

ATTENDANCE AND LEAVE MANUAL

POLICY BULLETIN 2020-05

Section 21.12 & Appendix I

September 2020

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TO: Manual Recipients
FROM: Jessica Rowe, Director of Staffing Services
SUBJECT: Clarification of Policy Bulletin 2020-01 and 2020-04

Introduction

This policy bulletin provides updated information related to the implementation and interpretation of the Families First Coronavirus Response Act (FFCRA), which implicates leave under the Federal Emergency Paid Sick Leave Act (FEPSLA) and/or benefits provided by the Emergency Family and Medical Leave Act (EFMLA), all related to employees impacted by COVID-19.

The following are clarifications to the provisions of both [Policy Bulletin 2020-01](#) (April 2020) and [Policy Bulletin 2020-04](#) (September 2020).

Definition of Health Care Provider

Effective September 16, 2020, the U.S. Department of Labor amended and clarified its rules on the use of FEPSLA and EFMLA. Specifically, the U.S. Department of Labor amended the definition of health care provider. As of September 16, 2020, agencies should apply the definition of health care provider found at 29 C.F.R. § 826.30(c)(1) when implementing exclusions to leave under the FFCRA:

(i) *Basic definition.* For the purposes of Employees who may be exempted from Paid Sick Leave or Expanded Family and Medical Leave by their Employer under the FFCRA, a health care provider is

- (A) Any Employee who is a health care provider under 29 CFR 825.102 and 825.125, or;
- (B) Any other Employee who is capable of providing health care services, meaning he or she 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.

(ii) *Types of Employees.* Employees described in paragraph (c)(1)(i)(B) include only:

- (A) Nurses, nurse assistants, medical technicians, and any other persons who directly provide services described in (c)(1)(i)(B);

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- (B) Employees providing services described in (c)(1)(i)(B) of this section under the supervision, order, or direction of, or providing direct assistance to, a person described in paragraphs (c)(1)(i)(A) or (c)(1)(ii)(A); and
- (C) Employees who are otherwise integrated into and necessary to the provision of health care services, such as laboratory technicians who process test results necessary to diagnoses and treatment.

(iii) Employees who do not provide health care services as described above are not health care providers even if their services could affect the provision of health care services, such as IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers.

(iv) *Typical work locations.* Employees described in paragraph (c)(1)(i) of this section may include Employees who work at, for example, a doctor's office, hospital, health care center, clinic, 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 permanent or temporary institution, facility, location, or site where medical services are provided. This list is illustrative. An Employee does not need to work at one of these facilities to be a health care provider and working at one of these facilities does not necessarily mean an Employee is a health care provider.

(v) *Further clarifications.*

- (A) Diagnostic services include taking or processing samples, performing or assisting in the performance of x-rays or other diagnostic tests or procedures, and interpreting test or procedure results.
- (B) Preventive services include screenings, check-ups, and counseling to prevent illnesses, disease, or other health problems.
- (C) Treatment services include performing surgery or other invasive or physical interventions, prescribing medication, providing or administering prescribed medication, physical therapy, and providing or assisting in breathing treatments.
- (D) Services that are integrated with and necessary to diagnostic, preventive, or treatment services and, if not provided, would adversely impact patient care, include bathing, dressing, hand feeding, taking vital signs, setting up medical equipment for procedures, and transporting patients and samples.

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(vi) The definition of *health care provider* contained in this section applies only for the purpose of determining whether an Employer may elect to exclude an Employee from taking leave under the EPSLA and/or the EFMLEA, and does not otherwise apply for purposes of the FMLA or section 5102(a)(2) of the EPSLA.

Questions concerning the guidance set forth in this Policy Bulletin should be directed to the Attendance and Leave Unit of the Department of Civil Service at (518) 457-2295.