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TO: Agency Heads, Chief Fiscal Officers, Payroll Directors, and Human Resource Officers

FROM: Kevin McHugh, Assistant Comptroller

DATE: March 31, 2020

RE: Families First Coronavirus Response Act” (“FFCRA”)

EXECUTIVE SUMMARY

Federal Legislation entitled “The Families First Coronavirus Response Act” (“FFCRA”) was recently enacted and provides in relevant part:

- expanded FMLA eligibility (with limited pay); and
- expanded required paid sick days for limited purposes.

This memo explains the FFCRA and provides payroll instructions for how to enter pay for eligible employees.

The FFCRA takes effect on April 1, 2020 and expires on December 31, 2020.

Public Health Emergency Leave

The FFCRA expands the Family and Medical Leave Act of 1993 (“FMLA”) to allow for Public Health Emergency Leave (PHEL) related to COVID-19. Some distinctions from regular FMLA include:

- Earlier Eligibility: Employees are eligible for PHEL after 30 days of employment;
- Limited to Childcare: Permits eligible employees to take up to 12 weeks of job-protected leave under the FMLA when the employee is unable to work or telework due to a need for leave to care for the employee’s son or daughter under 18 years of age if the child’s school or place of care has been closed, or the child care provider for the son or daughter is unavailable, due to the current public health emergency.
- Adds a Limited Wage Replacement: The first 10 days of leave under the PHEL may be unpaid, but employees may elect to use accrued vacation, personal, or sick leave or Emergency Paid Sick Leave. After the first 10 days, eligible employees must be paid a

benefit in the amount of not less than 2/3 of the employee's regular rate of pay, multiplied by the number of hours the employee would otherwise be normally scheduled to work, capped at \$200 per day per employee, and \$10,000 in the aggregate.

- Exclusions: Due to the nature of the crisis and state government's critical role in the response, Health Care Providers and Emergency Responders can be exempted from the PHEL.

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act (EPSL) requires that employers provide paid sick time when an employee is unable to work or telework for the reasons outlined below.

QUARANTINE, ISOLATION OR SEEKING MEDICAL DIAGNOSIS FOR EMPLOYEE'S PERSONAL ILLNESS.

For employees unable to work for reasons 1-3 below, the payment for leave must be the greater of the employee's regular rate of pay or the highest applicable minimum wage (local, state or federal). For these purposes, paid sick time is capped at \$511 per day per employee and \$5,110 in the aggregate per employee.

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19; or
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

TAKING CARE OF OTHERS OR EXPERIENCING OTHER CONDITIONS.

For employees unable to work for reasons 4-6 below, the payment for leave must be the greater of 2/3 of the employee's regular rate of pay, or 2/3 of the highest applicable minimum wage (local, state or federal). For these purposes, paid sick time is capped at \$200 per day per employee and \$2,000 in the aggregate per employee.

4. The employee is caring for an individual who is subject to a quarantine or isolation order or health care provider advisory; or
5. The employee who is unable to work or telework is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

For full-time employees, employers must provide 10 days of paid sick time. For part-time employees, employers must provide the average number of hours the employee typically works over a two-week period.

Other provisions of EPSL include:

- Employers of health care providers and emergency responders may elect to exclude their employees from EPSL;
- EPSL cannot be carried over from one year to the next;
- Employers may not require, as a condition of use of emergency paid sick time, that employees find a replacement to cover hours missed;
- Employers may not require employees to use other paid leave prior to using emergency paid sick time;
- After the first workday (or portion of a workday) an employee receives paid sick time, the employee may be required to follow reasonable notice procedures in order to continue receiving paid sick time;
- Employers must post notice of employees' eligibility for emergency sick time. The notice published by the federal Department of Labor can be found at: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf;
- Employers are not required to reimburse an employee for unused emergency sick time upon termination, resignation, retirement, or other separation from employment; and
- It is unlawful to discharge, discipline, or discriminate against an employee who takes leave or files a complaint under the EPSL.

Additional information about the PHEL and EPSL can be found at the Department of Labor's COVID-19 website: <https://www.dol.gov/agencies/whd/pandemic>.

Employees who have been excluded from the provisions of EPSL and have been diagnosed with or who have quarantined due to exposure to COVID-19 are encouraged to contact their department HR to discuss alternative available benefits.

Payroll Instructions for Implementing the Families First Coronavirus Response Act (FFCRA)

The following instructions provide guidance on how to use new time reporting codes in HR/CMS to administer the leaves included in the recently enacted federal Families First Coronavirus Response Act (FFCRA).

These new leaves are available starting April 1, 2020. Under the FFCRA, these leaves expire on December 31, 2020.

Executive department agencies will receive additional guidance from the Human Resources Division (HRD) on employee eligibility and administration of FFCRA leaves.

Public Health Emergency Leave (PHEL)

The time reporting code “PHEL” should be entered in timesheets if the employee is 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.

- The first 10 days of PHEL are unpaid. Employees may use existing time or, if eligible, EPSL (see below).
- The time reporting code should be entered for employee’s full regular scheduled hours.
 - If 8-hour schedule –enter 8 hours; will be paid at 2/3 of Regular Rate
 - If 7.5-hour schedule –enter 7.5 hours; will be paid at 2/3 of Regular Rate
- Daily earnings cap: \$200
- Total earnings cap: \$10,000
- Total time cap: 60 days (12 weeks). Use of this leave counts against FMLA leave.

Department core users will need to manually manage the daily and total earnings caps using the new time reporting code FFMXA – Families First Max Adjustment. A job aid and defensive queries will be provided.

Emergency Paid Sick Leave (EPSL)

1. **The time reporting code “FFESP” should be entered in timesheets if employee:** 1) is subject to a federal, state, or local quarantine or isolation order related to COVID-19; or 2) has been advised by a health care provider to self-quarantine related to COVID-19; or 3) is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
 - Rate of pay: 100% of regular rate
 - Daily earnings cap: \$511
 - Total earnings cap: \$5,110
 - Total time cap: 10 days

Department core users will need to manually manage the daily and total earnings caps using the time reporting code FFMXA. A job aid and defensive queries will be provided.

2. **The time reporting code “FFL23” should be entered in timesheets if employee:** 4) is caring for an individual subject to an order of quarantine or has been advised by a medical provider to self-quarantine; or 5) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or 6) is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
 - Rate of pay: 2/3 of regular rate
 - Daily earnings cap: \$200; total earnings cap: \$2,000
 - Total time cap: 10 days

Department core users will need to manually manage the daily and total earnings caps using the time reporting code FFMXA. A job aid and defensive queries will be provided.

Note about part-time employees: The number of hours under the cap should equal the average of the total scheduled hours in a two-week period. For example, an employee averaging 20 hours a week would have a 40-hour cap.

For more information on the FFCRA, please visit the federal Department of Labor's COVID-19 response website: <https://www.dol.gov/agencies/whd/pandemic>

Questions?

HR/CMS and MMARS/LCM support for system users

The Statewide Payroll Team at the Office of the Comptroller and the Business Enterprise Applications Unit at the Human Resources Division are here to support all agencies during this uncertain time.

Now, more than ever, we ask that you log tickets when issues arise and you need our support. Following this process ensures your issue gets assigned to an available Analyst. Do not email multiple Analysts directly. Please share this information with your staff so that they are aware.

As a reminder:

- Contact CommonHelp for HR/CMS support and general HR or Payroll related questions commonhelp.desk@mass.gov (866) 888-2808

Contact Comptroller's Solution Desk for MMARS/LCM support and related questions comptroller.info@mass.gov (617) 973-2468