



Policy Title	Families First Coronavirus Response Act
Effective Date	April 1, 2020 through December 31, 2020
Supersedes	Policy issued April 1, 2020
Approval	 State Personnel Director
References	<ul style="list-style-type: none">• The State is covered per FMLA Sec 101(4)(iii). The E-FML mandates are set forth in the new Sections 102(a)(1)(F) and the 110. PUBLIC HEALTH EMERGENCY LEAVE of the FMLA.• Family-Medical Leave Policy

PURPOSE

To implement the federal Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act.

SCOPE

This policy applies to state employees under the authority of the Governor. Other agencies and branches are encouraged to adopt this or a similar policy. This policy is in effect from April 1, 2020, through December 31, 2020.

POLICY STATEMENT

EMERGENCY FAMILY MEDICAL LEAVE (EFML)

Beginning on April 1, 2020, and ending on December 31, 2020, because of a qualifying need related to a public health emergency, the 12 workweeks of FMLA includes the following additional entitlements:

- 1) A ‘qualifying need related to a public health emergency’, means the employee is unable to work remotely or at an assigned worksite due to a need for leave to care for the employee’s child, who is under the age of 18 or with a disability under the ADA, if the elementary school or secondary school or place of care has been closed or is unavailable, due to a public health emergency (i.e., an COVID–19 emergency declared by a Federal, State, or local authority).
- 2) The first 75 hours an employee takes EFML is unpaid; however, an employee may elect to substitute any accrued paid leave to receive 100% of pay or Emergency Paid Sick Leave (EPSL) as described below. Employees may augment any EPSL paid at 2/3 pay rate or subject to the caps detailed below by using accrued leave.
- 3) After the first 75 hours, EFML is paid at two-thirds of an employee’s regular rate of pay; however, in no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate. Employees may augment this paid leave by using available accrued leave to achieve 100% pay.



- 4) Eligibility includes a state employee who has been employed for at least 30 calendar days; however, employees who are designated as emergency responders or health care providers are not eligible for EFML.
- 5) In any case where the necessity for leave is foreseeable, an employee shall provide the employer with such notice of leave as is practicable.
- 6) In the case of a part-time, hourly, intermittent, or temporary employee whose schedule varies from week to week to such an extent that an employer is unable to determine the number of hours the employee would have worked if such employee had not taken leave, use:
 - (a) 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 such leave; or
 - (b) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

No other provisions of the Family-Medical Leave Act, regulations, or standardized FML policy have been changed.

EMERGENCY PAID SICK LEAVE

Effective April 1, 2020, Emergency Paid Sick Leave (EPSL) is available as follows:

- 1) A full-time employee shall be entitled to 80 hours of EPSL, in accordance with section 3 below. However, employees who are designated as emergency responders or health care providers are not eligible for EPSL unless the absence is due to personal COVID-19 quarantine in accordance with provision 3(a) or personal COVID-19 illness in accordance with provisions 3(b) or 3(c).
- 2) A part-time, hourly, intermittent, or temporary employee shall be entitled (for reasons listed in section 3) to a number of hours of EPSL equal to the number of hours that such employee works, on average, over a 2-week period (as calculated in section 8).
- 3) A state employee is eligible to use EPSL to the extent that the employee is unable to work remotely or at an assigned worksite due to a need for leave because:
 - (a) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
 - (b) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
 - (c) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - (d) The employee is caring for an individual who is subject to an order as described in subparagraph (a) or has been advised as described in paragraph (b).
 - (e) The employee is caring for their child, under the age of 18 or with a disability under the ADA, if the elementary or secondary school or place of care of the child has been closed or is unavailable, due to COVID-19 precautions.
 - (f) 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.



- 4) With respect to any EPSL provided for any use described in Section 3, subsections (d), (e), or (f), the employee's compensation shall be two-thirds of the employee's regular rate of pay. Employees may augment this paid leave by using available accrued leave to achieve 100% pay.
- 5) In no event shall such EPSL time exceed—
 - (I) \$511 per day and \$5,110 in the aggregate for a use described in Section 3, subsections (a), (b), or (c); and
 - (II) \$200 per day and \$2,000 in the aggregate for a use described in Section 3, subsections (d), (e), or (f).
- 6) An employee will not be required to use any other paid leave before the employee uses EPSL.
- 7) EPSL is available for immediate use by the employee regardless of how long the employee has been employed.
- 8) In the case of a hourly, part-time, intermittent, or temporary employee whose schedule varies from week to week to such an extent that an employer is unable to determine the number of hours the employee would have worked if such employee had not taken leave, use:
 - a. 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 such leave; or
 - b. If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.
- 9) After the first workday (or portion thereof) an employee receives EPSL, the employee is required to follow the employing agency's notice procedures in order to continue receiving EPSL.
- 10) EPSL shall cease beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick time under section 3.
- 11) EPSL expires on December 31, 2020. It does not carry over from one year to the next nor is it paid out if an employee separates service with a balance of this leave.

DEFINITIONS

EFML means Emergency Family-Medical Leave available only under the terms and within the scope of this policy. Eligible employees may use a maximum of 10 calendar weeks (50 workdays) of paid EFML between April 1, 2020 and December 31, 2020.

FML means Family-Medical Leave for reasons other than the public health emergency. It is an unpaid leave unless an employee is using accrued leave concurrently. A separate policy governs this leave. See <https://www.in.gov/spd/2397.htm>.

EPSL means Emergency Paid Sick Leave available only under the terms and within the scope of this policy for eligible employees. Emergency responders or health care providers are eligible only if the absence is due to legal COVID-19 quarantine to which the employee is personally subject in accordance with provision 3(a) or personal COVID-19 illness in accordance with provisions 3(b) or 3(c).

Eligible Employee for purposes of EFML means an employee who has been employed by a state agency under the authority of the Governor for at least 30 calendar days prior to use of this leave. Emergency responders and health care providers are not eligible for EFML.



Eligible Employee for purposes of EPSL means an employee who is employed by a state agency under the authority of the Governor, regardless the length of service, and is not designated as emergency responder or health care provider unless that absence is due to legal COVID-19 quarantine to which the employee is personally subject in accordance with provision 3(a) or COVID-19 personal illness in accordance with provisions 3(b) or 3(c).

Emergency Responders or Health Care Providers for purposes of this policy during the current COVID-19 pandemic are those designated as such in accordance with U.S. Department of Labor guidance and Executive Order 20-18, section 12. Note that “Essential Governmental Functions” is broader than the subsets who are emergency responders or health care providers.

Work means compensable hours of labor performing assigned duties whether in an established worksite or an authorized remote location.

Employed for at least 30 calendar days means an employee on the employer’s payroll, as defined in 29 C.F.R. §825.105 for purposes of FMLA coverage, for 30 days as of the date of taking leave.

RESPONSIBILITIES

Employees are responsible for:

- requesting EFML or EPSL only for appropriate uses;
- knowing the amount of his/her FML, EFML or EPSL balances;
- reporting use of EFML or EPSL appropriately on the timesheet; and
- providing in a timely manner sufficient information for a determination whether an absence qualifies for EFML or EPSL; and
- identifying whether employee wants to use accrued leave to augment EFML or EPSL and the sequence of available leaves to be charged.

Employer is responsible for:

- designating which employees are emergency responders or health care providers, during the current COVID-19 pandemic, such that those employees are not eligible for EPSL unless the absence is due to personal COVID-19 quarantine in accordance with provision 3(a) or personal COVID-19 illness in accordance with provisions 3(b) or 3(c);
- implementing this policy in an appropriate and consistent manner;
- keeping accurate and up-to-date records for each affected employee; and
- taking appropriate actions, including discipline, when an employee fails to abide by the requirements of this and related attendance and leave policies.

Agency Payroll Staff and Auditor of State’s Office are responsible for:

- Calculating 2/3 pay rate (subject to specified dollar caps) and submitting appropriate documentation to the Auditor’s Office;
- Calculating and adjusting any leave balances used to augment the 2/3 pay rate and submitting appropriate documentation to the Auditor’s Office; and
- Running queries and reporting results to Agency HR Office regarding Time Reporting Codes and entries into the FMLA Request User Field and User Field 3 in employee’s timesheets.

HR Office Staff are responsible for:



- Posting a notice, prepared or approved by the U.S. Secretary of Labor containing the requirements described in the EPSL and EFML Acts.
- Reviewing and analyzing reports generated by queries;
- Determining whether employees have exhausted entitlement to E-PSL and notifying employees who have exhausted the entitlement that they no longer have authority to report their time using those codes.
- In agencies not using INSPD's shared services model for processing FML, HR is responsible for all processing and notification related to EFML. INSPD's employee relations division staff will provide the same processing and notification of EFML approvals as they do for non-emergency FML requests.

PROCEDURES

EMERGENCY FAMILY-MEDICAL LEAVE (EFML)

1. Complete and submit Emergency Family & Medical Leave (EFML) Request form. Documentation showing school or daycare provider is closed or unavailable means you have completed the chart on the request form detailing the name of the child, school or daycare provider, and a phone number, email, URL for contacting the school or provider and confirming the closure.
2. EFML request form and documentation must be submitted to the fax number or email on the form if your agency uses SPD's FML approval services. Otherwise, submit the request form and documentation to your agency HR office. Report use of FML and EFML on your timesheet. See Instructions for Recording Time in PeopleSoft Time & Labor.

EMERGENCY PAID SICK LEAVE (EPSL)

1. Complete and submit Emergency Paid Sick Leave (EPSL) Request form to your HR representative and supervisor and provide sufficient documentation for a determination to be made whether employee is eligible for and requesting EPSL for appropriate reasons.

Documentation Requirements:

- (a) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
 - An Executive Order issued in response to the COVID-19 pandemic directing Hoosiers to Stay at Home applies to state employees except those designated as:
 - i. Emergency responders
 - ii. Health care providers
 - iii. Essential employees who are required to work at a prescribed, on-site duty station.
 - Employees personally subject to a Federal, State, or local quarantine order must submit a copy of the order applicable to that employee.
- (b) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.



- Employee must submit documentation from a health care provider advising that employee to self-quarantine.
- (c) The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.
- Employee must submit documentation from a health care provider who provided a diagnosis
 - If employee has been unable to obtain a medical diagnosis, then submit a signed and dated statement detailing their symptoms and actions taken to obtain a medical diagnosis (e.g., contact with Anthem Nurse Line)
- (d) The employee is caring for an individual who is subject to an order as described in subparagraph (a) or has been advised as described in paragraph (b).
- Same documentation required as noted in those above paragraphs and identifying the individual for whom the employee is providing care
- (e) The employee is caring for their child, younger than age 18 or with a disability under the ADA, if the elementary or secondary school or place of care the child attends has been closed or is unavailable, due to COVID–19 precautions.
- Complete the chart on the request form detailing the name of the child, school or daycare provider, and a phone number for contacting the school or provider
- (f) 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.
- Employee must submit documentation from a health care provider who provided a diagnosis
2. EPSL request form and documentation must be submitted to your agency HR office.
3. Report use of FML and EFML on your timesheet. See Instructions for Recording Time in PeopleSoft Time & Labor.

FORMS

[Emergency Family & Medical Leave \(EFML\) Request](#)

[Emergency Paid Sick Leave \(EPSL\) Request](#)

[EPSL Request for Emergency Responders and Health Care Providers](#)

[Instructions for Recording Time in PeopleSoft Time & Labor using EFML or EPSL](#)

[Notice prepared or approved by the U.S. Secretary of Labor](#)

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