

# State Human Resources Policy #E24-104.08

## Emergency Paid Sick Leave and Emergency Family Medical Leave Act

**THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.**

### **DEFINITIONS**

Agency – The South Carolina Military Department/Office of the Adjutant General.

### **POLICY**

#### 1. General

a. On 18 March 2020, the President signed the “Families First Coronavirus Response Act” (FFCRA) into law which contains two new, different paid leave types related to the 2019 novel coronavirus (COVID-19) - Emergency Paid Sick Leave (EPSL) and Emergency Family Medical Leave Act (EFMLA).

b. This policy reference EPSL and EFMLA is in effect as of 01 April 2020, and expire 31 Dec 2020.

c. EPSL and EFMLA may only be used by an employee if the employee is unable to work due to a Federal or State quarantine or isolation order and the Agency has exhausted all work-from-home (i.e., Telecommuting) opportunities. According to the US Department of Labor, an employee may not take paid sick leave (i.e. EPSL or EFMLA), if:

[1] the employer has work for the employee to perform;

[2] the employer permits the employee to perform that work from a remote location (e.g. where the employee is self-quarantining) and

[3] there are no extenuating circumstances that prevent the employee from performing that work.

d. EPSL cannot be provided retroactively for periods prior to 01 April 2020.

e. Approval Authority. The approval authority for ESPL and/or EFMLA requests is the Chief of Staff for State Operations or his designee.

#### 2. Emergency Paid Sick Leave

a. State employees may take up to 80 hours of paid sick leave for one of six (6) qualifying reasons outlined below.

*1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19. Governor McMaster’s Executive Order requiring that all non-essential state employees not report to work constitutes a “Federal, State, or local quarantine or isolation order related to COVID-19.”*

*2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.*

*3. The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis (note - the employee may not take paid sick leave to self-quarantine without seeking a medical diagnosis).*

*4. The employee is caring for an individual who is subject to an order as described in the first reason for leave above OR has been advised to quarantine as described in the second reason for leave above.*

*5. The employee is caring for their child (son or daughter only, does not include grandchildren or other relatives) where the school or place of care has been closed, or the childcare provider is unavailable, due to COVID–19 precautions.*

*6. The employee is experiencing any other substantially similar condition specified by the FFCRA.*

b. This includes employees who do not currently earn leave including Temporary, Temporary Grant and Time-Limited employees.

(1) A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

(2) Employees are eligible from their first day of employment.

c. Pay and Rate of Pay

(1) The rate of pay provided to employees who utilize leave under the FFCRA will depend on the reason the leave is taken.

- If leave is taken for Reasons 1, 2 or 3 listed above, the employee receive their regular rate of pay up to \$511.00 per day or \$5,110 in the aggregate.
- If leave is taken for Reasons 4, 5 or 6, the employee will receive 2/3 of their regular rate of pay up to a maximum of \$200 per day and \$2,000 in the aggregate.

(2) Employees can use accrued Leave, Sick Leave, Compensatory Time or Holiday Compensatory Time to augment leave taken under EPSL up to their regular salary rate.

d. Employees may take EPSL intermittently (i.e. in less than full-day increments). Intermittent leave must be taken in increments set by the Agency.

e. Employees are not eligible to collect unemployment insurance benefits periods in which they receive EPSL.

f. If an employee is furloughed because an Agency does not have enough work or business for an employee, the employee is not entitled to then take EPSL.

### 3. Emergency Family Medical Leave Act

a. EFMLA temporarily amends and expands the federal FMLA to provide qualifying employees 12 weeks of leave if the employee is unable to work, including work-from-home, due to the need to care for the employee's child (son or daughter under 18 years of age) if the child's school or place of care is closed or the child care provider is unavailable due to a public health emergency.

(1) This includes any elementary and secondary schools, and any provider who receives compensation for providing childcare services.

(2) For the purposes of EMFLA, a public health emergency is “an emergency with respect to COVID-19 declared by a Federal, State, or local authority.”

b. ERMLA cannot be provided retroactively for periods prior to 01 April 2020.

c. EFMLA leave is available to all employees who have been employed at least 30 calendar days, including employees who do not accrue leave. A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

d. Pay and Rate of Pay

(1) The first 10 workdays of the 12 workweeks of leave provided under the EFMLA are unpaid, but in accordance with standard FMLA administration, employees are required to use any paid leave available concurrently with EFMLA leave during this 10-day period. Employees may also take EPSL concurrently (i.e., at the same time) with EFMLA.

(2) After the first 10 workdays (2 weeks), the employee will be paid leave for the remaining leave 10 weeks of the EFMLA.

(a) Paid leave provided to eligible employees shall be calculated at 2/3 of an employee’s regular rate of pay and should be based on the number of hours the employee would otherwise be normally scheduled to work.

(b) Paid leave under the EFMLA is capped at \$200 per day and \$10,000 in the aggregate.

(3) Employees can use accrued Leave, Sick Leave, Compensatory Time, or Holiday Compensatory Time to augment leave taken under the EFMLA up to their regular salary rate.

(4) Once the employee receives the maximum amount of paid EFMLA leave, the employee will continue EFMLA leave for the remainder of the eligible period, but the employee will not be paid under the EFMLA. Employees may use Annual Leave, Sick Leave, Compensatory Time or Holiday Compensatory Time for this unpaid period.

e. Employees may take EFMLA intermittently (i.e. in less than full-day increments). Intermittent leave must be taken in increments set by the Agency.

f. Employees are not eligible to collect unemployment insurance benefits for periods in which they receive EFMLA.

g. If an employee is furloughed because an Agency does not have enough work or business for an employee, the employee is not entitled to then take EFMLA.

#### 4. Records

a. The Military Department State Human Resources Office (Stater HRO) will retain all documentation for a minimum of four (4) years, regardless of whether leave was granted or denied.

b. For records pertaining to employees working under a Cooperative Agreement, the State HRO will retain those records for a minimum of four (4) years or in accordance with the retention requirements of the Master Cooperative Agreement whichever is greater.

### **PROCEDURE**

1. All forms for requesting either EPSL or EFMLA may be found at [sctag.org](http://sctag.org) under the “Forms” tab in the “Leave and Attendance” section

2. Requests for Leave

a. Employees requesting EPSL will submit their leave request utilizing the COVID-19 - Request for Emergency Paid Sick Leave Form.

b. Employees requesting EFMLA will submit their leave request utilizing the COVID-19 - Request for Emergency Family and Medical Leave (EFMLA) Form.

c. For both EPSL and FMLA, the Supervisor or Manager must verify on the Request Form (by signature) that the employee is not able to work from home (i.e., Telecommute). In addition, for FMLA, the Supervisor or Manager must verify on the Request Form (by signature) that the employee has been employed for at least 30 calendar days.

d. Employees must submit all supporting documentation with their leave requests(s).

e. If an employee provided oral statements to support his or her request, the supervisor or manager/Program Manager will document the statements and forward the statements with the request.

3. Documentation.

a. EPSL

Reason for Leave	Documentation
Reason 1	(1) The name of the government entity that issued the quarantine or isolation order to which the employee is subject ( <i>Note - The employee does not need to provide the name if the leave is being taken subject to an order of the Governor</i> ), and (2) confirmation from the Supervisor / Manager that the employee is not required to physically report to work (i.e., Critical employee), and (3) a statement that no suitable arrangements can be made for the employee to work-from-home.
Reason 2:	The name of the health care provider who advised the employee to self-quarantine for COVID-19 related reasons.
Reason 3	(1) Confirmation of a doctor's appointment or a written statement from the employee confirming they are experiencing applicable symptoms and describing the affirmative steps the employee has taken to obtain a medical diagnosis, and (2) a statement that no suitable arrangements can be made for the employee to work-from-home.

Reason for Leave	Documentation
Reason 4	(1) The government entity that issued the quarantine or isolation order to which the individual is subject ( <i>Note - The employee does not need to provide the name if the leave is being taken subject to an order of the Governor</i> ), or (2) the name of the health care provider who advised the individual to self-quarantine, depending on the precise reason for the request. (3) A statement that no suitable arrangements can be made for the employee to work from home.
Reason 5	(1) The name and relationship of the child being cared for; (2) the name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons; (3) a statement representing that no other suitable person is available to care for the child during the period of requested leave, and (4) and a statement that no suitable arrangements can be made for the employee to work from home.
Reason 6	If leave is being taken for this reason, please contact the Military Department's State Human Resources.

b. EFMLA. The employee should provide

- (1) The name and relationship of the child being care for;
- (2) the name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons; and
- (3) a statement representing that no other suitable person is available to care for the child during the period of requested leave and that no suitable arrangements can be made for the employee to work from home.