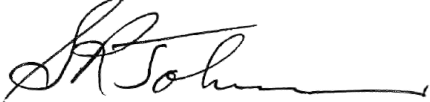




COVID-19 LEAVE POLICY

Policy #: To be assigned.	Authority: Families First Coronavirus Response Act; USDOL Regulations Issued September 16, 2020; State of Delaware State of Emergency Declaration Order – March 12, 2020 and all Modifications; Merit Rule 5.3.7
Effective Date: Federal Leaves: September 16, 2020 - December 31, 2020, or until the Orders are rescinded	Supersedes: April 21, 2020
Application: Executive Branch Agencies	Signature: 

1. POLICY PURPOSE STATEMENT

This policy provides details on the implementation of the Families First Coronavirus Response Act (FFCRA) at the State of Delaware (State). The FFCRA provides paid sick leave and expanded family and medical leave to employees for specified reasons related to COVID-19. The policy also includes 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:

- a. 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.
- b. COVID-19 – New strain of coronavirus that has not been previously identified in humans.
- c. FFCRA – Families First Coronavirus Response Act
- d. FPEL – Federal Emergency Family and Medical Leave Act (FMLA) Expansion Leave
- e. FPSL – Federal Emergency (Paid) Sick Leave
- f. 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.
- g. SPEL – State Paid Emergency Leave

4. POLICY

The FFCRA requires the State to provide employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. Under the FFCRA, these provisions will apply from April 1, 2020 through December 31, 2020, or until the Orders are rescinded.

- a. FPSL - Under 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 because s/he: 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-19; 5) is caring for an individual² who is affected by 1), 2), or 3) of this Policy section; or 6) is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and the Treasury.³ The FPSL under 1), 2), or 3) of this 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 - Under the FFCRA, eligibility for FMLA has been expanded to include the reason that an employee 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. 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 FPEL FMLA 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 new reason for FMLA does not add time to the allowable FMLA 12-week provision. If the employee has exhausted their 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 and vacation pay will not apply. Employees approved for FMLA for this reason are authorized to use their last week of annual leave and last week of sick leave, Merit Rule 5.7 notwithstanding, to be able to borrow ahead.

- c. SPEL - The State, in response to the COVID-19 emergency, exercised its discretion starting on 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. SPEL will end when the State of Emergency for COVID-19 is lifted or December 31, 2020 at the latest, whichever is sooner. The discretionary leave provided as SPEL is not additive to the FFCRA Federally-mandated leaves for FPSL and FPEL.

- d. Accordingly, beginning on April 1, 2020, the effective date of the FFCRA, an employee requesting to take leave, and who is eligible for any FPSL or FPEL, shall take the FPSL or FPEL. If an employee has a remaining balance of SPEL, the SPEL shall be used concurrently with the FPSL or FPEL. Any

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%9Chealth%20care,of%20providing%20health%20care%20services)

² 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/ffcr-questions#63>)

³ The Secretary of HHS has not identified any other substantially similar condition that would entitle an employee to take paid sick leave.

hours of FPSL or FPEL that are taken will be offset by a reduction of an equal number of hours of remaining SPEL. The employee may supplement the 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, therefore, will be offset by a reduction of an equal number of hours of any remaining SPEL. COVID documentation of absence must be provided as soon as practicable, and not prior to the absence for both expanded FFCRA family leave and sick leave.

- 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 FPSL if they are quarantined or ill due to COVID-19. 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 child care purposes. Please see Section 6: Exclusions or Exceptions.
- g. For timekeeping purposes, an employee must exhaust his/her 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. Employees may request 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 available work but employees are unable to work and unable to telecommute due to a need for leave for reasons in Policy a. 1), 2) and 3). 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. Employees may request 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 due to a need for leave for reasons in Policy 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.
 - 1) The employee may 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), or, if eligible and applicable, Borrow-Ahead Leave up to

two (2) weeks of Sick and/or Annual Leave for the total number of hours (at his/her standard workweek of 75 or 80 hours).

- c. 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), and whose school or childcare is closed or otherwise unavailable due to COVID-19, must apply for the expanded FMLA. Employees are to request FMLA for this reason by completing the COVID-19 Federal Paid Expanded Family and Medical Leave Request Form. The FMLA may be taken intermittently and in hourly increments if the Agency has approved of the intermittent working or teleworking arrangement.
- 1) The first two (2) weeks of FMLA are considered an elimination period and are unpaid. An employee may 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, or, if eligible and applicable, Borrow-Ahead Leave for up to two (2) weeks of Sick and/or Annual Leave combined to cover the unpaid elimination period. Use of an employee's own leave, compensatory time or Borrow-Ahead Leave 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.
 - 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 may use unused SPEL, accumulated compensatory time, accrued Sick and/or Annual Leave, per the Merit Rules (or other leave policies), or Borrow-Ahead Leave, if eligible and applicable, for up to two (2) weeks of Sick and/or Annual Leave combined. Use of an employee's own leave, compensatory time or Borrow-Ahead Leave does not apply to casual/seasonal employees. Any hours of FPSL or FMLA 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. A health care provider 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](#)
- [COVID-19 Borrow-Ahead Leave Procedure](#)

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](#)
- [COVID-19 Borrow-Ahead Leave Agreement Form](#)
- [Borrow-Ahead Leave Spreadsheet](#)

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