning to the workplace and potentially spreading the virus to others.

The U.S. Department of Labor encourages employers “to implement highly flexible telework arrangements that allow employees to perform work, potentially at unconventional times, while tending to family and other responsibilities.”

FAMILY AND MEDICAL LEAVE EXPANSION ACT (FMLA+)

Applies to **ALL STATE EMPLOYEES** who have been employed for at least 30 calendar days. However, a Health Care Provider or Emergency Responder may be exempted by the employer as described in more detail below.

This law was effective April 1, 2020 and expires on December 31, 2020. For employees who are unable to telework and who are on Governor authorized paid emergency leave, the 12 weeks of FMLA+ will become available on April 18, 2020. Essential employees that are unable to telework will be able to utilize the FMLA+ provisions effective April 1, 2020. Agency heads have the authority to allow essential employees who are unable to telework, but meet the eligibility criteria, to utilize the Governor authorized paid emergency leave through April 17, 2020. **Agencies may not count an employee’s time on the Governor authorized paid emergency leave against any FFCRA entitlement.**

This new FMLA leave is for parents who are caring for his or her child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions. Please note that the FFCRA does not create an additional 12-week FMLA leave entitlement. Employees who have already taken FMLA leave during the last 12-month period will have the remaining portion of FMLA leave available. For example, if an employee has used 4 weeks of FMLA leave, he or she will have the remaining 8 weeks of leave to use for childcare as described above.

The **employee alone** must be providing care for the child during the period for which the employee is receiving this type of leave. For example, if there is a co-parent, co-guardian, or another individual present to care for the child, this leave is not available.

- **Full-time employee:** Eligible for up to 12 weeks (40 hours per week). The first two weeks of the 12 weeks are unpaid under this provision of the expanded FMLA act. With the approval of the appointing authority, this leave MAY be taken on an intermittent basis. An employee may elect to use any accrued leave to cover the initial two weeks of unpaid leave OR can choose to be paid at the two-thirds pay rate as outlined above in the EPSL section.
- **Part-time employee:** Eligible for leave for the number of hours that the employee is normally scheduled to work over that 12-week period. The first two weeks of the 12 weeks are unpaid under this provision of the expanded FMLA. With the approval of the appointing authority, this leave MAY be taken on an intermittent basis. An employee may also choose to use accrued leave to cover the initial two weeks of unpaid leave OR can choose to be paid at the two-thirds pay rate as outlined above in the EPSL section.
- **Full-time and Part-time employee:**

After the initial two weeks of the FMLA+:

1. The employee may elect to use any of his or her accrued leave in conjunction with the FMLA+ leave in order to remain whole.
2. With approval of the appointing authority, the employee may elect to be paid two-thirds of his or her rate of pay subject to the statutory cap of \$200 per day or a total of \$10,000 total from April 1, 2020 through December 31, 2020.
3. The employer **may require** the employee to utilize his or her accrued leave for the remaining 10 weeks.

Restoration to Position after Leave Ends:

As with the original FMLA law, the FMLA+ leave is job-protected, meaning the employer must restore an employee to the same or equivalent position upon his or her return to work.

DOCUMENTATION FOR LEAVE UNDER FFCRA

The following documentation is required when an employee is requesting leave under the FFCRA. Forms for this leave usage will be provided by separate memorandum:

1. Employee's name
2. Date(s) of leave
3. The FFCRA qualifying reason for the leave request
 - i. Quarantine: Name of governmental entity or health care professional ordering or advising quarantine or self-quarantine. If providing care for an individual, provide the person's name and relationship to employee.
 - ii. Childcare: Name and age of child (or children) and the name of the school or place of care that has closed. The employee must provide a statement that no other suitable person is available to care for the child during the period of the requested leave.
4. A statement that the employee is unable to work, including telework, for one of the six qualifying reasons of the FFCRA.

HEALTH CARE PROVIDER AND EMERGENCY RESPONDER

A **"Health Care Provider"** may be excluded from coverage of EPSL and FMLA+ by the employer.

A health care provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary 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.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, entities or institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the Governor determines is a health care provider necessary for Alabama's response to COVID-19.

An **"Emergency Responder"** may also be excluded from EPSL or FMLA+ by their employer.

An emergency responder is 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, child welfare workers and service providers, 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. This also includes any individual that the Governor determines is an emergency responder necessary for Alabama's response to COVID-19.

Employers are reminded that in order to minimize the spread of the virus associated with COVID-19, the U.S. Department of Labor encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

Additional Notes:

The employee should provide the employer with as much notice as possible.

Each agency must post a notice about these FFCRA requirements in a conspicuous place such as on a bulletin board or sent electronically to employees, as some may be teleworking. The notice may be found at:

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf.

The agency may not dismiss, discipline, or otherwise discriminate against an employee who takes EPSL or FMLA+ under the FFCRA or files a complaint or other proceeding under or related to the FFCRA.

FMLA + does not carry over from one year to the next year.