

**Families First Coronavirus Response Act:
Public Health Emergency Leave
Frequently Asked Questions
Revised 4/15/20**

Q: What is it?

A: The Families First Coronavirus Response Act (FFCRA) passed by Congress on March 18, 2020, expands the Family and Medical Leave Act of 1993 (“FMLA”) to allow for Public Health Emergency Leave (PHEL) for public health emergencies related COVID-19.

Q: When is this law effective?

A: It is effective from April 1, 2020 until December 31, 2020.

Q: Which employees are eligible?

A: Employees are eligible for PHEL after being on the payroll for at least 30 calendar days of employment, regardless of whether they are otherwise eligible for FMLA. For example, to be eligible for PHEL on April 1, 2020, an employee would have to have been on the payroll as of March 2, 2020.

An employee is also eligible if the employee was laid off or otherwise terminated on or after March 1, 2020, and rehired or otherwise reemployed on or before December 31, 2020, provided that the employee had been on the payroll for thirty or more of the sixty calendar days prior to the date the Employee was laid off or otherwise terminated.

Employees designated as health care providers or emergency responders who are necessary to the Commonwealth’s response to COVID-19 will be exempted from the PHEL provisions of the FFCRA.

Q: What are the circumstances in which an employee can take PHEL?

A: An employee may qualify for the PHEL 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 of their son or daughter is unavailable, due to the current public health emergency. Employees are only eligible for this leave only if no suitable other person is available to care for his or her son or daughter for this period of leave.

Q: How much leave is available?

A: Eligible employees are able to take up to 12 weeks of job-protected leave under the PHEL.

Q: Is this leave paid?

A: The FFCRA provides for 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 paid Emergency Paid Sick Leave. <https://www.mass.gov/doc/emergency-paid-sick-leave-faq>

After these first ten days, eligible employees must be paid a benefit in the amount of not

less than 2/3 of an 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 total.

The 12 weeks are part of, not in addition to, an employee's annual FMLA entitlement.

Q: Can an employee use accrued leave instead of PHEL?

A: Yes, an employee may elect to first use any accrued leave that would otherwise be available to be applied to care for a child who is unable to attend school, daycare or a place of care – vacation, comp time or personal time). Any use of this leave shall run concurrent with the employee's overall PHEL entitlement, and will not increase the number of weeks of PHEL leave available to that employee.

Q: What happens once an employee exhausts their leave accruals but still has leave time remaining to take under the PHEL?

A: After an employee has exhausted their vacation, comp or personal time, the employee is eligible to take the PHEL benefit of 2/3 of the employee's regular rate for the remainder of the PHEL qualifying period.

Q: What is the definition of child?

A: The definition of child includes biological, adopted, foster child, stepchild, legal ward or a person standing in loco parentis to the child.

Q: How is school defined?

A: The term school includes elementary and secondary schools.

- "Elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.
- "Secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

Q: What is a childcare provider?

A: Childcare providers include center-based childcare provider, a group home childcare provider, a family childcare provider, or other provider of childcare services for compensation that is licensed, regulated, or registered under State law.

The definition of childcare provider can also include affinity childcare which is a caregiver 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, if such provider complies with any applicable requirements that govern child care provided by the relative. For affinity childcare: an eligible child must be less than 13 years of age and

- The child's family income does not exceed 85 percent of the State median income for a family of the same size, and the child's family assets do not exceed \$1,000,000 (as certified by a member of that family); and
- who—

- resides with a parent or parents who are working or attending a job training or educational program; or
- is receiving, or needs to receive, protective services and resides with a parent or parents.

Under the Families First Coronavirus Response Act (FFCRA), the eligible child care provider need not be compensated or licensed if he or she is a family member or friend, such as a neighbor, who regularly cares for the employee's child.

Q: What is a "Place of Care"?

A: The term "Place of Care" means a physical location in which care is provided for the Employee's child while the Employee works for the Employer. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

Q: What is telework?

A: The term "Telework" means work the Employer permits or allows an Employee to perform while the Employee is at home or at a location other than the Employee's normal workplace.

Q: If an employee has the ability to telework, can they decline to work and use this leave?

A: No, if an employee has the ability to telework, they are not eligible for this leave.

An employee is able to telework if: there is work for the employee; the employer permits telework, and there are no extenuating circumstances (like serious COVID-19 symptoms) preventing the employee from performing that work.

Q: Are there any restrictions on telework if a child is at home during the COVID-19 crisis?

A: No, there are no dependent care restrictions for telework.

Q: Can this leave be taken intermittently?

A: Intermittent use of PHEL can be approved upon request and with the agreement employee's manager.

Q: What is a Health Care Provider?

A: The U.S. Department of Labor has for the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the EPSL and PHEL, stated a health care provider is 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 that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also 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.

The U.S. DOL has also stated that the Governor may designate any individual who is necessary to the Commonwealth of Massachusetts' response to COVID-19 a health care provider.

Q: What is an Emergency Responder?

A: The U.S. Department of Labor has for the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, stated an emergency responder is 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.

The U.S. DOL has also stated that the Governor may designate any individual who is necessary to the Commonwealth of Massachusetts' response to COVID-19 an emergency responder.

Q: Are employees required to provide notice?

A: Yes, when the need to take PHEL is foreseeable, employees must provide as much notice as is practicable. Notice may not be required in advance, and may only be required after the first workday (or portion thereof) for which an employee takes PHEL.

Q: If an employee uses this leave, will the employee still get to use FMLA for other personal or family health conditions?

A: Public Health Emergency Leave does not increase the amount of FMLA leave to which employees may otherwise be entitled under Federal law, the Red Book or Collective Bargaining Agreements. For example, if a bargaining unit employee uses 2 weeks of PHEL to care for their 10-year-old son during a school closure due to the coronavirus, that employee would have up to 24 weeks of FMLA leave left to take for another FMLA qualifying reason.

Q: Are employees entitled to EPSL if they have a qualifying reason but exhausted all of their available FMLA prior to the passage of the law.

A: Employees who have exhausted their FMLA would be entitled to 10 days of EPSL for a qualifying reason. The employee would not be eligible for PHEL.

Q: How do employees apply for this leave?

A: Employees should be given a copy of the Certification of Public Health Emergency Leave. This Certification form should be completed for the initial request, as well as for any extensions.

Q: Is all FMLA leave now paid leave?

A: No. The only type of FMLA leave that is paid leave is PHEL, when that leave exceeds ten days.

Q: If an employee receives 2/3 of their pay with EPSL and PHEL, can an employee use leave accruals to allow for full pay?

A: Employees will not be able to supplement EPSL or PHEL with leave accruals.

Q: Is this law retroactive?

A: No.

Q: Is there a time reporting code? How do I track an employee's use of this leave?

A: New time reporting codes (TRCs) have been provided. Agencies may use their own tools or processes to keep track of employee use of EPSL. **HRD will provide a job aid and other supports to agency HR to ensure compliance with the law. See the Communication to Agency HR for more information on the new TRCs.**