

HR/LR Policy 1440

Date Issued: 03/18/2020

## Paid COVID-19 Leave: REVISED

Date Revised: 04/01/2020, 04/07/2020

Authority: Executive Order 20-07

### OVERVIEW

#### Objective

To provide paid leave to executive branch employees who must be absent from work for reasons related to COVID-19 (“Paid COVID-19 Leave”).

#### Policy Statement

On March 13, 2020, the Governor issued Executive Order 20-01 and declared a peacetime emergency because the COVID-19 pandemic, an act of nature, threatens the lives of Minnesotans, and local resources are inadequate to address the threat. On March 15, 2020, the Governor issued Executive Order 20-02, authorizing and directing the Commissioner of Education to close all schools to students, with delineated exceptions, beginning Wednesday, March 18, 2020 through Friday, March 27, 2020. On March 25, 2020, the Governor issued Executive Order 20-19 implementing a distance learning period beginning on March 30, 2020 through May 4, 2020, during which time public school buildings and facilities must be closed for typical in-school instruction.

On March 17, 2020, the Governor issued Executive Order 20-07 authorizing the Commissioner of Management and Budget to address state workforce needs during the COVID-19 peacetime emergency. The Executive Order recognized that this peacetime emergency places burdens on state agency employees as with all Minnesota workers. The Executive Order also recognized that the peacetime emergency places special responsibilities on state agency employees to work as effectively as possible to maintain government operations, to secure the health and safety of Minnesotans, and to take care that the laws are faithfully executed. To this end, Minnesota Management and Budget will use the provisions of Executive Order 20-07 to make every effort to assign, reassign, or redeploy employees to maintain government operations.

The Executive Order authorized and directed the Commissioner of Management and Budget to develop and implement a policy to provide paid leave to executive branch employees who must be absent from work for reasons related to COVID-19. As authorized and directed by Executive Order 20-07, this policy establishes Paid COVID-19 Leave and the terms and conditions for use of different types of Paid COVID-19 Leave under different scenarios, enabling state agencies to balance the demands of the workplace with the needs of employees, their families, and the general public during the COVID-19 public health emergency.

#### Scope

This policy applies to all employees of agencies in the executive branch, as defined in Minnesota Statutes 2019, section 43A.02, subdivision 22, and includes all employees of the Minnesota State Retirement System, the Public Employees Retirement Association, the Teacher’s Retirement Association, and the Minnesota State Colleges and

Universities system. This policy does not include employees of constitutional offices, but Executive Order 20-21 expressly authorized the constitutional offices, at their discretion, to adopt COVID-19 leave for their classified and unclassified employees.

## Duration

This policy has been revised. The April 1, 2020 policy revisions are effective April 1, 2020; the April 7, 2020 policy revisions are effective April 7, 2020 and apply to qualifying leave taken on and after April 7, 2020. This policy expires no later than the termination of the peacetime emergency under Minnesota Statutes, section 12.31.

This policy is subject to change as needed at the discretion of Minnesota Management and Budget. All approvals of leave under this policy are subject to change to conform with any changes that may be made to this policy, and all leave approved under this policy expires when this policy is no longer in effect, except as may be required under federal law.

## Definitions and Key Terms

| Terms   | Definitions  |
|---|--|
| <i>Child</i>                                      | The employee’s biological, adopted, or foster child, stepchild, legal ward, or child via in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act (as amended).  |
| <i>Childcare Provider</i>                         | A provider who receives compensation for providing childcare services on a regular basis. The term includes a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that is licensed, regulated, or registered under State law as described in section 9858c(c)(2)(E) of Title 42; and satisfies the State and local requirements, including those referred to in section 9858c(c)(2)(F) of Title 42. 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. |
| <i>COVID-19 Care Leave for Family Members</i>     | Paid COVID-19 Care Leave to care for individuals who are family members.   |
| <i>COVID-19 Care Leave for Non-Family Members</i> | Paid COVID-19 Care Leave to care for individuals who are non-family members.   |
| <i>COVID-19 School Leave Type 1</i>               | Paid COVID-19 School Leave to care for the employee’s children if any child is age 12 and under, or over the age of 12 and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act (as amended).   |

| Terms                               | Definitions  |
|-------------------------------------|--|
| <i>COVID-19 School Leave Type 2</i> | Paid COVID-19 School Leave to care for the employee’s children who are all over age 12 and under age 18, unless any child is incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act (as amended).   |
| <i>Family Member</i>                | <p>The employee’s:</p> <ul style="list-style-type: none"> <li>• spouse;</li> <li>• child;</li> <li>• adult child;</li> <li>• sibling;</li> <li>• parent;</li> <li>• parent-in-law;</li> <li>• grandchild (including biological, step, adopted, and foster grandchild)</li> <li>• grandparent; or</li> <li>• stepparent.</li> </ul>   |
| <i>Health Care Provider</i>         | A licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the Family and Medical Leave Act (29 C.F.R. § 825.102).  |
| <i>Individual</i>                   | For the purposes of Paid COVID-19 Care Leave, an individual is a family member or a non-family member.   |
| <i>Non-Family Member</i>            | A person who regularly resides in the employee’s home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if they were quarantined or self-quarantined. Non-family members do <b>not</b> include persons with whom the employee has no personal relationship.   |
| <i>Place of Care</i>                | 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.   |
| <i>School</i>                       | An “elementary school” or “secondary school” as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801). “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. |

## Legal References

Executive Order 20-07; Minnesota Statutes § 12.21, subdivision 3(10); Minnesota Statutes § 43A.05, subdivision 4; Minnesota Statutes §§ 144.419-144.4196; Families First Corona Virus Response Act and temporary regulations at 29 C.F.R. Part 826; Family and Medical Leave Act.

# GENERAL STANDARDS AND EXPECTATIONS

## I. COVID-19 School Leave

- a. During this peacetime emergency, to ensure the continued operation of government, employees generally are expected to report to work or to telework as directed by their supervisor. If an employee must be absent from work due to a need to care for their child whose school or place of care has been physically closed, or their childcare provider is unavailable, for reasons related to COVID-19, and there is no other suitable person available to care for their child during the period of absence, they:
  - i. Should telework, with supervisor approval, if their job responsibilities can be performed through telework. Employees may telework even if their children are present in the remote work location, so long as the employee is actually conducting their job duties and actually working their normal work schedule or flexing their time as approved by their supervisor.
  - ii. Employees not assigned to Priority 1 or Priority 2 critical services may use Paid COVID-19 Leave if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework while also providing childcare, or they are not permitted to telework by their supervisor.
  - iii. Employees who are assigned to Priority 1 or Priority 2 critical services, with authorization by their appointing authority, may use Paid COVID-19 Leave if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework while also providing childcare, or they are not permitted to telework by their supervisor. Each agency will designate a process for determining when COVID 19 School Leave will be used in this circumstance.
  - iv. To use Paid COVID-19 School Leave, employees who cannot work or telework because of a need to provide care for a child older than 14 during daylight hours must certify that special circumstances exist requiring the employee to provide care.
- b. Paid COVID-19 School Leave shall not exceed the employee's normal work schedule.
- c. Pursuant to the federal Families First Corona Virus Response Act ("FFCRA"), COVID-19 School Leave Type 2 shall be limited to up to 40 hours of leave per week (pro-rated for part-time employees) for up to 12 workweeks. COVID-19 School Leave Type 2 will be compensated at 2/3 of the employee's regular rate of pay. Employees are permitted to supplement the remaining 1/3 with accrued vacation leave or accrued compensatory time.

COVID-19 School Leave Type 1 is not currently subject to the above limitations.

- d. Paid COVID-19 School Leave under this policy is also covered by the Family and Medical Leave Act ("FMLA"), to the extent as provided by the FFCRA.

Use of COVID-19 School Leave Type 2 under this policy, for employees normally eligible for FMLA leave, will run concurrently with FMLA and will be counted against the employee's existing FMLA balance. The total amount of FMLA leave available to any employee eligible for both FMLA and COVID-19 School Leave Type 2 shall not exceed 12 workweeks. Employees are never entitled to more than a total of 12 workweeks of COVID-19 School Leave Type 2 between April 1, 2020 and December 31, 2020, even though that period of leave spans two FMLA leave years.

Employees who have already exhausted their FMLA balance for the fiscal year are limited to up to 80 hours (pro-rated for part-time employees) of COVID-19 School Leave Type 2. COVID-19 School Leave Type 2 will be compensated at 2/3 of the employee's regular rate of pay. Employees are permitted to supplement the remaining 1/3 with accrued vacation leave or accrued compensatory time.

Use of COVID-19 School Leave Type 1 under this policy will be afforded all job protections of the FMLA, to the extent as provided by the FFCRA, but at this time will not be counted against the employee's existing FMLA balance.

## II. COVID-19 Health Leave

- a. During this peacetime emergency, to ensure the continued operation of government, employees generally are expected to report to work or to telework as directed by their supervisor. An employee who must be absent from work and is unable to telework because their job responsibilities cannot be performed through telework, they are too ill to work, or they are not permitted to telework by their supervisor, may use Paid COVID-19 Leave if they must be absent from work because:
  - i. They have a fever, dry cough, shortness of breath or any other COVID-19 symptoms identified by the U.S. Centers for Disease Control and Prevention, and are seeking a medical diagnosis of COVID-19 (Paid COVID-19 Leave under this subsection is limited to time the employee is unable to work because the employee is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a COVID-19 test); or
  - ii. They have been exposed to a person with a confirmed case of COVID-19 and the employee is exhibiting a cough or shortness of breath/difficulty breathing and a fever; or
  - iii. A health care provider has advised the employee to self-quarantine based on the health care provider's belief that the employee has COVID-19, that the employee may have COVID-19, or that the employee is particularly vulnerable to COVID-19.
- b. Paid COVID-19 Health Leave shall not exceed the employee's normal work schedule.
- c. Nothing contained in this policy interferes with an employee's right to take leave as provided by the FMLA or Americans with Disabilities Act/Minnesota Human Rights Act. Use of Paid COVID-19 Health Leave that also constitutes FMLA leave will run concurrently with FMLA and will be counted against the employee's existing FMLA balance.

## III. COVID-19 Care Leave

- a. During this peacetime emergency, to ensure the continued operation of government, employees generally are expected to report to work or to telework as directed by their supervisor. If an employee must be absent from work because the employee is caring for an individual who depends on the employee to care for them and the individual: has been advised by a health care provider to self-quarantine because of the health care provider's belief that the individual has COVID-19, that the individual may have COVID-19 due to known exposure or symptoms, or that the individual is particularly vulnerable to COVID-19; or is subject to a Federal, State, or local isolation or quarantine order related to COVID-19; the employee:
  - i. Should telework, with supervisor approval, if their job responsibilities can be performed through telework. Employees may telework even if the individual for whom they are caring is present in the remote work location, so long as the employee is actually conducting their job duties and actually working their normal work schedule or flexing their time as approved by their supervisor.
  - ii. Employees not assigned to Priority 1 or Priority 2 critical services may use Paid COVID-19 Leave if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework while also providing care, or they are not permitted to telework by their supervisor.

- iii. Employees who are assigned to Priority 1 or Priority 2 critical services, with authorization by their appointing authority, may use Paid COVID-19 Leave if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework while also providing care, or they are not permitted to telework by their supervisor. Each agency will designate a process for determining when Paid COVID 19 Leave will be used in this circumstance.
- b. Paid COVID-19 Care Leave shall not exceed the employee's normal work schedule.
- c. COVID-19 Care Leave for Non-Family Members shall be limited to up to 80 hours of leave (pro-rated for part-time employees). COVID-19 Care Leave for Non-Family Members will be compensated at 2/3 of the employee's regular rate of pay. Employees are permitted to supplement the remaining 1/3 with accrued vacation leave or accrued compensatory time.

COVID-19 Care Leave for Family Members is not currently subject to the above limitations.

- d. Nothing contained in this policy interferes with an employee's right to use sick leave to care for ill or injured family members as provided in Minn. Stat. § 181.9413, or to take leave as provided by the Family and Medical Leave Act. Use of Paid COVID-19 Care Leave that also constitutes FMLA leave will run concurrently with FMLA and will be counted against the employee's existing FMLA balance.

#### **IV. COVID-19 Distance Leave**

- a. If an employee must be absent from work because: the employee is subject to a Federal, State, or local isolation or quarantine order related to COVID-19; or because the employee's agency has directed the employee not to report to the workplace for a COVID-19 related reason, including that the employee is not assigned to perform Priority 1, Priority 2 or other Critical Sector duties and therefore is not exempted from a Minnesota stay at home executive order, the employee:
  - i. Should telework, with supervisor approval, if their job responsibilities can be performed through telework. Employees may telework even if others are present in the remote work location, so long as the employee is actually conducting their job duties and actually working their normal work schedule or flexing their time as approved by their supervisor.
  - ii. Employees not assigned to Priority 1 or Priority 2 critical services may use Paid COVID-19 Leave if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework because of the circumstances giving rise to the Distance Leave, or they are not permitted to telework by their supervisor.
  - iii. Employees who are assigned to Priority 1 or Priority 2 critical services, with authorization by their appointing authority, may use Paid COVID-19 Leave if their job responsibilities cannot be performed through telework, they cannot reasonably perform telework because of the circumstances giving rise to the Distance Leave, or they are not permitted to telework by their supervisor.
- b. Paid COVID-19 Distance Leave shall not exceed the employee's normal work schedule.

#### **V. Agency Closure Leave**

- a. An employee may use Paid COVID-19 Leave if:
  - i. As provided in Minnesota Statutes § 43A.05, subd. 4, the Commissioner of Minnesota Management and Budget determines that continued operation of a facility would result in a threat to health or safety of individuals;
  - ii. The Commissioner of Minnesota Management and Budget determines the employee is excused from duty due to the threat; and

- iii. The Commissioner of Minnesota Management and Budget determines the employee cannot be reassigned.
- b. For employees of the campuses of the Minnesota State Colleges and Universities, the decision to provide COVID-19 Agency Closure Leave is vested in the college and university presidents, under guidelines established by the Board of Trustees of the Minnesota State Colleges and Universities, as provided in Minnesota Statutes § 43A.05, subd. 4.
- c. Paid COVID-19 Agency Closure Leave shall not exceed the employee's normal work schedule.

## VI. General Provisions

- a. Employees must complete a Paid COVID-19 Leave Request Form and receive approval for use.
- b. Employees who are assigned to perform Priority 1 or Priority 2 critical services must submit a completed Request Form and receive approval in advance of taking COVID-19 School Leave or COVID-19 Care Leave, and must submit a completed Request Form to take COVID-19 Health Leave or COVID-19 Distance Leave as soon as is practicable.
- c. Employees assigned to perform Priority 1 and Priority 2 critical services who are requesting COVID-19 School Leave, COVID-19 Care Leave or COVID-19 Distance Leave must obtain additional authorization by their appointing authority to take this leave.
- d. Employees not assigned to perform Priority 1 or Priority 2 critical services who request COVID-19 School Leave must submit a completed Request Form as soon as is practicable if the need for leave is foreseeable; and for all other requests for Paid COVID-19 Leave, the employee is not required to submit the Request Form in advance of the leave, but must submit a completed Request Form as soon as is practicable after the first workday (or portion of the workday) for which the employee takes the leave.
- e. Employees must complete a new Paid COVID-19 Request Form and receive a new approval for use if the reason for their need for leave changes.
- f. Employees must notify the agency promptly once their need for Paid COVID-19 Leave ceases.
- g. All approvals of leave under this policy are subject to change to conform with any changes that may be made to this policy, and all leave approved under this policy expires when this policy is no longer in effect, except as may be required under federal law.
- h. Paid COVID-19 Health Leave and Paid COVID-19 Care Leave that also constitutes FMLA leave can be taken on an intermittent or reduced schedule basis. All other types of Paid COVID-19 Leave may be taken on an intermittent or reduced schedule basis with agency permission.
- i. Use of Paid COVID-19 Leave does not count as hours worked.
- j. Employees are not entitled to reimbursement or payout for unused Paid COVID-19 Leave.
- k. Employees must exhaust COVID-19 Leave to Care for Non-Family Members and COVID-19 School Leave Type 2 before taking other types of leave for those same uses. For other types of Paid COVID-19 Leave, employees can choose to use accrued sick, vacation, or compensatory time as provided in the applicable collective bargaining agreement or compensation plan, rather than Paid COVID-19 Leave.

## VII. Payroll Earnings Codes

- a. Employees must use earnings code, **CVD – COVID-19 Paid Leave**, to track time when they are using the following Paid COVID-19 Leave types:
  - i. COVID-19 School Leave Type 1
  - ii. COVID-19 Health Leave that is not also FMLA-covered leave (or if FMLA is exhausted)

- iii. COVID-19 Care Leave for Family Members that is not also FMLA-covered leave (or if FMLA is exhausted)
  - iv. COVID-19 Distance Leave
  - v. COVID-19 Agency Closure Leave
- b. Employees must use earnings code, **FMD - FMLA-COVID19 Paid Leave**, to track time when they are using the following COVID-19 Leave types:
- i. COVID-19 Health Leave that is also FMLA-covered leave
  - ii. COVID-19 Care Leave for Family Members that is also FMLA-covered leave
- c. Employees must use earnings code, **FME - FMLA-COVID19 School Lve Type 2**, to track time when they are using COVID-19 School Leave Type 2 if FMLA has not been exhausted for the fiscal year.
- d. Employees must use earnings code, **CVE - COVID-19 CareLveNon-Family**, to track time when they are using the following Paid COVID-19 Leave types:
- i. COVID-19 Care Leave for Non-Family Members; or
  - ii. COVID-19 School Leave Type 2 if the employee has already exhausted FMLA for the fiscal year.
- e. These leave codes **do not** accrue vacation or sick leave. Employees who wish to continue to accrue vacation or sick leave must use the applicable leave (*e.g.*, sick, vacation, or compensatory time) under their collective bargaining agreement or compensation plan, rather than Paid COVID-19 Leave. However, employees must exhaust COVID-19 Leave to Care for Non-Family Members and COVID-19 School Leave Type 2 before taking other types of leave for those same uses.

## RESPONSIBILITIES

### Agencies are responsible for:

- Adopting this policy.
- Instructing employees on this policy.
- Requiring and obtaining completed Request Forms for all employees requesting [Paid COVID-19 Leave](#).
- Determining which employees are assigned to perform Priority 1 and Priority 2 critical services.
- Communicating to employees requesting leave whether their assignments are considered Priority 1/Priority 2.
- Determining a process for obtaining appointing authority approval or disapproval of COVID-19 School Leave or COVID-19 Care Leave for employees assigned to perform Priority 1 or Priority 2 critical services.
- Consulting with MMB to determine if facilities should remain open or be closed.
- Ensuring the continuation of critical priority services, including by assigning and reassigning employees, and allowing for their redeployment as provided in Executive Order 20-07.
- Keeping current emergency contact lists used by the agency and MMB for providing notification of facility closings and other emergency notices.
- Assigning employees to telework where appropriate.

## MMB is responsible for:

- Monitoring the public health situation.
- Declaring a facility closure when the Commissioner of MMB determines that continued operation would threaten individuals' health or safety.
- Notifying agencies with facilities in the geographic location of any facility closure decision.
- Determining when to reopen facilities.
- Redeploying employees as provided in Executive Order 20-07.
- Making any needed modifications to this policy.

## RESOURCES

[Executive Order 20-02](#)

[Executive Order 20-03](#)

[Executive Order 20-07](#)

[Paid COVID-19 Leave Request Form](#)

## CONTACTS

MMB Enterprise Human Resources