MEMORANDUM

Date: October 22, 2020

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

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      CDCR

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Original signed by:

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

This memorandum provides updated information to all CDCR and CCHCS staff regarding Labor Code 248.1 and U.S. Department of Labor (DOL) revised regulations, which expanded 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, to include previously excluded staff.

Information contained in this memorandum is based upon the DOL guidelines that are subject to change. Please continue to follow the CDCR COVID-19 preparedness webpage for updates related to COVID-19.

Effective September 21, 2020, Labor Code 248.1 allows health care providers (HCP) and emergency responders (ER) the ability to request coverage under EPSLA for COVID-19 related illnesses or symptoms. Employees who fall under the definition of HCP and ER are entitled to 80-hours of paid leave and may participate in requests for EPSLA as follows:

- If the HCP/ER is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- If the HCP/ER is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.
- If CDCR/CCHCS prohibits the HCP/ER employee from entering the job site due to health concerns related to the potential transmission of COVID-19.

Note: If at any time employees were granted Administrative Time Off (ATO) related to COVID-19 illness from March 4, 2020, through September 21, 2020, for one of the reasons listed in above, the ATO granted will count towards the EPSLA 80-hour entitlement.
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DOL Definitions of HCP and ER under FFCRA

HCP: Updated to reflect the DOL’s revised regulations, effective 9/16/2020-12/31/2020.

For the purposes of defining the set of employees who may be excluded from taking EPSLA or expanded E-FMLA under the FFCRA, a health care provider includes two groups:

- This first group is anyone who is a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.
- The second group is any other person who is employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care. This group includes employees who provide direct diagnostic, preventive, treatment, or other patient care services, such as nurses, nurse assistants, and medical technicians. It also includes employees who directly assist or are supervised by a direct provider of diagnostic, preventive, treatment, or other patient care services. Finally, employees who do not provide direct health care services to a patient but are otherwise integrated into and necessary to the provision those services—for example, a laboratory technician who processes medical test results to aid in the diagnosis and treatment of a health condition—are health care providers. A HCP 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, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity.

ER: An ER is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or 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.

HCP and ER staff are excluded from coverage under E-FMLA. 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.
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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 HCR and ER.

Emergency Paid Sick Leave Act (EPSLA)
Effective September 21, 2020, pursuant to Labor Code 248.1, employees that are identified as a HCP or ER can now apply for certain coverage under the 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;
- 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: *HCP and ER are considered an essential governmental function and are excluded from these options.

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

<table>
<thead>
<tr>
<th>Employee Time Base</th>
<th>Entitlement</th>
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<tbody>
<tr>
<td>Full-time employees</td>
<td>Receive up to 80 hours of paid sick leave at the employee’s regular rate of pay.</td>
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<tr>
<td>Part-time employees with a set time base</td>
<td>Receive a prorated amount based on their time base.</td>
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<td>Intermittent employees</td>
<td>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.</td>
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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. If an eligible employee takes 80 hours of ATO for self COVID-19 related reasons, the employee is not entitled to take paid sick leave for another reason provided 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 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.

Note: Supervisors and managers are responsible to verify if any ATO has been used anytime between March 4, 2020, through September 21, 2020 for COVID-19 related reasons for all employees who were previously excluded from FFCRA and are now requesting EPSLA.

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.

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-week 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.
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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 the 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.

**Note:** HCP and ER staff are excluded from coverage under E-FMLA

**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:

- 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.
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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.

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.

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.