

## MEMORANDUM

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**Date:** April 15, 2020

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**To:** California Department of Corrections and Rehabilitation (CDCR) All Staff  
California Correctional Health Care Services (CCHCS) All Staff

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	Original signed by:	Original signed by:
<b>From:</b>	Katherine Minnich Deputy Director, Human Resources CDCR	Jasinda Muhammad Deputy Director, Human Resources CCHCS

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**Subject: EMERGENCY PAID SICK LEAVE AND EMERGENCY FAMILY AND MEDICAL LEAVE  
EXPANSION ACTS AND REQUESTS**

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This memorandum is intended to provide information to all CDCR and CCHCS staff regarding an expansion of benefits under the Families First Coronavirus Response Act (FFCRA), which enacted both the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (E-FMLA), effective April 1, 2020 through December 31, 2020.

Information contained in this memorandum is based upon the U.S. Department of Labor guidelines that are subject to change. Please continue to follow the CDCR [COVID-19](#) preparedness webpage for updates related to COVID-19.

**Note:** CDCR and CCHCS are deemed essential State agencies, meaning that they provide critical/essential services which the public will expect them to continue to provide, and as a result they operate under the exemptions for health care providers and emergency responders under the EPSLA and the E-FMLA.

The following staff are exempted from coverage under the EPSLA and E-FMLA.

- **Health care providers:** Under the FFCRA, health care providers may be exempted from EPSLA or E-FMLA by the Department. 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.
- **Emergency responders:** Under the FFCRA, an emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or

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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.

**The current listing of exempt CDCR and CCHCS classifications can be found on the California Department of Human Resources, Human Resource Manual, [Exclusions from Eligibility for the FFCRA](#) webpage.**

CDCR and CCHCS must ensure that mission critical functions and services are maintained consistent with public health needs arising from this emergency in support of health care providers and emergency responders.

Therefore, in addition to the classifications already identified as exempt, Hiring Authorities (HA) or designees must continuously review their operations to ensure minimum staffing levels are maintained to support emergency responders and healthcare workers. As a result, if a classification is not currently listed as exempt, and the work is critical to supporting health care providers and emergency responders, immediately elevate this through your chain of command for action and response. CDCR and CCHCS continue to work with California Department of Human Resources on identifying essential/critical classifications and operational areas that may qualify as exemptions under the law. HA or designees must also ensure an interactive process with the employee is applied to assist our employees while also supporting our critical mission.

HA or designees should communicate with employees when a denial occurs and maintain consistency. It is imperative that all decisions are properly documented and tracked for future reporting purposes.

## **Emergency Paid Sick Leave Act (EPSLA)**

Under the EPSLA, eligible employees are entitled up to 80 hours of emergency paid sick leave taken in full-day increments, if they are unable to work (or unable to telework) due to COVID-19. Specifically, an employee can use paid sick leave if they are:

- Subject to a Federal, State, or local quarantine or isolation order related to COVID-19;\*
- Advised by a health care provider to self-quarantine related to COVID-19;
- Experiencing COVID-19 symptoms and seeking a medical diagnosis;

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- Caring for an individual subject to a Federal, State, or local quarantine or isolation order or self-quarantine advised by a health care provider related to COVID-19;
- Caring for their child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
- Experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

**Note:** \*CDCR and CCHCS are considered an essential governmental function and are exempted from the above orders.

The employee's time base determines the number of paid sick leave hours the employee is entitled to receive under EPSLA. See below.

Employee Time Base	Entitlement
Full-time employees	Receive up to 80 hours of paid sick leave at the employee's regular rate of pay.
Part-time employees with a set time base	Receive a prorated amount based on their time base.
Intermittent employees	Calculated based on the average daily hour entitlement (determined by the past six-months of work and the average number of hours). If the employee has not worked six months, the entitlement is calculated by the number of hours the employer and employee agreed they would work each week upon hire.

**Note:** If an eligible employee takes 80 hours of paid sick leave for self-quarantine, the employee is not entitled to take paid sick leave for another reason provided under the EPSLA. The total number of hours for which an employee may receive paid sick leave is capped at 80 hours under the EPSLA.

Also, under the EPSLA, eligible full-time employees are entitled to full pay, up to 80 hours of emergency paid sick leave, and can be taken intermittently, if they are teleworking and if they are caring for their child whose school, or place of care, or childcare provider is closed (or childcare provider is unavailable) due to COVID-19 related reasons.

## Employee Requests for EPSLA Administrative Time Off

Employees submitting a request for EPSLA must complete Page 1 of the [Employee Request for Emergency Paid Sick Leave Act/Emergency Family and Medical Leave Expansion Act](#) form.

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Paid sick leave for this purpose will be documented as Administrative Time Off (ATO) on the Employee's Record of Attendance, CDCR 998-A. Employees should record the Reason for Absence description as "EPSLA ATO" and Leave Code "ATO1" on the CDCR 998-A form. Any ATO provided to employees due to COVID-19 prior to April 1, 2020, does not count toward their EPSLA entitlement. Please refer to required documentation section below.

## **Emergency Family and Medical Leave Expansion Act (E-FMLA)**

Under the E-FMLA, certain employees who have worked for the employer for at least 30 calendar days are entitled to take up to 12-workweeks of paid FMLA leave for specified reasons related to COVID-19. Specifically, under E-FMLA, eligible employees can now take up to 12-workweeks of job protected leave to provide care for their child whose school or daycare is closed because of COVID-19. Under this Act, employees are not required to have worked for the employer for 12 months or have worked 1,250 hours in the 12 months preceding the leave to be eligible for E-FMLA.

E-FMLA utilizes the same 12 weeks entitlement as FMLA. If the employee has used any of their 12-week entitlement under the FMLA, the entitlement under E-FMLA will be reduced by the amount already used. E-FMLA is available only until December 31, 2020; after that, employees may use FMLA leave only for those conditions which were authorized prior to the passage of the E-FMLA .

The first two weeks of E-FMLA are unpaid, although employees can elect to use their two weeks of EPSLA leave.

For weeks 3 through 12 of E-FMLA, employees will be paid two-thirds of their regular salary, up to \$200 per day up to a total of \$10,000. Employees may elect to use pre-existing leave credits to supplement their E-FMLA up to full pay. The maximum daily entitlement and overall total are the same regardless of the employee's time base.

**Note:** In addition to E-FMLA, employees may be entitled to other leave based on California Family Rights Act.

Employees submitting a request for E-FMLA must complete Page 2 of the [Employee Request for Emergency Paid Sick Leave Act/Emergency Family and Medical Leave Expansion Act](#) form.

## **Required Documentation for EPSLA and E-FMLA**

In order for the Department to authorize EPSLA and/or E-FMLA leave, employees must provide supporting documentation. Documentation may include, but is not limited to the following:

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- A note from a health care provider to self-quarantine related to COVID-19;
- A notice of closure or unavailability from the child's school, place of care, or childcare provider;
- A notice posted on a government, school, or daycare website;
- A notice published in a newspaper; or
- An email to the parent from an employee or official of the school, place of care, or childcare provider.

Employees may also be required to attach supporting documentation showing proof of parent-child relationship.

## Additional Information and Requirements

Employees may be eligible for both types of leave, but only for a total of 12 workweeks of paid job-protected leave. Employees may take both paid sick leave and expanded family and medical leave to care for their child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.

An employee shall provide their manager/supervisor with such notice of leave as is practicable under the circumstances if leave under these Acts is foreseeable.

Employees with a pending or approved EPSLA or E-FMLA request shall immediately notify their supervisor if changes to the reason for the request occur, for example, change in school or childcare status.

If an employee requests and receives time off under the EPSLA and/or E-FMLA programs, the employee must complete the following:

- Submit to their manager/supervisor their completed [Employee Request for Emergency Paid Sick Leave Act/Emergency Family and Medical Leave Expansion Act](#) form(s).
- Attach supporting documentation (as indicated above).
- Complete the CDCR 998-A and include the following:
  - EPSLA or E-FMLA in the *Reason for Absence* column.
  - The *Leave Code* AT01 in the *Leave + or –* column.
  - The number of hours used.

For more information, review the [Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act](#).

If you have any questions, within CDCR or CCHCS contact Human Resources at [m HR PO COVID19@cdcr.ca.gov](mailto:m HR PO COVID19@cdcr.ca.gov).