



# RULES OF THE STATE PERSONNEL BOARD

## 478-1-.31 Families First Coronavirus Response Leave

### (1) Introduction:

This temporary State Personnel Board Rule shall be read in conjunction with the provisions of State Personnel Board Rule 478-1-.23, *Family and Medical Leave*, (Rule 23) and State Personnel Board Rule 478-1-.16, *Absence from Work*, (Rule 16) and shall provide for compliance with the federal Families First Coronavirus Response Act (FFCRA) enacted on March 18, 2020.

- (a) The Emergency Family Medical Leave Expansion Act of the FFCRA provides a job-protected leave entitlement for eligible employees who are incapable of teleworking due to a need for leave to care for the employee's son or daughter under 18 years of age if the school or place of care has been closed, or the childcare provider of the son or daughter is unavailable due to a public health emergency. State agencies shall administer the Emergency Family and Medical Leave in accordance with the FFCRA and any related regulations.
- (b) The Emergency Paid Sick Leave Act of the FFCRA provides an administrative leave benefit which provides for 80 hours of paid leave for six qualifying reasons (see Section (5)(b)). State agencies shall administer the Emergency Paid Sick Leave Act in accordance with the FFCRA and any related regulations.
- (c) Each state employer should establish procedures for employees to request and receive approval for absences from work that meet the eligibility requirements for Emergency Family and Medical Leave or Emergency Paid Sick Leave. An employee is expected to return to work and/or telework as scheduled at the expiration of the approved absence. If an extension is necessary, the employee must follow the agency's established procedures for requesting an extension prior to the leave expiration or adhere to other agency procedures for requesting an extension of leave.
- (d) Prior to engaging in other employment, including self-employment, while on leave employees must comply with the notice and other requirements set forth in State Personnel Board Rule 478-1-.07, *Outside Employment*.
- (e) State employers shall not discriminate or retaliate against an individual for exercising any right to Emergency Family and Medical Leave or Emergency Paid Sick Leave.
- (f) To the extent that the U.S. Department of Labor or any other federal administration authority issues regulations that conflict with this Rule, the federally issued regulations shall control.

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## **(2) Applicability:**

The policies and procedures described in this Rule apply to all agencies of the Executive Branch, excluding the Board of Regents of the University System of Georgia.

## **(3) Definitions:**

For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02, *Terms and Definitions*:

- (a) “Administrative leave” means paid time off for specified reasons defined in state or federal law. This paid time off is not charged to accrued leave and the duration is defined in the applicable statute.
- (b) “Childcare provider” means a provider who receives compensation for providing childcare services on a regular basis.
- (c) “Public health emergency” means an emergency with respect to COVID-19 as declared by the Governor of Georgia, the federal government, or a local authority.
- (d) “Rolling 12-month Period” or “Rolling Year” is the 12-month period measured backward from the date an employee uses any Family and Medical Leave. Under the “rolling year,” each time an employee takes Family and Medical Leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.
- (e) “School” means an elementary school, including nonprofit institutional day or residential schools and public elementary charter schools that provide elementary education, as determined under state law. School also means secondary school, including nonprofit institutional day or residential schools and public secondary charter schools that provide secondary education, as determined under state law.
- (f) “Workday” means a day an employee is regularly scheduled to work.

## **(4) Emergency Expansion of Family and Medical Leave:**

- (a) Employee Eligibility:

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1. For purposes of determining an employee's eligibility for Emergency Family and Medical Leave, the state is considered one employer.
2. To be eligible an employee must have been employed for at least thirty(30) calendar days.
3. Time worked for the State of Georgia in any employment capacity will count toward meeting the eligibility criteria in Section (4)(a)2 above. Such employment includes full-time, part-time, temporary, and seasonal employment, whether paid on a salaried or hourly basis. Time worked for a state employer as a worker assigned from a temporary staffing agency shall also be counted if the same worker is subsequently hired by the state employer.

(b) Qualifying Need Related to a Public Health Emergency:

The only qualifying need under which an eligible employee may request Emergency Family and Medical Leave is when the employee is unable to work or telework due to a need for leave to care for the employee's son or daughter under 18 years of age if the school or place of care has been closed, or the childcare provider of the son or daughter is unavailable to due to a public health emergency.

(c) Leave Entitlement:

1. An eligible employee is entitled to take up to 12 workweeks of Family and Medical Leave during a rolling 12-month period, measured backward from the date an employee uses any Family and Medical Leave, for any qualifying reason provided in State Personnel Board Rule 23, Family and Medical Leave, or for the qualifying need related to a public health emergency as described in Section (4)(b) above.
2. Intermittent Leave:
  - (i) Eligible employees may take Emergency Family and Medical Leave on an intermittent or reduced schedule basis, upon approval by the state employer, provided intermittent leave is granted in a consistent manner to all staff.
  - (ii) Any employee requesting to take Emergency Family and Medical Leave on an intermittent basis must have the schedule of the leave approved by the state employer and must receive prior approval for any adjustments to the schedule.

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## (d) Paid Leave Provisions:

State employers shall provide compensation for each workday of Emergency Family and Medical Leave an employee takes after the first ten (10) workdays of such leave as follows:

1. For full-time, salaried employees, the amount of compensation provided for Emergency Family and Medical Leave shall be no less than two-thirds (2/3) of the employee's regular rate of pay provided such pay shall never exceed \$200.00 per day or \$10,000.00 in the aggregate.
2. For part-time and/or hourly employees, the amount of compensation provided for Emergency Family and Medical Leave shall be based upon the number of hours the employee would otherwise normally be scheduled to work at no less than two-thirds (2/3) the regular rate of pay per hour. Such pay shall never exceed \$200.00 per day or \$10,000.00 in the aggregate.

If the employee's hours normally vary from week to week, to the extent that the state employer is unable to determine the number of hours the employee would have worked with certainty, then the state employer shall calculate the number of hours as follows:

- (i) The average number of hours the employee was scheduled to work each day over the 6-month period ending on the date on which the employee is to begin the Emergency Family and Medical Leave.
  - (ii) If the employee did not work over a 6-month period, then the number of hours shall be based on the reasonable expectation of the employee at the time of hire of the average number of hours per day the employee would normally be scheduled to work.
3. An employee may elect to use accrued annual leave, personal leave, holiday deferral leave, compensatory time, or emergency paid sick leave (see Section (5) below) during the first ten (10) workdays of Emergency Family Medical Leave.

## (e) Employee Notice Requirements:

1. Where the need for Emergency Family and Medical Leave is foreseeable, the employee is expected to provide the state employer the maximum notice

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practicable. Where the need arises unexpectedly, the state employer may require the employee to follow customary call-in procedures.

2. A state employer may require that an employee's notice of leave include the anticipated start date and the anticipated duration but must consider the employee's potential inability to know when a school or childcare provider may reopen or become available again.

(f) Reinstatement Requirements:

At the expiration of Emergency Family Medical Leave, an employee is entitled to reinstatement to the same or an equivalent position held prior to the leave.

1. An equivalent position is one which has substantially similar duties and responsibilities and equivalent benefits, pay, and other terms and conditions of employment.
2. There is no greater right to reinstatement than if the employee had remained at work, rather than take the leave. For example, if the position or equivalent position held by the employee when the leave began does not exist due to economic conditions or other changes in the operation of the agency that affect employment and were caused by the public health emergency during the period of leave, then the employee is not entitled to reinstatement. See Section (4)(f)3 below regarding the FFCRA requirement to contact the employee regarding future equivalent opportunities.

3. Period of Required Contact:

If the position or an equivalent position does not exist when the leave expires, state employers with fewer than twenty-five (25) employees must make reasonable efforts to contact the employee if such an equivalent position becomes available for a period of one (1) year. The one (1) year must begin on the date the qualifying need related to the public health emergency ends or the date that is 12 weeks after the date on which the employee's leave commences, whichever is earlier.

## (5) Emergency Paid Sick Leave

(a) Employee Eligibility:

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1. All employees are eligible, regardless of tenure, to receive administrative Emergency Paid Sick Leave if the employee is unable to work or telework due to an approved use for leave listed below in Section (5)(b).
2. No employee shall be required to use other accrued leave or compensatory time prior to Emergency Paid Sick Leave.
3. No employee shall be required to identify a replacement for his or her absence while taking Emergency Paid Sick Leave.

(b) Approved Uses of 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 healthcare provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and is seeking medical diagnosis.
4. The employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order or has been advised by a healthcare provider to self-quarantine.
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed or the childcare provider of such son or daughter 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.

(c) Amount of Leave:

1. Full-time employees are entitled to 80 hours of leave.
2. Part-time employees are entitled to the number of hours such employee works, on average, over a two-week period.

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3. The amount of leave for employees on irregular schedules shall be based on the average number of hours over a two-week period the employee worked the six (6) months prior to taking Emergency Paid Sick Leave. Employees who have been employed for less than six (6) months prior to taking Emergency Paid Sick Leave shall receive the average number of hours the employee reasonably expected to work over a two-week period upon hire.
4. Emergency Paid Sick Leave shall not carry over to the following year.

(d) Amount of Compensation Due:

1. For approved uses of Emergency Paid Sick Leave under Sections (5)(b) 1 – 3 above, the employee's leave is calculated at the regular rate of pay capped at \$511.00 per day and \$5,110.00 in the aggregate.
2. For approved uses of Emergency Paid Sick Leave under Sections (5)(b) 4 – 6 above, the employee's leave is calculated at two-thirds (2/3) the regular rate of pay capped at \$200.00 per day and \$2,000.00 in the aggregate.

(e) Employee Notice Requirements:

1. Where the need for Emergency Paid Sick Leave is foreseeable, the employee is expected to provide the state employer the maximum notice practicable. Where the need arises unexpectedly, the state employer may require the employee to follow customary call-in procedures.
2. A state employer may require that an employee's notice of leave include the anticipated start date and the anticipated duration, but must take into account the employee's potential inability to know when a school or childcare provider may reopen or become available again, or when a quarantine or isolation order or recommendation may end.

(f) Interaction with Emergency Expansion of Family and Medical Leave:

1. At the request of an employee, Emergency Paid Sick Leave shall be approved to be used during the first ten (10) unpaid workdays of Emergency Family and Medical Leave.
2. Employees may request to use accrued annual leave, personal leave, holiday deferral leave, or compensatory time, rather than Emergency Paid Sick Leave, to

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compensate the first ten (10) unpaid workdays of Emergency Family and Medical Leave.

## **(6) Employer Notice Requirement:**

Each state employer shall post and keep posted, in conspicuous locations on agency premises where notices to employees are customarily placed, the FFCRA notice prepared by and approved by the US Secretary of Labor. State employers may satisfy this requirement by emailing or direct mailing the model notice to employees or posting the model notice on an employee information internal or external website until such time the state employer can post the notice on agency premises.

## **(7) Effective Date and Sunset Provision:**

This Board Rule shall become effective on April 1, 2020, upon the Governor's signature, and shall expire on December 31, 2020.

### **Authority:**

O.C.G.A. §§ 45-20-3, 45-20-3.1, and 45-20-4 (duties and functions of the State Personnel Board and Department of Administrative Services related to the Rules of the State Personnel Board); O.C.G.A. § 45-20-16 (State Personnel Board Authority to establish rules for accrual and usage of leave)

### Federal Law References:

Pub. L. No. 116-127 – Families First Coronavirus Response Act  
29 U.S.C. § 2601, et. seq. – Family and Medical Leave Act  
29 C.F.R. Part 825 – US DOL Family and Medical Leave Regulations