

# **GUIDANCE FOR EMPLOYEES**

## **OVERVIEW OF AND QUESTIONS AND ANSWERS ABOUT THE EFMLEA AND EPSLA**

### **OVERVIEW**

The Families First Coronavirus Response Act (FFCRA) includes two laws providing for employee leave. The first is the Emergency Family and Medical Leave Expansion Act (EFMLEA); the second is the Emergency Paid Sick Leave Act (EPSLA). These laws require the state to provide employees with paid sick leave and expanded family and medical leave *for the specified reasons* related to COVID-19. These provisions will apply from April 1, 2020, until the end of the emergency but no later than December 31, 2020. Employees are covered by the EFMLEA only after being employed for 30 days, but are eligible for paid leave under the EPSLA from the first day of employment. *NOTE: These laws do not apply to health care providers and emergency responders (Definitions on pp. 10-11).*

### **PAID LEAVE AVAILABLE**

The Emergency Paid Sick Leave Act provides up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave when an employee is unable to work or telework because of one of six qualifying reasons related to COVID-19. Although the Emergency Paid Sick Leave Act requires the state to pay only 2/3 of an employee's pay and only up to a limit of \$200/day for three of the six qualifying reasons for the leave, this Administration has decided that *employees will receive their full pay* for all time off taken pursuant to this law.

The Emergency Family and Medical Leave Expansion Act provides up to 12 weeks of expanded family and medical leave (the first 2 weeks unpaid, followed by 10 weeks of paid leave) for an employee unable to work or telework because the employee is required to care for the employee's child whose school or day care has closed, or regular daycare provider has become unavailable due to COVID-19, if there is no other suitable person to care for the child. Like the Emergency Paid Sick Leave Act, the expanded FMLA requires the state to pay only 2/3 of an employee's pay and only up to a limit of \$200/day for leave. However, this Administration has decided that *employees will receive their full pay* for the paid time off taken pursuant to this law.

### **ELIGIBLE EMPLOYEES**

All State employees (not to include health care providers and emergency responders defined on p. 10-11) are eligible for the 80 hours of emergency paid sick leave (or a lesser amount for part-time employees), regardless of how long an employee has been employed, *when the employee is unable to work or telework* for one of the six qualifying reasons related to COVID-19.

An employee who has been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of paid and 2 weeks of unpaid expanded family medical leave to care for the employee's child whose school or day care closed or child care provider is unavailable due to COVID-19. *Note that the 12 weeks of expanded FML is reduced by any traditional FML an employee has taken this calendar year.*

## **GUIDANCE FOR EMPLOYEES**

These leaves can be taken prior to an employee being required to use accrued leaves.

# GUIDANCE FOR EMPLOYEES

## QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take the emergency paid sick leave if the employee is *unable to work or telework*, because an employee:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19. [The stay-at-home order issued by Gov. Mills does not prevent any state employee from working and therefore does not satisfy this requirement].
2. The employee has been advised by a health care provider to self-quarantine related to COVID-19. This applies only when the health care provider's advice for the employee to self-quarantine is based on a belief either that the employee *has or may have COVID-19*, or when the *employee is particularly vulnerable* to COVID-19. This does not apply when an employee is advised to self-quarantine to protect the health of a family or household member.
3. The employee is experiencing COVID-19 symptoms *and* is seeking a medical diagnosis.
4. The employee needs to care for an individual subject to an order described in #1 or self-quarantine as described in #2. The relationship of the individual to the employee must be such as to create the expectation that the employee would care for the individual.
5. The employee needs to care for the employee's child whose school or place of care is closed (or their regular child care provider is unavailable) for reasons related to COVID-19. This requires that it is necessary for the employee to care for the child, and that no other suitable person is available to care for the child.
6. The employee is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury. [At this time no condition has been specified by the Secretary].

An employee is entitled to take the expanded family and medical leave *only* if the employee is unable to work or telework because the employee is caring for a child whose school or place of care is closed, or their regular child care provider is unavailable, for reasons related to COVID-19. Note that this is the same as reason #5 for emergency paid sick leave. In order to qualify for the expanded family medical leave, or for emergency paid sick leave for reason #5, the employee must be *unable to work or telework* because the employee is *needed* to care for the child *and there must be no other suitable person available* to care for the child.

These laws took effect on April 1 and cannot legally be taken prior to that time.

The questions and answers below are based upon regulations and guidance from the USDOL.

# GUIDANCE FOR EMPLOYEES

## QUESTIONS & ANSWERS

### **EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (“EFMLEA”)**

*Note: Health Care Providers and Emergency Responders are excluded from the provisions of this Act.*

**Q. When an employee is unable to work or telework because the employee is needed to care for a son or daughter due to a COVID-19 school or daycare closure, what leave is the employee eligible for?**

A. A covered employee is entitled to up to 12 weeks of expanded FML leave pursuant to the EFMLEA (2 unpaid, 10 paid) when the employee is *unable to work or telework* because the employee is *needed* to care for the employee’s child, and *there is no other suitable person to care for them*. The employee is also entitled to up to 80 hours of emergency paid sick leave under the EPSLA to provide pay during these two unpaid weeks of expanded FML. The employee can opt instead to take accrued leave instead of the emergency paid sick leave during these two weeks. Only if the employee had previously used the emergency paid sick leave for another qualifying reason *and* the employee has no available accrued leave can the two weeks or any portion of them be unpaid. *Note: Any “traditional” FMLA leave previously taken by the employee during the calendar year is subtracted from the 12 weeks of EFMLEA, and any leave taken under the EFMLEA will reduce the employee’s calendar year entitlement for traditional FMLA.*

**Q. Can a grandparent, aunt/uncle, niece/nephew, or similar relative take one of these federal leaves for the purpose of caring for a child?**

A: No. Neither the expanded FML nor the emergency paid sick leave is available for such leave. Under both the 12 week extended FML and the two-weeks of paid sick leave, such leave is available for school closure or loss of childcare only for an employee’s own son or daughter.

**Q. Who meets the definition of “son or daughter”?**

A. Under the EPSLA or EFMLEA, a “son or daughter” is an employee’s own child under 18 years of age. This includes a biological, adopted, foster child, stepchild, legal ward, or a child for whom the employee is standing *in loco parentis*—someone with day-to-day responsibilities to care for or financially support a child. 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.

**Q. How long must employees be employed by the state in order to qualify for the extended leave provided by the expanded FML?**

A: Any full-time or part-time employee who has been on the state’s payroll for 30 days prior to taking leave under the expanded FML is eligible for the leave.

**Q. If an employee has already used six (6) weeks of job-protected FML this calendar year, is the employee entitled to 12-weeks of leave under the expanded FML in addition to the six (6) weeks of FML already taken?**

A: No. The expanded FMLA simply adds new eligibility criteria to the old law. Therefore, the expanded FML benefit counts toward an employee’s total of 12-weeks of traditional FML. Thus, because an employee has already taken six (6) weeks of FML, the employee is only entitled to an additional six (6) weeks of total leave under either the expanded FMLA or the traditional

## GUIDANCE FOR EMPLOYEES

FMLA. Similarly, if an employee used the full 12-week expanded FML benefit for a COVID-19 reason the employee will not have access to additional leave for traditional FML reasons later in the calendar year. *Note that even after an employee has exhausted 12 weeks of FMLA/EFMLEA, the employee would nevertheless be eligible for the two weeks of emergency paid sick leave if it had not been already taken.*

**Q. The expanded FMLA states it is solely for those employees who are unable to work or telework due to a need to care for a child under 18 due to closures of schools/daycares related to the COVID-19 health emergency. What happens if the employee themselves is hospitalized due to COVID-19?**

A. The only benefit available under the expanded FMLA is for an employee unable to work or telework because the employee is needed to care for a son or daughter due to school or daycare closure as a result of the COVID-19 emergency. The employee may, however, be eligible for job-protected emergency paid sick leave, or leaves pursuant to the traditional FMLA, and to the collective bargaining agreement.

**Q. If both parents work for the state, does the expanded FMLA limit the couple to 12 total weeks of expanded FML, or is each individual employee entitled to 12-weeks of expanded FML?**

A. Each covered parent is eligible for expanded FML, and each is required to exhaust the 10-day unpaid leave period prior to being entitled to the paid expanded FML. Although each parent is entitled to the expanded FML, the requirement that the employee be *needed* to care for the child and that no other suitable person is available to care for the child means that, absent extenuating circumstances, both parents would not be eligible to take the expanded FML at the same time. *Note: each employee can opt to use the 80 hours of emergency paid sick leave or the employee's own accrued leave during each 10-day unpaid period.*

**Q. Is the state required to continue health insurance benefits and pay the employer's share of premiums for coverage for the employee, spouse, and dependents when an employee utilizes leave under the expanded FML?**

A. Yes.

**Q. Is the state required to restore an employee to the employee's position upon return from expanded FML?**

A. Yes. An employee taking expanded FML has the same return rights as an employee returning from any other FMLA leave.

**Q. Are there any employees who are exempt from the extended FML?**

A. The federal law specifically allows employers to exempt from coverage for the emergency sick leave and the expanded FML any employee who is a "health care provider" or an "emergency responder". (*Definitions at pp 10-11.*)

## GUIDANCE FOR EMPLOYEES

### **EMERGENCY PAID SICK LEAVE ACT (“EPSLA”)**

*Note: Health Care Providers and Emergency Responders are excluded from the provisions of this Act.*

**Q. Is the emergency paid sick leave available to employees in addition to the paid sick leave provided by the collective bargaining agreement?**

A: Yes. The emergency paid sick leave is in addition to any paid leave already provided by the state, and the employee cannot be required to exhaust accrued paid leave benefits before using the paid sick leave provided by the EPSLA.

**Q. Does the Governor’s stay-at-home order constitute a state quarantine or isolation order that would qualify an employee to take the paid sick leave?**

A. Regardless of whether the Governor’s stay-at-home Order would meet the standard in the emergency paid sick leave law, an employee is eligible for the emergency paid sick leave *only* when the employee is unable to work or telework. Because the Governor’s order does not prevent state employees from continuing to perform the work of state government, an employee is not eligible for paid sick leave based on that Order because the employee would not meet the “unable to work or telework” requirement.

**Q. If an employee is informed by the employee’s health care provider that the employee should self-quarantine because *the employee* is at high-risk, is the employee entitled to take emergency paid sick leave? After the 10 days, would the employee be eligible for leave pursuant to the traditional FMLA ?**

A. Where a covered employee has been advised by a medical provider to self-quarantine, the employee is entitled to emergency paid sick leave *only if the employee is unable to work or telework* as a result. After all of an employee’s emergency paid sick leave has been used, an employee would only qualify for traditional FMLA leave if the employee has a “serious health condition”. The employee may also be entitled to access other leave pursuant to the collective bargaining agreement. *Employees should contact HR to discuss what leaves might be available to them.*

**Q. Is an employee who is worried about contracting COVID-19 entitled to use emergency paid sick leave?**

A. It depends. Only if the employee is unable to work or telework due to one of the six (6) criteria would the employee be eligible to use emergency paid sick leave. If the employee is advised by their health care provider to quarantine or isolate because the employee is vulnerable to COVID-19 due to age or health condition *and* this prevents the employee from working *or teleworking*, the employee would be entitled to use the 80 hours of emergency paid sick leave. The employee may also be entitled to access other leaves pursuant to the collective bargaining agreement, and if the employee has a serious health condition, the FMLA.

**Q. What qualifies an employee for leave under the 6th qualifying reason for emergency paid sick leave, that “the employee is experiencing a substantially similar condition to COVID-19 as has been identified by the Secretary of Health and Human Services?”**

A. At this time the HHS Secretary has not yet identified any such conditions similar to COVID-19, and until such time as he does, no employee is entitled to leave pursuant to this provision.

**Q. How long will the emergency paid sick leave be available, and will the state pay out emergency sick leave banks at the end of the year?**

## GUIDANCE FOR EMPLOYEES

A. Emergency paid sick leave will not be carried over or paid out at the end of the year or upon separation from employment. The leave is available only during the COVID-19 emergency, and the law will sunset on December 31, 2020.

### **EMERGENCY PAID SICK LEAVE, EXPANDED FML, AND TRADITIONAL FML**

#### **Q. When is an employee able to telework?**

A. An employee may telework when the employer permits the employee to perform work at home or at a location other than the normal workplace. Telework is work for which normal wages are paid and is not considered paid leave.

#### **Q. If the employee is or becomes unable to telework, is the employee entitled to emergency paid sick leave or expanded FML?**

A. If the employer permits teleworking but the employee is unable to perform those tasks, or is unable to work the required hours because of one of the qualifying reasons for paid sick leave, then the employee is entitled to take paid sick leave. Similarly, if the employee is unable to perform those teleworking tasks or hours because the employee needs to care for a son or daughter because of a COVID-19 school or daycare closure, and no other suitable person is available to care for the child, then the employee is entitled to take expanded FML and emergency paid sick leave. *NOTE: To the extent the employee is able to telework while caring for the child, paid sick leave and expanded family and medical leave is not available.*

#### **Q. What if the employee can work but not their regular hours?**

A. If the employee and employer agree that the employee will work their normal number of hours, but outside of their normally scheduled hours (for instance early in the morning or late at night), then the employee is able to work and leave is not necessary unless a COVID-19 qualifying reason prevents the employee from working that schedule.

#### **Q: Assuming an employee is eligible for traditional FMLA, must the state grant an employee traditional FMLA job-protected leave when the employee is subject to a government-ordered quarantine or isolation order, is advised by a health care provider to self-quarantine, or is experiencing symptoms of COVID-19 and seeking a medical diagnosis?**

A: An employee may be entitled to job-protected leave under the traditional FMLA under these circumstances, assuming the employee has a “serious health condition” as defined by the FMLA. Employees should contact HR for information. *NOTE: The employee may be entitled to emergency paid sick leave, or leaves pursuant to the collective bargaining agreement or state and federal law.*

#### **Q: An employee is *concerned* about contracting COVID-19 and has requested access to traditional FMLA job-protected leave. Is the employer required to provide the employee with leave benefits pursuant to the traditional FMLA?**

A: It depends. Only if an employee has a “serious health condition” would the employee be entitled to leave under the traditional FMLA. Employees should contact HR for information.

#### **Q: Does the traditional FMLA allow an employee access to job-protected leave to care for a family member who is quarantined, isolated, or experiencing symptoms associated**

## GUIDANCE FOR EMPLOYEES

### **with COVID-19?**

A: Under the traditional FMLA, an employee is entitled to 12-weeks of leave to care for an immediate family member (*i.e.*, spouse, child, or parent) with a “serious health condition”. Employees should contact HR for information.

### **Q: If the state allows employees to take traditional FMLA for the employee’s own serious health condition, is the state required to pay the employee for the FMLA leave taken by the employee?**

A: No. Neither state nor federal law entitles the employee to receive pay for traditional FMLA leave. *Note: The employee may be eligible for two weeks of paid leave under the EPSLA and to use the employee’s accrued leave.*

### **Q: What information can the state request to verify that the employee needs to miss work to care for a child pursuant to the EFMLEA or EPSLA?**

A: The employee requesting leave must fill out the leave request form for the emergency sick leave or the expanded FML being requested.

### **Q: May an employee stack leave provided under either the EPSLA or the EFMLEA?**

A: An employee caring for children out of school or day care because of a COVID-19 closure is provided the 80 hours of emergency paid sick leave to cover the two week unpaid period of expanded FML. The employee can opt to substitute accrued leave in place of the emergency paid leave. If the employee has already used all or part of the 80 hours for another qualifying reason and has no accrued leave available, then the two weeks would be unpaid expanded FML. Note that an employee can never be *paid* twice for the same time.

### **Q: Can an employee choose to take 12 weeks of expanded FML first and then take 2 weeks of emergency paid sick leave so the employee will have access to 14 weeks of leave to care for a child due to school closing?**

A: Yes, but only if the employee chooses to substitute the employee’s accrued leave for the 10 days of emergency paid sick leave. In that case, the 10 days of emergency paid sick leave would still be available after 12 weeks, assuming the qualifying conditions are still met.

### **Q: Is a full-time employee working from home eligible for expanded FML and emergency paid sick leave to care for the employee’s child or children?**

A: It depends on the child care obligations being performed by the employee and whether the employee can realistically work from home. In order to qualify, the employee must be *needed* to care for the children, with no other available suitable person to care for the children. The younger and greater the number of children, the harder it will be for the employee to work from home.

### **Q: Does the employee have an obligation to notify the state of the need to take leave?**

A: Yes. Just as employees are required to do when using regular sick leave, employees must notify the employer of the need to use the expanded FML or emergency paid sick leave as soon as possible. When the employee is aware of the need in advance, the employee should provide the employer with that advance notice.

### **Q. Is the state required to notify employees of their rights under these federal leave laws?**

A: Yes. Notices are posted in conspicuous places on the premises and provided electronically to employees working remotely.



## GUIDANCE FOR EMPLOYEES

**Q. Are employees protected from discharge, discipline, or other discrimination for taking leave under these federal leave laws or filing a complaint or instituting a proceeding under or related to these laws?**

A. Yes. Employees are protected for exercising their rights under these laws.

**Q. How many hours per week is a full time employee entitled to be paid pursuant to these federal leave laws?**

A. For expanded FML, the employer must pay an employee for hours the employee would have been normally scheduled to work, even if more than 40 hours in a week. Hours over 40 are paid at the straight time rate rather than the premium rate. Emergency paid sick leave is paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week (at the straight time rate) and 30 hours of paid sick leave in the second week. In any event, the total number of emergency paid sick leave hours is capped at 80. If the employee's schedule varies from week to week, the calculation of hours for a full-time employee with a varying schedule is calculated using the same method as for a part-time employee.

**Q. How many hours per week of emergency paid sick leave or expanded FML is a part-time employee entitled to be paid?**

A. A part-time employee is entitled to paid leave for the employee's average number of work hours in a two-week period that the employee would normally be scheduled to work. If the normal hours are unknown or the employee's schedule varies, the 6-month average is used to determine the employee's average daily hours.

**Q. How are the hours of an intermittent employee calculated?**

A. Unless the intermittent employee has a regular schedule, the average daily hours are calculated using a six-month average. Such intermittent employee may take emergency paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that. If this calculation cannot be made because the employee has not been employed for at least six months, the calculation is based upon the number of hours the employee and employer agreed that the employee would work upon hiring; if there is no such agreement, the calculation is based upon the average hours per day the employee was scheduled to work over the entire term of his or her employment.

**Q. When calculating pay due to employees taking leave, must regularly-scheduled overtime hours be included?**

A. Yes, regularly scheduled overtime hours are included, but the pay does *not* include premium (time and a half) for overtime hours. In other words, an employee on paid leave will receive straight time for scheduled overtime hours (but only up to an 80-hour maximum for a full time employee for emergency paid sick leave).

**Q. Can an employee take 80 hours of emergency paid sick leave to self-quarantine and then another amount of emergency paid sick leave for another covered reason?**

A. No. An employee can take up to two weeks of paid leave for any of the qualifying reasons. This is limited to 80 hours for a full-time employee; for a part-time employee, the number of hours is equal to the average number of hours that the employee works over a typical two-week period.

## GUIDANCE FOR EMPLOYEES

**Q. If an employee is home unable to work or telework with a child because his or her school or place of care is closed, or child care provider is unavailable, does the employee get emergency paid sick leave, expanded FML, or both, and how do they intersect?**

A. The employee may be eligible for both types of leave to care for their child whose school/childcare is closed/child care provider is unavailable due to COVID-19 related reasons, assuming such leave is *necessary* because the employee is *unable to work or telework* as a result, and no *other suitable person is available* to provide care. The extended FMLA provides 2 weeks unpaid and 10 weeks paid; the emergency paid sick leave act provides 80 hours paid leave. Only if the employee has no emergency paid sick leave left and chooses not to use their accrued leave will the first two weeks of expanded FML be unpaid.

**Q. If an employee is out on another type of leave on April 1 for a reason that would qualify the employee for emergency paid sick leave or extended FML, is the employee entitled to leave pursuant to the Acts?**

A. Yes. Effective April 1, 2020, an employee already on a leave for a reason that would qualify the employee for emergency paid sick leave or extended FML would be entitled to up to 2 weeks of emergency paid sick leave and 12 weeks of expanded FML (10 weeks paid) for qualifying reasons when the employee is unable to work or telework.

**Q. Can an employee take emergency paid sick leave or paid expanded FML and accrued leave for the same time?**

A. No. An employee cannot be paid twice for the same time.

### **INTERMITTENT LEAVE UNDER THE EFMLEA AND EPSLA**

**Q. Can an employee take emergency paid sick leave or expanded FML intermittently while teleworking?**

A. Yes, if the employer allows it, subject to operational needs, and if the employee is unable to telework their normal hours due to any of the qualifying reasons for emergency paid sick leave or expanded FML. In that situation, *by mutual agreement only*, the employee may take paid sick leave intermittently while teleworking. Similarly, if the employee is prevented from teleworking the employee's normal hours because the employee needs to care for the employee's child whose school/daycare is closed because of COVID-19 related reasons, *by mutual agreement only* the employee can take expanded FML intermittently while teleworking. The employee may take intermittent leave in any increment *that the employee and employer agree upon*. For example, if they agree on a 90-minute increment, the employee could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

**Q. May an employee take emergency paid sick leave or expanded FML intermittently while working at the employee's usual worksite (as opposed to teleworking) if the leave is due to caring for children whose school or daycare is closed due to COVID-19?**

A. Yes, if operational needs allow and *the employer and employee agree*, but only if the leave is due to caring for children due to the school or daycare closure. For example, if the child is at home because his or her school or daycare is unavailable because of COVID-19 related reasons, the employee may take paid sick leave on Mondays, Wednesdays, and Fridays to care for the child, but work at the normal worksite on Tuesdays and Thursdays.

## GUIDANCE FOR EMPLOYEES

**Q. May the employee take emergency paid sick leave intermittently while working at the employee's usual worksite (as opposed to teleworking) if the leave is due to any reason other than caring for children out of school or daycare?**

A. No. Unless the employee is teleworking, paid sick leave for qualifying reasons related to COVID-19 other than to care for a child whose school or daycare closed cannot be taken intermittently. Unless the employee is teleworking, once the employee begins taking paid sick leave for one or more of the *other* qualifying reasons, the employee must continue to take paid sick leave each day until the employee either (1) uses the full amount of paid sick leave or (2) no longer has a qualifying reason for taking paid sick leave. *This limit is imposed because if the employee is sick or at risk for becoming sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the paid sick leave is necessary to keep the employee from potentially spreading the virus to others.*

**Q. If an employee no longer has a qualifying reason for taking emergency paid sick leave before exhausting the 80 hours, may the employee take the remaining emergency paid sick leave at a later time?**

A. Yes. If another qualifying reason occurs before the public health emergency ends and before December 31, 2020, the employee can use the remaining time to a total of 80 hours (for a full time employee).

**Q. Does an employee qualify for expanded FML even if the employee has already used some or all of the employee's leave under the traditional FMLA?**

A. The employee's eligibility for expanded FML depends on how much traditional FMLA leave the employee has already taken during the calendar year. The employee may take a total of 12 workweeks for FMLA (including expanded FML) during a calendar year. If the employee has taken some, but not all, of 12 workweeks of leave of FMLA during this calendar year, the employee may take the remaining portion of leave available. If the employee has already taken 12 workweeks of FMLA leave this year, the employee may not take any expanded FML. For example, if the employee took two weeks of FMLA leave in January 2020 to undergo and recover from a surgical procedure, the employee has 10 weeks of FMLA leave remaining. Because expanded FML is a type of FMLA leave, the employee would be entitled to take up to 10 weeks of expanded FML, rather than 12 weeks, and any expanded FML the employee takes would count against the employee's entitlement to traditional FMLA leave for the remainder of the calendar year. In addition, an eligible employee will still be eligible for emergency paid sick leave regardless of how much expanded FML or traditional FML the employee has taken.

### **DEFINITIONS OF "HEALTH CARE PROVIDER" AND "EMERGENCY RESPONDER"**

**Q. Who is a "health care provider" who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?**

A. The USDOL defines "health care provider" as anyone employed 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. This definition includes any individual employed by an entity

## **GUIDANCE FOR EMPLOYEES**

that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This includes anyone employed by any 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. This also includes any individual that the Governor determines is a health care provider necessary for Maine's response to COVID-19. Maine State employees covered by this exemption include (but may not be limited to) all employees at the State's two psychiatric hospitals and employees at Maine's CDC.

### **Q. Who is an "emergency responder" who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?**

A. The USDOL defines "emergency responder" as an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of 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, 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. This also includes any individual that the Governor determines is an emergency responder necessary for Maine's response to COVID-19. Maine State employees covered by this exemption include (but may not be limited to) the Maine State Police, most other law enforcement officers, employees of Maine's correctional facilities, employees in the Bureau of Unemployment Compensation, employees at Maine's CDC, and child and adult protective workers and crisis workers at DHHS.

### **DOCUMENTATION REQUIRED FOR EMERGENCY FML AND EMERGENCY PAID SICK LEAVE**

#### **For emergency FML (EFMLEA) or emergency paid sick leave (EPSLA) due to the school/daycare closure/daycare provider unavailability due to COVID-19:**

1. Employee's name
2. Date(s) of leave requested
3. Qualifying COVID-19 reason for the leave
4. Statement representing that the employee is unable to work or telework due to the COVID-19 qualifying reason
5. Name of the son/daughter being cared for
6. Name of the closed school/daycare, or regular childcare provider who is unavailable due to COVID-19; and
7. Statement representing that no other suitable person is available to care for the child during the period of the requested leave.

#### **For emergency paid sick leave because the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19:**

1. Employee's name
2. Date(s) of leave requested
3. Qualifying COVID-19 reason for the leave

## GUIDANCE FOR EMPLOYEES

4. Statement representing that the employee is unable to work or telework due to the COVID-19 qualifying reason; and
5. Name of the government entity issuing the quarantine or isolation order.

### **For emergency paid sick leave because the employee has been advised by a health care provider to self-quarantine related to COVID-19:**

1. Employee's name
2. Date(s) of leave requested
3. Qualifying COVID-19 reason for the leave
4. Statement representing that the employee is unable to work or telework due to the COVID-19 qualifying reason; and
5. Name of the health care provider who advised the employee to self-quarantine due to concerns regarding COVID-19.

### **For emergency paid sick leave because the employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis:**

1. Employee's name
2. Date(s) of leave requested
3. Qualifying COVID-19 reason for the leave; and
4. Statement representing that the employee is unable to work or telework due to the COVID-19 qualifying reason.

### **For emergency paid sick leave because the employee caring for an individual subject to an order described in qualifying reason #1 or self-quarantine as described in qualifying reason #2:**

1. Employee's name
2. Date(s) of leave requested
3. Qualifying COVID-19 reason for the leave
4. Statement representing that the employee is unable to work or telework due to the COVID-19 qualifying reason; and
5. a) name of the government issuing the quarantine order, or b) name of the health care provider advising the individual to self-quarantine.