

OFFICE OF STATE HUMAN RESOURCES
EMPLOYEE WORK AND EMERGENCY LEAVE PROVISION #4*

Starts: May 26, 2020

Ends: June 30, 2020 or at the start of Phase 3, whichever is first

Applies to **temporary and permanent** employees
Exceptions to these provisions must be approved by the State Human Resources Director

While these provisions apply to all employees, The University of North Carolina System Office will send university-specific guidance to cover their SHRA and EHRA employees.
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The following is the fourth State of Emergency Leave provision authorized by the State Human Resources Director in response to the COVID-19 event and in compliance with the Families First Coronavirus Response Act (FFCRA). State of Emergency Leave (SOE) provisions run concurrently with the FFCRA leave. These provisions are subject to modification or discontinuation by the State Human Resources Director at any time based on COVID-19 developments, Executive Orders, and additional USDOL guidance regarding the FFCRA.

State of Emergency Leave options first became available on March 10, 2020 and have been offered to employees for 2 ½ months, subject to the agency head's discretion and the availability of funding. Since April 1, eligible employees have been entitled to leave protections as outlined by FFCRA. Any *unused* FFCRA leave continues to be available to eligible employees, as outlined below, through December 31, 2020. In line with the FFCRA, the Emergency Leave Provision 4 moves toward a supplemental leave approach between employees and agencies. If Provision 4 extends through June 30, there will be 26 workdays (208 hours) of emergency leave/FFCRA leave available to employees.

Payment of FFCRA leave is based on the employee's regular rate of pay and work schedule (or average rate of pay and work schedule for employees as determined by reviewing the schedule for the 6 months immediately prior to the leave being taken) and does not include overtime.

Expanded Community Service Leave is also being extended through Provision 4.

Families First Coronavirus Relief Act (FFCRA)

The FFCRA became effective on April 1, 2020. It consists of two interrelated parts: Emergency Paid Sick Leave Act (EPSLA) and Emergency Family and Medical Leave Expansion Act (EFMLEA). The two acts work together to require paid leave under certain situations related to COVID-19.

The Emergency Paid Sick Leave Act (EPSLA) requires up to 80 hours of paid leave at the regular rate for an employee who is placed in quarantine or in isolation by a governmental entity or required to be in self-isolation by a health care provider. The EPSLA also requires up to 80 hours of paid leave at 2/3rds the regular rate for an employee who is caring for a dependent in quarantine, isolation or self-isolation

as described above, or who is caring for a dependent due to a day care or school closure due to COVID-19 related reasons. **EPSLA leave is available to all employees, whether full time, part time or temporary, and pro-rated for part-time employees.***

The Emergency Family and Medical Leave Expansion Act (EFMLEA) expands the Family and Medical Leave Act of 1993 (FMLA) to allow a new reason for leave and requires the leave to be paid at 2/3rds the regular rate. Employers must provide up to 12 weeks of paid leave for employees who need time off to care for a dependent child due to a day care or school closure related to COVID-19. The 12 weeks are considered an expanded reason for leave and not an expansion of the amount of leave available under FMLA. The first 80 hours of EFMLEA is unpaid however employees may use paid leave under EPSLA (if unused) or accrued paid leave, at the same time as unpaid EFMLEA leave. **EFMLEA leave is available to all employees, whether full time, part time or temporary, as long as they have worked for the employer for at least 30 days immediately prior to the request for leave.*** The amount of leave is pro-rated for part time employees.

** Health care providers and emergency responders, as defined by FFCRA may be exempted by their employer from paid sick leave and/or expanded family and medical leave. For additional information, please see definitions below and refer to [Families First Coronavirus Response Act: Questions and Answers](#).*

Within the guidelines provided by FFCRA, agencies shall approve emergency paid sick leave for all employees. Essential employees (for this purpose are defined as health care providers and emergency responders) may also be allowed to use EFMLEA leave as work allows with the approval of their supervisor and a division director at the rate of pay outlined below. The leave outlined in State of Emergency Leave Provision #3 and this document runs concurrently with FFCRA leave.

Pursuant to the FFCRA, a “**health care provider**” is an employee who works “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.” It also includes employees who work for an entity who contracts with any of the above institutions to provide services or to maintain the operation of the facility where that individual’s services support the operation of the facility. Further, it includes anyone employed by an 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.” It also includes employees “that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.” [29 CFR 826.30 (c)(1)(i) and (ii)]

Pursuant to the FFCRA, an “**emergency responder**” is an employee who is “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, 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.” It also includes employees “whom the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.” [29 CFR 826.30 (c)(2)(i)]

Employee Designations and Work Assignments

- **The CDC guidance on COVID-19 encourages maximizing social distancing, staggered scheduling and teleworking opportunities to reduce the spread of COVID-19. Those guidelines should be considered by Agency Heads when determining which employees should be designated as mandatory for the purposes of onsite work, as well as for development of phased approaches to returning to normal operations.** Agency leadership has the authority to designate any employee as mandatory when they are needed to provide support to mandatory operations at an agency worksite.
- The Agency should maintain a list of mandatory employees directed to report to a worksite as well as essential employees to carry out critical operations based on the Agency’s operational needs specific to the COVID-19 event. **These designations may be changed by management at any time due to the operational needs of the Agency and COVID-19 developments.** Employees should be advised that the designation may change depending upon operational needs, updated DHHS guidance, or any agency’s ability to change operating processes to promote better social distancing.
- **Mandatory employees are those employees who are directed by their supervisor to report to work, or remain at work, at a designated Agency worksite, other than their personal residence, at regular and specific dates and times. In most circumstances these employees are not eligible for telework options.** These employees would typically include, but are not limited to, employees in positions that directly impact public health and patient care; public safety; operation of critical infrastructure and facilities; operation and safety of sensitive research labs and ongoing care for research animals, and the custody or care of persons or property for whom the state has a duty to continue to serve.
- **When designating mandatory or essential employees as well as when developing phased approaches to returning to normal operations, special consideration should be given to employees who have self-identified as “high risk” for experiencing greater complications with COVID-19 (i.e., over 65 years of age; have underlying health conditions, including heart disease, lung disease, or diabetes; or a weakened immune system) or who are providing care to someone at high risk. Agency management may allow these employees to telework or apply other Emergency Leave provisions below, as deemed appropriate.**
- **All employees who have not been directed by their supervisor to work onsite at any particular date and time may continue to be assigned work. Those employees are expected to telework, if**

feasible, given the nature of their position and duties, unless otherwise directed by their supervisor. Management may also reassign an individual to complete other work assignments that are not a part of their normal duties and responsibilities. If employees are reassigned, the agency head may compensate them accordingly, for the duration of the emergency.

- An Agency Head may elect to discontinue scheduling temporary employees or separate them if the agency does not have work for the temporary employee to perform, as deemed appropriate and consistent with state and federal law. Further, the Agency Head has the discretion to offer telework to temporary employees and/or to designate such employees as essential to address critical operational needs.

Emergency Leave Provision #4

Note: While management will give every possible consideration to individual personal circumstances, management has limited discretion to deny or defer special leave provisions (as described below) for mandatory or essential employees whose presence is determined necessary to address urgent public health, public safety, or critical infrastructure needs.

Emergency Paid Sick Leave is authorized consistent with the employee's usual work schedule as follows:

- Employees are not eligible for Emergency Paid Sick Leave who were on other pre-approved leave, choose not to work, or are unavailable for reasons other than provided for in the special COVID-19 provisions and must use available and applicable leave types; e.g. vacation leave, paid parental leave, bonus leave, compensatory time, or take leave without pay.
- All other non-COVID-19 absences will utilize regular forms of leave such as sick, vacation, bonus leave, or Voluntary Shared leave if approved.
- Paid Emergency Sick Leave should be based upon the employee's average hours per week over the course of the immediately preceding six months. In no case shall Paid Emergency Sick Leave exceed 40 hours per week.

For the period of **5/26/2020-6/30/2020 or the start of Phase 3, whichever is first**, paid leave is authorized for the following reasons at the rate of pay that aligns with FFCRA's requirements for emergency paid sick leave:

- **Up to 80 hours of FFCRA's EPSLA leave** is available to an employee who is unable to work because the employee is:
 - Is subject to a federal, state, or local quarantine or isolation order related to COVID-19, or
 - Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, or
 - Is experiencing COVID-19 symptoms and seeking a medical diagnosis, shall receive Emergency Paid Sick leave- (100%) **at the regular rate of pay** for up to 80 hours starting 4/1/2020. This leave will run concurrently with FFCRA. Once this paid leave is used, employees are eligible to use other available accrued leave, consistent with agency guidelines. Note: for the purposes of calculating the mandatory 80 hours for quarantine,

isolation and/or illness related to COVID-19, the use of 9547 Admin Leave CDE and 9548 SEL shall be combined not to exceed 80 hours from April 1, 2020.

- Is caring for a dependent subject to a federal, state, or local quarantine or isolation order related to COVID-19, or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 shall receive Emergency Paid Sick Leave **at 2/3rds the employee's regular rate of pay** for up to 80 hours starting 4/1/2020. This leave will run concurrently with FFCRA paid sick leave. Note: for the purposes of calculating the mandatory 80 hours for quarantine, isolation and/or illness related to COVID-19, the use of 9547 Admin Leave CDE and 9548 State of Emergency Leave shall be combined not to exceed 80 hours from April 1, 2020.
- **Up to 12 weeks of FFCRA's EFMLEA leave** is available to employees who cannot work because they have childcare needs due to COVID-19-related facility closings. Employees shall receive Emergency Paid Sick leave **at 2/3rds the regular rate of pay** for the period of time they are required to care for the child, children or other dependents in accordance with the time limitations indicated in FFCRA.
 - Notes: The first 80 hours of EFMLEA is unpaid however employees may use paid leave under EPSLA (if unused) or accrued paid leave, at the same time as unpaid EFMLEA leave.
 - For employees who are not exempted by the FFCRA, beginning April 1, 2020, the first 80 hours of State of Emergency Leave are mandatory under EPSLA for any of the specified reasons (i.e., illness or childcare issues).
 - After the first 80 hours are exhausted, the EFMLEA mandates up to 10 weeks of paid leave for employees who have worked for the employer for at least 30 days and have a remaining FMLA entitlement. The 10 weeks are considered an expanded reason for leave and not an expansion of the amount of leave granted under FMLA. Therefore, an employee's eligibility for the use of EFMLEA for childcare is subject to their FML remaining entitlement.
 - Agencies should track the leave taken consistent with the agency's method for tracking standard FMLA leave.
 - If more than one person in the household is a state employee, then the employees are expected to work with their supervisors to determine how to allocate paid leave to avoid inappropriate overlap of leave usage when a co-parent, co-guardian or child care provider is otherwise available.
 - State of Emergency leave used since April 1, 2020 and the leave granted in this provision for childcare will run concurrently with FFCRA Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion Act.

Although not covered under FFCRA, Emergency Paid Sick Leave is authorized for the period of **5/26/2020-6/30/2020 or the start of Phase 3, whichever is first**, for the following reasons at the rate of pay indicated:

- **Elder Care.** Employees may receive Emergency Paid Sick Leave **at 2/3rds the regular rate of pay** if they have elder care needs because of the closure of a facility due to COVID-19, not to exceed the limits authorized for childcare needs due to COVID-19-related facility closings.
- **Work cannot be performed remotely, or reasonable alternate work is not feasible.** Employees may receive Emergency Paid Sick Leave **at 2/3rds the regular rate of pay** if they are not scheduled to work onsite, cannot telework because their position and duties cannot be performed remotely, and reasonable alternate remote work is not feasible or productive. In addition, some employees who

can telework for part but not all of their regular work week may be eligible for a combination of Time Worked and Emergency Leave.

Additional Leave Information through December 31, 2020

Permanent employees may elect to utilize the following forms of leave, if approved to cover any remainder of their work schedule that is not worked or to supplement the 2/3rds Emergency Paid Sick Leave or take leave without pay.

- Employees can use personal accrued leave to fill in gap up to full pay.
- Employees may use sick, vacation or regular bonus leave interchangeably
- Employees may use earned compensatory leave
- CDE Care Leave (further explained below)
- Employees may use Advanced Leave (up to 24 months work of their sick and vacation entitlement) with approval of supervisor and division director. Approved employees have up to 24 months from the time of accrual to make up this leave before it is deducted from pay, as determined by agency.
- If an agency implements furloughs due to budget limitations, employees shall not be able to use SOE leave or personal leave to offset pay impacted by furloughs.

NOTE: The specifics on leave entry for Emergency Paid Sick leave for the purpose of calculating 2/3rds the regular rate of pay is forthcoming.

CDE-Care Leave

- In accordance with the Communicable Disease Emergency policy, employees who cannot work because they have childcare needs related to school or facility closings have the option to telework, if approved, or use leave that must be made up within a 24-month period.
- An employee with child-care needs may elect to use regular forms of leave, which may include sick leave, or may request to use the CDE Care Leave when other leave types provided above are not available. If CDE Care Leave is approved by the supervisor, the employee must make up the leave within the time period determined by the agency (up to 24 months). This leave may be used to supplement the use of emergency paid sick leave for childcare or elder care needs.

NOTE: The leave code is forthcoming for those agencies utilizing the Integrated HR/Payroll System.

NOTE: If Agencies want a variance from this Provision:

- Less generous benefits due to budget restrictions will need to be on file with OSHR when implemented, but not for approval, only for notification. **(however, any variance MUST comply with FFCRA regulations)**
- More generous benefits need OSHR approval **before implementation** to be reviewed for defensibility and consistency.

*** State of Emergency Leave Provision #1:** On Friday, March 13, 2020, agencies and universities were notified that they could authorize up to 10 days (80 hours) of paid State of Emergency Leave for all employees (temporary and permanent) who request leave due to having symptoms potentially related to COVID-19, subject to the availability of funds. These 10 days of leave are separate and distinct from the above special State of Emergency Leave provision. The first paid State of Emergency Leave (up to 10 days) for employees having symptoms potentially related to COVID-19 became available effective March 10 through March 15 and will be replaced by a subsequent provision. Balances do not carry forward beyond Provision 3.

*** State of Emergency Leave Provision #2:** On Tuesday, March 17, 2020, agencies and universities were notified that they could authorize up to 12 days (96 hours) of paid State of Emergency Leave for all employees (temporary and permanent) who request leave due to reasons stated therein, subject to the availability of funds. These 12 days (96 hours) of leave are separate and distinct from the State of Emergency Leave Provisions #1 or #3, and are effective from March 16 – 31, 2020. Balances do not carry forward beyond March 31.

*** State of Emergency Leave Provision #3:** On Thursday, March 26, 2020, agencies and universities were notified that they could authorize up to 168 hours of paid State of Emergency Leave for all employees (temporary and permanent) who request leave due to reasons stated therein, subject to the availability of funds. Further, on Wednesday, April 29, 2020, agencies and universities were notified that they could authorize provision #3 through May 8, 2020 with the total hours expanded to 216 hours. This provision was further extended on May 6, 2020 granting a total of 296 hours. These 296 hours of leave are separate and distinct from the State of Emergency Leave Provisions #1 or #2 and are effective from April 1, 2020 – May 22, 2020. Due to the paid holiday on May 25, total hours do not exceed the 296 hours granted in Provision 3. Balances do not carry forward beyond May 25. NOTE: The use of State of Emergency leave starting April 1, 2020 for qualifying reasons under FFCRA is applied towards the amount of leave authorized by the Act.

[Communicable Disease Emergency Policy \(Rev. 4/28/2020\)](#)