Human Resources Branch Memorandum

SUBJECT:	NUMBER: **HRB 20-011**
UPDATED: Families First Coronavirus Response Act (FFCRA)	DATE ISSUED: **April 17, 2020**
DISTRIBUTION: **CDFW All Employees**	EXPIRES: **Until Superseded**

☐ **Action Required**   ☐ **Informational Only**   ☒ **Control Agency Directive**

Purpose

On March 18, 2020, the federal government enacted the Families First Coronavirus Response Act (FFCRA), which enacted both the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (E-FMLA). The purpose of this memorandum is to provide California Department of Fish and Wildlife (CDFW) employees information on the expansion of FMLA and Sick Leave benefits due to the FFCRA.

This memo was initially released on April 7, 2020. It has been updated to include Exempt Classifications.

Authority
- California Department of Human Resources (CalHR) Manual 2127
- Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

EPSLA is effective April 1, 2020. Under the EPSLA, employees are entitled to two-weeks of emergency paid sick leave for sick leave related to COVID-19. Specifically, employees can use the paid sick leave if they are:

1. Subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

2. Advised by a health care provider to self-quarantine related to COVID-19;

3. Experiencing COVID-19 symptoms and are seeking a medical diagnosis.

4. Caring for an individual subject to an order described in (1) or self-quarantine as described in (2);

5. Caring for his or her child whose school or place of care is closed (or childcare provider is unavailable) due to COVID-19 related reasons; or

6. Experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

The employee's time base determines the number of paid sick leave hours the employee is entitled to receive.

- Full-time employees receive up to 80 hours of paid sick leave at the employee's regular rate of pay.

- Part-time employees with a set time base receive a prorated amount based on their time base.

- Intermittent employees' departments must:

  - Take the past six-months of work and calculate the average number of hours to determine the average daily hour entitlement; if the employee has not worked six months, then;

  - The number of hours the employer and employee agreed they would work each week upon hire.

Paid sick time for this purpose will be documented as Administrative Time Off (ATO) on the employee's timesheet. ATO over 30 calendar days for these purposes does not require approval from the Department of Human Resources, Personnel Services Branch. Any ATO provided to employees due to COVID-19 prior to April 1, 2020, does not count toward the employee's emergency paid sick leave entitlement.

Employers may not discharge, discipline, or otherwise discriminate against any employee based upon the employee's use of emergency paid sick leave.

Emergency Family and Medical Leave Expansion Act (E-FMLA)
E-FMLA is effective April 1, 2020. E-FMLA requires certain employers to provide employees who have worked for the employer for 30-days with up to 12-workweeks of paid FMLA leave for specified reasons related to COVID-19. Specifically, eligible employees can take up to 12-workweeks of leave to provide care for their child whose school or daycare is closed because of COVID-19. Employees do not have to have worked for the employer for 12-months or have worked 1,250 hours in the 12-months preceding the leave to be eligible for E-FMLA.

The first two weeks of E-FMLA are unpaid, although employees can elect to use their two weeks of paid sick leave discussed above. For weeks 3 to 12 of E-FMLA, employees will be paid two-thirds of their salary, up to $200/per day up to a total of $10,000. Employees can elect to use leave credits to supplement their E-FMLA. The maximum daily entitlement and overall total are the same regardless of the employee's time base.

E-FMLA utilizes the same 12-week entitlement as FMLA. If an employee has used any of their 12-week entitlement under FMLA, the entitlement under E-FMLA will be reduced by the amount already used.

If leave under this program is foreseeable, an employee shall provide their employer with such notice of leave as is practicable.

Employers may not discharge, discipline, or otherwise discriminate against any employee based upon the employee's use of E-FMLA leave.

Exempt Classifications
The work of our health care providers and emergency responders is critical to the operations of our state departments. For this reason, the state will exempt certain classifications from being eligible for EPSLA and E-FMLA, which is specifically permitted by federal law.

The following CDFW classifications are exempt from EPSLA and E-FMLA:

Assistant Chief, Law Enforcement Division (LED)
Associate Governmental Program Analyst (Support Law Enforcement/Public Safety Functions – **LED ONLY**)
Chief, Deputy Director, Law Enforcement Division
Deputy Chief, CEA A, Law Enforcement Division
Fish and Game Captain
Fish and Game Lieutenant Specialist
Fish and Game Lieutenant Supervisor
Fish and Game Senior Warden-Pilot
Fish and Game Warden
Fish and Game Warden-Cadet
Fish and Game Warden-Pilot
Lab Scientific Aid
Motor Vessel Engineer (Support Law Enforcement/Public Safety Functions – **LED ONLY**)
Office Technician (Support Law Enforcement/Public Safety Functions – **LED ONLY**)
Senior Wildlife Forensic Specialist
Staff Service Analyst (Support Law Enforcement/Public Safety Functions – **LED ONLY**)
Staff Service Manager 1 (Supervisor) (Support Law Enforcement/Public Safety Functions – **LED ONLY**)
Student Aides (Support Law Enforcement/Public Safety Functions – **LED ONLY**)

Employees exempt from this policy may still be eligible for Administrative Time Off (ATO) or other leave pursuant to policy and guidance previously issued. Employees should consult their supervisors with questions about eligibility.

Supplementation
Employees receiving pay at two-thirds may elect to use applicable available leave credits to supplement up to full pay.

Required Documentation for E-FMLA
In order to take E-FMLA, employees must provide documents to support the need to care for a child whose school or place of care is closed due to COVID-19 related reasons. This may be a notice of closure or unavailability from the child's school, place of care or childcare provider. The notice may include a notice that may have been posted on a government, school or day care website, published in a newspaper or email to the parent from an employee or official of the school, place of care, or childcare provider. At the present time, employees may apply for E-FMLA using [DFW 1067: FMLA Request Form](#) and attach the required documentation.

Absent the distinctions discussed above, the FMLA and California Family Rights Act policies, which can be found in CAL-HR Manual section 2107, apply to E-FMLA.

Expiration
The Families First Coronavirus Response Act expires on December 31, 2020.

Application
Departments must develop a mechanism to manually track all pay provided to employees under these programs. The tracking mechanism must include the employee's name, dates entitlements are used, days/hours of leave, and total amount paid to the employee.

Employees must clearly document on their timesheet in the comments section the leave which they are using. For example: when using any portion of the two weeks of EPSLA, it must be documented as ATO in the "Leave and Special Hours" section on the timesheet and referenced in the comments as ATO for EPSLA along with the dates used (i.e. ATO for EPSLA on April 6 – 10 and April 13 -17, 2020.)

Contact
For payroll related questions, please contact Transactions Manager, Veronica Boles, at veronica.boles@wildlife.ca.gov.

For E-FMLA related questions, please contact the COVID-19 Leave Support Hotline at COVID-19LeaveSupport@wildlife.ca.gov.

Resources
- Department of Labor: COVID-19 and the American Workplace
- CalHR Families First Coronavirus Response Act Frequently Asked Questions
- CDFW Families First Coronavirus Response Act Frequently Asked Questions