



COVID-19 LEAVE POLICY	
Policy #: Temporary Statewide Policy	Authority: Director of Office of Management and Budget’s authority to manage expenditures for the continuity of state government operations and with the approval of the General Assembly; Merit Rule 5.7
Effective Date: January 1, 2022	Supersedes: September 9, 2021
Application: Executive Branch Agencies	Signature: 

1. POLICY PURPOSE STATEMENT

This policy provides details on the continued implementation of unused COVID-19 leaves based on parameters set in the Families First Coronavirus Response Act (FFCRA) and the American Rescue Plan Act (ARPA) at the State of Delaware (State). The FFCRA provided paid sick leave and expanded family and medical leave and ARPA provided optional additional leave to employees for specified reasons related to COVID-19. The policy also includes implementation of the State provisions for Paid Emergency Leave and how the State provisions integrate with the Federal provisions.

2. SCOPE

Executive Branch Agency employees.

3. DEFINITIONS AND ACRONYMS:

- **ARPA** – American Rescue Plan Act
- **Child** – Under the FFCRA, a “son or daughter” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis – someone with day-to-day responsibilities to care for or financially support a child. Under the FFCRA, a “son or daughter” is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability.
- **Coronavirus (COVID-19)** – New strain of coronavirus that has not been previously identified in humans. The virus causing coronavirus disease 2019 (COVID-19) is not the same as the coronaviruses that commonly circulate among humans and cause mild illnesses, like the common cold. A variant has one or more mutations that differentiate it from other variants in circulation. As expected, multiple variants of SARS-CoV-2 have been documented in the [United States](#) and [globally](#) throughout this pandemic. A variant with specific genetic markers that have been associated with changes to receptor binding, reduced neutralization by antibodies generated against previous infection or vaccination, reduced efficacy of treatments, potential diagnostic impact, or predicted increase in transmissibility or disease severity.
- **FFCRA** – Families First Coronavirus Response Act
- **FPEL** – Federal Emergency Family and Medical Leave Act (FMLA) Expansion Leave

- **FPSL** – Federal Emergency (Paid) Sick Leave
- **Parent** – A biological, foster, or adoptive parent of an employee, a stepparent of an employee, parent-in-law, parent of a domestic partner, or a legal guardian or other person who stood in loco parentis to an employee when the employee was a child.
- **SPEL** – State Paid Emergency Leave

4. POLICY

The FFCRA required the State to provide employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19 from April 1, 2020 through December 31, 2020. The State will continue to provide unused COVID-19 leaves based on the parameters set in the FFCRA provisions through June 30, 2022. ARPA became effective on April 1, 2021 and allowed employers options to voluntarily continue FFCRA provisions and to offer additional leave. The State will continue to allow the use of the original unused COVID-19 leaves available April 1, 2020 and the ten (10) additional workdays of unused FPSL based on the ARPA parameters effective May 1, 2021 through June 30, 2022.

- a. FPSL – Based on the FFCRA, an employee is entitled to two (2) weeks of FPSL if there is work available, but the employee is unable to work and unable to telecommute for reasons stated below. ARPA allowed the provision of an additional ten (10) workdays of FPSL for reasons stated below. Use of FPSL may be approved because an employee:
- 1) is subject to a Federal, state, or local quarantine or isolation order related to COVID-19;
 - 2) has been advised by a health care provider¹ to self-quarantine due to concerns related to COVID-19;
 - 3) is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
 - 4) is caring for their child (under the age of 18 years old) whose school or childcare is closed or otherwise unavailable due to COVID-19²;
 - 5) is caring for an individual³ who is affected by 1), 2), or 3) of this Policy section;
 - 6) is experiencing any other substantially similar condition specified by the Secretary of the Department of Health and Human Services, in consultation with the Secretaries of the Departments of Labor and the Treasury⁴.
- ARPA provided additional reasons for the use of FFCRA leaves: 7) has been exposed to COVID-19 and is seeking or awaiting the results of a test for COVID-19 or the employer has requested such test or diagnosis; 8) is obtaining the COVID-19 vaccination; or 9) is recovering from an injury, disability, illness or condition resulting from the COVID-19 vaccination. The FPSL under 1), 2), 3), 7), 8), or 9) of this

¹ A health care provider must meet the definition of this term under the Family and Medical Leave Act regulations. (https://webapps.dol.gov/elaws/whd/fmla/3.aspx?Glossary_Word=PROVIDER#:~:text=The%20Act%20defines%20%E2%80%9Ch%20care,of%20providing%20health%20care%20services)

² Special circumstances may apply that would cover a child who is 18 or older.

³ An individual includes an immediate family member or someone who regularly resides in your home. Caring 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 would depend on you for care during the quarantine or self-quarantine, would also qualify. This paid sick leave does not apply to caring for someone with whom the employee has no relationship. (<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#63>)

⁴ The Secretary of HHS has not identified any other substantially similar condition that would entitle an employee to take paid sick leave.

Policy section is paid at the employee's regular earnings. The FPSL under 4), 5), or 6) of this Policy section is paid at 2/3 the employee's regular earnings.

- b. FPEL – Based on the FFCRA, eligibility for FMLA is expanded to include the reason that an employee, who has been employed for at least 30 calendar days, has work available but is unable to work and unable to telecommute because s/he is caring for their child (under the age of 18 years old) whose school or childcare is closed or otherwise unavailable due to COVID-19 for specific time frames listed in this policy. Special circumstances may apply that would cover a child who is 18 or older. This leave has a 30-calendar-day employment requirement for the employee prior to use. The FMLA FPEL provides for a 12-week period with the first two (2) weeks unpaid and the remaining weeks paid at 2/3 the employee's regular earnings. This reason for FMLA does not add time to the allowable FMLA 12-week provision. If the employee has exhausted his/her FMLA, s/he is not eligible for additional FMLA. For the purpose of the Expanded FMLA, the Merit Rule for holding back one week of sick leave and one week of annual leave will not apply.
- c. SPEL - The State, in response to the COVID-19 emergency, exercised its discretion starting March 12, 2020 to provide that employees may be paid SPEL at 100% of the employee's regular earnings under specific circumstances related to COVID-19. The circumstances pursuant to which SPEL may be paid are stated in the FAQs first published on March 16, 2020 and subsequent revisions. SPEL is discretionary leave, not an entitlement for employees, and may be terminated at any time. The use of available SPEL is scheduled to end on June 30, 2022. The discretionary leave provided as SPEL is not additive to the FFCRA and ARPA leaves for FPSL and FPEL. Please see COVID-19 FAQs for further information.
- d. An employee requesting to take leave, and who is eligible for any available FPSL or FPEL, shall take the FPSL or FPEL depending on the reason leave is requested. If an employee has a remaining balance of SPEL, the SPEL shall be used concurrently with the FPSL or FPEL. Any remaining hours of FPSL or FPEL that are taken will be offset by a reduction of an equal number of hours of any remaining SPEL. The employee shall supplement any unused FPSL or FPEL with remaining SPEL up to 100% of his/her regular earnings. For timekeeping purposes, an employee must exhaust his/her FPSL prior to using any other leaves. The FPSL and FPEL run concurrently with any SPEL balance and will be offset by a reduction of an equal number of hours of any remaining SPEL. COVID-19 documentation of absence must be provided as soon as practicable, and not prior to the absence for both expanded FPEL, FPSL and/or SPEL.
- e. Part-time and casual/seasonal employees are eligible for provisions in subsections a. through d. of this Policy section. The pay is calculated on the average number of hours an employee works. This calculation will be used to determine the regular earnings amount(s) to be paid to the employee for these leaves. The regular pay will need to be calculated using a look back of all earnings over the prior 13 pay periods (six months).
- f. Employees that are emergency responders and health care providers are eligible for unused FPSL if they are quarantined or ill due to COVID-19 or ill as a result of getting a COVID-19 vaccination. However, these employees are not eligible to utilize leave for other reasons

related to COVID-19, such as leave to care for ill or quarantined family members or for childcare purposes. Please see Section 6: Exclusions or Exceptions.

- g. For timekeeping purposes, an employee must exhaust his/her unused FPSL or FPEL, if applicable prior to using any other leaves. The FPSL and FPEL run concurrently with any SPEL balance and, therefore, will be offset by a reduction of an equal number of hours of any remaining SPEL for reasons covered by this Policy.

5. PROCEDURES

- a. Effective April 1, 2020, employees may request up to two (2) weeks or up to 80 hours (based on their standard weekly hours of 75 or 80 for full time and an average for part time or casual/seasonal) of **unused** FPSL if there is work available but employees are unable to work and unable to telecommute. The State will continue to allow the use of the ten (10) additional workdays of unused FPSL based on the ARPA parameters effective May 1, 2021 through June 30, 2022. Reasons this leave may be taken are listed in Policy section a. 1), 2), 3), 7), 8), and 9). For these reasons, the FPSL is paid at 100% of the employee's regular earnings. If the employee is hourly, overtime is included in the calculation of this pay. Any hours of FPSL or FPEL taken run concurrently with any SPEL balance and, therefore, will be offset by a reduction of an equal number of hours of any remaining SPEL. Employees are to request FPSL by completing the COVID-19 Federal Emergency Paid Sick Leave Form.
- b. Effective April 1, 2020, employees may request up to two (2) weeks or up to 80 hours (based on their standard weekly hours of 75 or 80 for full time and an average for part time or casual/seasonal) of **unused** FPSL if there is work available but employees are unable to work and unable to telecommute. The State will continue to allow the use of the ten (10) additional workdays of unused FPSL based on the ARPA parameters effective May 1, 2021 through June 30, 2022. Reasons this leave may be taken are listed in Policy section a. 4), 5) and 6). For these reasons, the FPSL is paid at 2/3 an employee's regular earnings. If the employee is hourly, overtime is included in the calculation of this pay. Any hours of FPSL or FPEL taken run concurrently with any SPEL balance and, therefore, will be offset by a reduction of an equal number of hours of any remaining SPEL. Employees are to request this leave by completing the COVID-19 Federal Emergency Paid Sick Leave Form. The employee shall supplement the 2/3 FPSL or 2/3 FPEL provision with their remaining SPEL up to 100% of his/her regular earnings. If the employee has exhausted his/her SPEL, the employee may supplement by using accumulated compensatory time, accrued Sick and/or Annual Leave per the Merit Rules (or other leave policies), if eligible and applicable.
- c. Effective April 1, 2020 through June 30, 2022, employees that have been employed for at least 30 calendar days who are requesting time off to care for their child (under the age of 18 years old; special circumstances may apply that would cover a child who is 18 or older) whose school or childcare is closed or otherwise unavailable due to COVID-19, must apply for any remaining expanded FMLA. Employees are to request expanded FMLA by completing the COVID-19 Federal Paid Expanded Family and Medical Leave Request Form (FPEL Form). The expanded FMLA may be taken intermittently and in hourly increments if the Agency has approved the intermittent working or teleworking arrangement.

- 1) The first two (2) weeks of expanded FMLA are considered an elimination period and are unpaid. An employee shall use unused FPSL, accumulated compensatory time, accrued Sick and/or Annual Leave per the Merit Rules (or other leave policies), floating holidays in whole-day increments, if eligible and applicable, combined to cover the unpaid elimination period. Use of an employee's own leave or compensatory time does not apply to casual/seasonal employees. Any remaining hours of FPSL or FPEL taken will be offset by a reduction of an equal number of hours of any remaining SPEL.
- 2) The FMLA FPEL is paid at 2/3 the employee's regular earnings. For hourly employees, overtime must be included in the earnings calculation. To cover the 1/3 of their regular earnings not paid by FPEL up to 100% of his/her regular earnings, an employee shall use unused SPEL, accumulated compensatory time, accrued Sick and/or Annual Leave, per the Merit Rules (or other leave policies). Use of an employee's own leave or compensatory time does not apply to casual/seasonal employees. Any hours of FPSL or FPEL taken will be offset by a reduction of an equal number of hours of any remaining SPEL.

6. EXCLUSIONS OR EXCEPTIONS

For the purposes of employees who may be exempted from Paid Sick Leave or Emergency Family and Medical Leave Act Expansion Leave by their employer under the FFCRA, the following applies:

- a. To be considered a health care provider for this section, an employee must be capable of providing and employed to provide diagnostic, preventative, or treatment services or services that are integrated with and necessary to diagnostic, preventative, or treatment services and, if not provided, would adversely impact patient care.
- b. An emergency responder is anyone 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, law enforcement officers, correctional institution personnel, firefighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 9-1-1 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.

7. DISSEMINATION AND TRAINING

Agency human resources shall provide a review of this policy and procedures to current employees and shall provide a review of this policy and procedures to employees who are new to their respective agencies as part of their orientation.

8. DATA REPORTING

N/A

9. ASSOCIATED POLICY/REGULATIONS/INFORMATION

- [Coronavirus \(COVID-19\) Frequently Asked Questions](#)
- [U.S. Department of Labor](#)

10. FORMS ASSOCIATED WITH THIS POLICY

- [COVID-19 Federal Emergency Family and Medical Leave Act Expansion \(FPEL\) Leave Request Form](#)
- [COVID-19 Federal Emergency Paid Sick Leave \(FPSL\) Request Form](#)

This policy is not intended to create any individual right or cause of action not already existing and recognized under State and Federal law.