



Loudoun County Government Administrative Policies and Procedures

Title: Families First Coronavirus Response Act (FFCRA) Policy	Effective Date: April 1, 2020 - December 31, 2020
Number: HR-46	Date Last Reviewed/Revised: N/A
	Date of Next Review: N/A

I. Purpose

To comply with the Families First Coronavirus Response Act (“FFCRA”) and to assist eligible employees affected by the COVID-19 outbreak with job-protected leave and emergency paid sick leave. This policy will be in effect from April 1, 2020 until December 31, 2020. The County’s normal accrued paid leave and Family Medical Leave (FML) policies, as outlined in Chapter 6.4 of the Human Resources Handbook, and any associated HR administrative policies remain in effect for employee leave requests outside of the scope of this administrative policy.

II. Authority

In accordance with Chapter 1.1 of the Human Resources Handbook, Administration and Enforcement, the County Administrator is authorized to establish procedures and/or guidelines to ensure equitable and uniform administration and enforcement of Board policies.

III. Policy Statement

The Families First Coronavirus Response Act (“FFCRA”) requires employers to provide eligible employees with paid sick leave and/or expanded Family Medical Leave for specified reasons related to COVID-19. The leave benefits outlined in the FFCRA are available to eligible employees who are **unable to work or telework** due to specific COVID-19 related reasons. The FFCRA also allows employers to exempt “healthcare providers” and “emergency responders” from being covered by FFCRA leave benefits.

This policy outlines Loudoun County Government’s compliance with the requirements of the FFCRA and provides procedures for the administration of FFCRA leave benefits within the County workforce, including outlining eligibility requirements and identifying employees who are exempt from coverage.

Eligible employees who request to utilize FFCRA leave benefits shall not be subject to any interference or retaliation from management with regard to the use of such benefits. Supervisors shall call the Department of Human Resources, Employee Relations Division, for questions related to FFCRA leave benefits and prior to denying a request for leave under this policy. Any employee who believes his/her FFCRA related leave request was denied in violation of this administrative policy or who has a good faith belief that he/she has been subjected to retaliation on the basis of using FFCRA related leave shall call the Department of Human Resources, Employee Relations Division, to raise such concerns.

IV. Special Circumstances Not Covered by the FFCRA

The following circumstances are not covered by the FFCRA and shall be addressed under the County's normal leave policies as outlined in Chapter 6.4 of the Human Resources Handbook and any relevant HR administrative policies. Department Directors shall consult with the County's Director of Human Resources or the Employee Relations Manager prior to approving leave requests for employees under these circumstances:

- A.** Employees who have depleted their sick leave and are in an unpaid status during a period **prior to April 1, 2020** as the result of a COVID-19 related self-quarantine or isolation order from a government agency or a medical diagnosis of COVID-19.
- B.** An employee who is not ill but has had "close contact," as defined by the Department of Health, with someone who is in quarantine or isolation for exposure to COVID-19 or someone who is presumed to be positive for COVID-19 exposure and is awaiting testing or the results of testing.

V. Emergency Family and Medical Leave (EFML)

A. Eligible Employees

Eligible employees include all employees (except those excluded in Section VII. below) who have been employed with Loudoun County Government for at least 30 calendar days and who are unable to work or telework due to a need for leave to care for a son or daughter under 18 years of age because the school or place of care has been closed, or the regular childcare provider of such son or daughter is unavailable due to a public health emergency with respect to COVID-19. An employee is considered to have been employed by the County for at least 30 calendar days if the employee has been on the County's payroll for the 30 calendar days immediately prior to the date the leave begins. For example, if the employee wants to take EFML leave on April 1, 2020, the employee must have been on the County's payroll as of March 2, 2020. Time worked as a temporary employee shall count toward the 30-calendar day eligibility period.

B. EFML Definitions

1. **Son or Daughter:** A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability.
2. **Childcare Provider:** A provider who receives compensation for providing child care services on a regular basis, including an “eligible child care provider” (as defined in section 658P of the Child Care and Development Block Grant Act of 1990 (42 USC 9858n)).
3. **School:** means an elementary or secondary school.

C. Duration of Leave

Employees will have **up to** 12 weeks of leave to use from April 1, 2020 through December 31, 2020, for the purposes stated above. This time is included in and **not** in addition to the total FMLA leave entitlement of 12 weeks in a 12-month period. For example, if an employee has already taken 6 weeks of FMLA covered leave, that employee would only be eligible for 6 weeks of EFML leave under this policy.

D. Intermittent Use of EFML

Employees approved for use of EFML may take leave intermittently, subject to an agreement with the employee, employee’s supervisor, and Department Director.

E. Pay During Leave

EFML will be **unpaid leave** for the first two work weeks of leave; however, employees may use any accrued paid leave to cover their absence during this time. The employee may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act (“EPSL”), as further explained in Section VI below. After the first two work weeks, leave will be paid at **two-thirds (2/3)** of the employee’s regular rate of pay for the number of hours the employee would otherwise be scheduled to work. Any unused portion of this pay will not carry over to the next year. The employee may elect to supplement EFML pay with accrued leave up to, but not exceeding, 100% of the employee’s normal base pay.

For employees with varying hours, one of two methods for computing the number of hours paid will be used:

1. The average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type; Or,

2. If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

F. Employee Status and Benefits During EFML Leave

While an employee is on EFML leave, the County will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. While on paid leave, the County will continue to make payroll deductions to collect the employee's share of the premium. During any unpaid portions of leave, the employee must make arrangements to pay the employee's share of the premium in accordance with instructions from the Department of Human Resources.

If the employee contributes to a life insurance or disability plan, the County will continue making payroll deductions while the employee is on paid leave. During any portion of unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the County may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the County may discontinue coverage during the EFML leave. If the County maintains coverage, the County may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

Employees should consult with the Department of Human Resources, Benefits Division, regarding payment arrangements for benefits while on unpaid leave.

G. Procedure for Requesting Leave

All employees requesting EFML must provide written notice to their supervisor and their department's Human Resources Liaison of the need for leave as soon as practicable. Verbal notice will otherwise be accepted until written notice can be provided. The notice the employee provides should include a brief statement as to the reason for leave, and if possible, the expected duration. Upon receipt of such notice, the HR Liaison shall:

1. Immediately provide the employee with contact information for FMLASource, the County's outside administrator for Family Medical Leave. For any employee not located in the FMLASource database, a form will be provided to the employee by the HR Liaison.
2. Immediately notify the Department Director and their department's Employee Relations Analyst (within the Department of Human Resources) of the request for EFML. Such notification shall be made by email to the Employee Relations Analyst.

The employee must immediately contact FMLASource by calling (877) 462-3652 and requesting the use of EFML. The employee may be asked to provide documentation in support of the request of EFML. This may include, but is not limited to, a notice of closure or unavailability from the child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to the employee from an employee or official of the school, place of care, or child care provider. If the employee has teleworked since the closure, and has been offered the opportunity to continue to do so, additional information will be requested to support the need for leave.

3. Employee Status After Leave

Generally, an employee who takes EFML leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. However, the County may exempt certain key employees from job restoration rights.

VI. Emergency Paid Sick Leave (EPSL)

A. Eligible Employees:

All full-time and part-time employees who are unable to work or telework due to one of the following reasons for leave are eligible to receive emergency paid sick leave:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to either number 1 or 2 above.
5. The employee is caring for his or her son or daughter under the age of 18 if the school or place of care of the child has been closed, or the childcare provider of such child is unavailable, due to COVID-19 precautions.
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.

B. Definitions:

1. **Son or Daughter:** A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or

18 years of age or older and incapable of self-care because of a mental or physical disability.

2. **Individual:** An Employee's immediate family member, 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 he or she were quarantined or self-quarantined. "Individual" does not include persons with whom the Employee has no personal relationship.

C. Duration of Leave

All eligible full-time employees will have up to 80 hours of EPSL available to use for the qualifying reasons above. DOL defines a full-time employee as an employee who is normally scheduled to work 40 or more hours per week. Eligible part-time employees are entitled to EPSL based on the number of hours worked, on average, over a two-week period.

For employees with varying hours, one of two methods for computing the number of hours paid will be used:

1. The average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type. Or,
2. If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

Paid sick time provided to an employee under the policy shall cease beginning with the employees next scheduled work shift immediately following the termination of the need for paid sick time under Section VI. (A) above.

D. Intermittent Use of EPSL

Employees who physically report to their work-site are not permitted to use EPSL intermittently if the reason for use is related to VI(A)(1)-(4) and VI(A)(6). Employees with the ability to telework may take EPSL intermittently as agreed upon by the employee's supervisor and Department Director.

E. Rate of Pay

EPSL will be paid at the employee's regular rate of pay. The regular rate of pay for employees who serve in multiple positions shall be calculated based on the position with the highest hourly rate.

F. Interaction with Other Paid Leave

The employee may use EPSL under this policy before using any other accrued paid leave for the qualifying reasons stated above. Employees on expanded FMLA leave under this policy may use EPSL during the first 10 days of EFML which are normally unpaid.

G. Procedure for Requesting Emergency Paid Sick Leave

All employees requesting EPSL must provide written notice to their supervisor and their department's Human Resources Liaison of the need for leave as soon as practicable. Verbal notice will otherwise be accepted until written notice can be provided. The notice the employee provides should include a brief statement as to the reason for leave, and if possible, the expected duration. Upon receipt of such notice, the **HR Liaison shall:**

- 1.** Immediately provide the employee with contact information for FMLASource, the County's outside administrator for Family Medical Leave. For any employee not located in the FMLASource database, a form will be provided to the employee by the HR Liaison.
- 2.** Immediately notify the Department Director and their department's Employee Relations Analyst (within the Department of Human Resources) of the request for EPSL. Such notification shall be made by email to the Employee Relations Analyst.

The **employee** must immediately contact FMLASource by calling (877) 462-3652 and requesting the use of EPSL. The employee may be asked to provide documentation in support of the request of EPSL. This may include, but is not limited to, a copy of a federal, state, or local quarantine or isolation order, a note from a healthcare provider, and/or a notice of closure or unavailability from the child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to the employee from an employee or official of the school, place of care, or child care provider. If the employee has teleworked since the closure, and has been offered the opportunity to continue to do so, additional information will be requested to support the need for leave.

H. Carryover

EPSL under this policy will not be provided beyond December 31, 2020. Any unused paid sick leave will not carry over to the next year or be paid out to employees.

I. Job Protections

No employee who appropriately utilizes EPSL under this policy will be discharged, disciplined or discriminated against for work time missed due to this leave.

VII. Employees Excluded from Emergency Family and Medical Leave and Emergency Paid Sick Leave

A. Authority:

In accordance with Sections 3015 and 5102(a) of the FFCRA, employers of health care providers and/or emergency responders are authorized to elect to exclude such employees from the application of the FFCRA, including excluding such employees from the use of EPSL (Section 5102(a)) and EFML (Section 3015)). Moreover, in accordance with 29 C.F.R § 825.216(b) of the Family and Medical Leave Act of 1993, an employer may deny job restoration to key employees, as defined in 29 C.F.R. § 825.217(c)), if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer.

B. Excluded Employees:

For the purposes of administration of EFML and EPSL, the following employee groups have been excluded from coverage by the County Administrator as authorized by Sections 3105 and 5102(a):

- 1. Healthcare Providers:** As defined by the FFCRA, any associated DOL regulations or guidance, any relevant guidance from the U.S. Department of Homeland Security on the identification of essential critical infrastructure workers during the COVID-19 response and/or any relevant guidance issued by the Governor of the Commonwealth of Virginia. Healthcare Providers include, but are not limited to, 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. This also includes any individual that the highest official of a state or territory, including the District of Columbia,

determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19. ***(For a list of job classifications within the County that have been deemed to be healthcare providers and are excluded from coverage, please see Attachment #1. Please note, the list of excluded positions will be updated on a rolling basis as additional guidance and/or regulations are issued by the DOL, DHS and/or other relevant federal or state agencies.)***

- 2. Emergency Responders:** As defined by the FFCRA, any associated DOL regulations or guidance, any relevant guidance from the U.S. Department of Homeland Security on the identification of essential critical infrastructure workers during the COVID-19 response, and/or any relevant guidance issued by the Governor of the Commonwealth of Virginia. Emergency Responders include but are not limited 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. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19. Further, public agency workers responding to abuse and neglect of children, elders, and dependent adults are included in the definition of emergency responders for the purposes of this administrative policy. ***(For a list of job classifications within the County that have been deemed to be healthcare providers and are excluded from coverage, please see Attachment #1. Please note, the list of excluded positions will be updated on a rolling basis as additional guidance and/or regulations are issued by the DOL, DHS and/or other relevant federal or state agencies.)***

- 3. Key Employees (Exempted from EFML Only):**
The County may choose to exempt certain key employees from EFML and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to business operations. Key employees will be

given written notice at the time FMLA leave is requested of his or her status as a key employee.

C. Alternatives to EFML and EPSL

At the discretion of the County Administrator, employees in categories 1-3 above who are excluded from the use of EFML and/or EPSL may be eligible for the following alternative options.

1. Alternative Childcare:

The County has established child care facilities to offer child care services (Monday-Friday 7:30 a.m. to 6 p.m.) to County employees with children from preschool age through 5th grade who need child care so they can work. These child care services will be offered free of charge to employees who are excluded from EFML or EPSL by this administrative policy. These services may be considered a taxable fringe benefit to the employee based on individual circumstances. Employees who avail themselves of this service should consult their tax professional for further guidance on any tax implications.

2. Up to 80 hours of Administrative Leave:

Employees may request up to 80 hours of Administrative Leave if any of the following circumstances apply. Any such request will be reviewed and approved on a case by case basis by the County Administrator or designee:

- The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a health care provider to self-quarantine due to symptoms of COVID-19 and is awaiting testing or the results of testing **or** the Department of Health has concurred that self-quarantine is necessary.
- An employee who is not ill but has had “close contact,” as defined by the Department of Health, with someone who is in quarantine or isolation for exposure to COVID-19 or someone who is presumed to be positive for COVID-19 exposure and is awaiting testing or the results of testing.
- The employee receives a medical diagnosis of COVID-19.
- The employee is caring for an immediate family member with a medical diagnosis of COVID-19.
- To replace advanced Injury Leave upon a determination of non-compensability of a Workers’ Compensation Claim for COVID-19.

D. Employees in an Unpaid Status due to a County Facility or other Worksite Closure:

Employees in the following situations are not eligible for EFML or EPSL but may be eligible for unemployment insurance. Employees in this situation are encouraged to contact the Virginia Employment Commission at 1-866-832-2363 or at www.vec.virginia.gov to determine their eligibility for unemployment benefits.

1. An employee who went into an unpaid status, **prior to** April 1, 2020, because their worksite closed and there was no work for them to do.
2. An employee who goes into an unpaid status **on or after** April 1, 2020 because their worksite closed and there was no work for them to do. The employee is excluded from EFML and EPSL even if the employee requested leave prior to the closure.
3. An employee whose worksite closes while the employee is on EPSL or EFML will receive pay for EFML or EPSL used before the worksite closure in accordance with this policy. However, as of the date of the closure, the employee will no longer be entitled to EPSL or EFML.
4. An employee who is furloughed or has his/her hours otherwise reduced by the County may not use EFML or ESPL for the hours the employee is no longer scheduled to work.

Responsible Department:

Department of Human Resources

ATTACHMENT #1- HR-46

LIST OF JOB CLASSIFICATIONS EXCLUDED FROM EFML AND EPSL UNDER THE EXEMPTION FOR HEALTHCARE PROVIDERS AND EMERGENCY RESPONDERS*

DEPARTMENTS	EXCLUDED JOB CLASSIFICATIONS/POSITIONS
Office of Emergency Management	All positions within OEM
Department of Mental Health, Substance Abuse, and Developmental Services (MHSADS)	All positions within MHSADS
Loudoun County Health Department (DOH)	All positions within DOH
Loudoun County Fire and Rescue (LCFR)	<ol style="list-style-type: none"> 1. All uniformed positions within LCFR 2. All positions assigned to the Emergency Communications Center
Loudoun County Sheriff's Office (LCSO)	<ol style="list-style-type: none"> 1. All uniformed positions within LCSO 2. All positions assigned to the Emergency Communications
Department of Family Services (DFS)	<ol style="list-style-type: none"> 1. All positions assigned to the JDC 2. Child Protective Services <ul style="list-style-type: none"> • Family Services Specialist (123) • Program Assistant (Case Aide) (112) • Program Supervisors (126) 3. Adult Protective Services and Adult Aging Services <ul style="list-style-type: none"> • Family Services Specialist (123) • Program Assistant (Case Aide) (112) • APS Supervisors (126) 4. Foster Care <ul style="list-style-type: none"> • Family Services Specialist (123) • Program Assistant (Case Aide) (112) • Program Supervisors (126)

***The list of excluded positions will be updated on a rolling basis as additional guidance and/or regulations are issued by the DOL, DHS and/or other relevant federal or state agencies.**