

Human Resources Branch Memorandum

SUBJECT: AMENDMENT #1: Families First Coronavirus Response Act (FFCRA)	NUMBER: HRB 20-011
	DATE ISSUED: December 14, 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DISTRIBUTION: CDFW All Employees	EXPIRES: Until Superseded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 reflect CalHR Manual's 12/01/2020 update on Supplemental Paid Sick Leave.

Authority

- [California Department of Human Resources \(CalHR\) Manual 2127](#)
- [Families First Coronavirus Response Act](#)

Notice

- [California COVID-19 Supplemental Paid Sick Leave for Non-Food Sector Employees](#)

Emergency Paid Sick Leave Act (EPSLA)

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.

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.

Time reporting: Once employee has received approve from the supervisor, ESPLA must be added as ESPLA Leave (AT-EPsla) under the add leave section on the employee's timesheet.

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 (ESPLA) discussed above concurrently with EFMLA. 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.

Required Documentation for E-FMLA Approval -

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.

Time reporting: Once approved for EFMLA, to add E-FMLA leave to the timesheet go to add special hours and add the E-FMLA line. Employees must add a note in comments if they want to supplement the 1/3 unpaid portion and what leave to use. The Senior PS will notify the employee of the actual amount of supplementation leave taken after the timesheet has been sent to the Human Resources Branch (HRB).

Personal Leave Program (PLP) 2020

Per the Federal Department of Labor, employees who are using EPSLA and EFMLA shall be paid at their regular rate of pay. This means employees will be paid their unreduced salary for hours/days taken under this program. The PLP 2020 hours for the pay period will be prorated based on the hours paid that are not EPSLA/EFMLA using the applicable intermittent chart.

Intermittent EPSLA and EFMLA time off shall be paid using the unreduced regular salary rate of pay, while hours worked, including leave used unrelated to EPSLA/EFMLA shall be paid using the reduced regular rate of pay. Workweek Group E/SE employees who are working partial days will receive the reduced rate. WWG E/SE employees are not using leave in partial days and should be handled like any other day when they do not work a full day.

Exempt Classifications for EPSLA/EFMLA

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
Office Technician (Support Law Enforcement/Public Safety Functions – **LED ONLY**)
Retired Annuitant (Captain) (Support Law Enforcement/Public Safety Functions – **LED
ONLY**)
Retired Annuitants (AGPA) (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.

New - AB 1867 Supplemental Paid Sick Leave (SPSL) – For exempt classifications

The SPSL is effective September 19, 2020, applies to the LED employees listed above as Exempt, and is in addition to the employee's other leave balances. Employees otherwise excluded from the FFCRA may be eligible to take up to two weeks of COVID SPSL if they are unable to work due to any of 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 is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
3. The employee is prohibited from working by the covered worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

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

- Full-time employees receive up to 80 hours of SPSL 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 receive 14 times the average number of hours worked each day during the preceding six months, up to 80 hours. The calculations are as follows:
 - To calculate the average number of hours worked by an intermittent employee with a variable schedule over the past six months, the figure is determined based on the total number of days in the 6-month period, not just the number of days worked.
 - If the intermittent employee has worked less than six months determine the average for the time period, the employee has worked for the state.
 - Retired annuitants are not eligible to receive leave under the SPSL program but are eligible under the FFCRA if the classification they are in is not exempt.

The leave shall be available for immediate use by the eligible employee, upon the oral or written request of the employee to the department. Departments cannot require an eligible employee to use other leave before the use of SPSL, including PLP 2020.

Any ATO time provided to an employee excluded from FFCRA between March 4, 2020 and the effective date of SPSL for the reasons listed above counts towards fulfilling the SPSL 80-hour obligation.

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

Time reporting: Once approved by the supervisor, to add SPSL, go to add leave and add AT-COV19 on the timesheet. Please add a note in the comment section on the timesheet that your AT-COV19 is for SPSL.

Expiration

The Families First Coronavirus Response Act, including the SPSL, 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.

Contact

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

For EPSLA/SPSL/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](#)
- [Families First Coronavirus Response Act Frequently Asked Questions](#)
- [COVID-19 Leave Support Intranet Page](#)