

## **National Guard Civilian Employee Procedural Guidance for Family First Corona Virus Response Act (FFCRA) Paid Leave**

The below guidance clarifies procedures for Human Resource (HR) Specialists concerning National Guard (NG) Employees that may be eligible and request paid leave under FFCRA. There are two types of paid leave available for NG employees; Paid Sick Leave and Emergency Family and Medical Sick Leave.

**Background Information:** ALL NG Employees are eligible for FFCRA Paid Sick Leave of two weeks (80 hours). Some employees are eligible for Emergency Family and Medical Leave (EFML) of an additional 10 weeks. Both of these temporary rules provided in the Family Medical Leave Act (FMLA) are effective April 1, 2020 until Dec 31, 2020. The below decision table assists a State in determining an employee's eligibility for coverage under Title I of FMLA which makes them entitled to EFML. The FFCRA created special applicability rules for these two types of paid leave that are separate from regular FMLA.

<b>Emergency Family and Medical Leave Eligibility Chart</b>	<b>Yes</b>	<b>No</b>
Has the NG Employee been employed for 30 days or more as of the date of request?	Go to question 2	Not Eligible
Is the employee's appointment temporary (time limited to one year or less)?	Eligible for 10 weeks cumulative	Go to question 3
Is the employee on an intermittent work schedule?	Eligible for 10 weeks cumulative	Not Eligible

**TABLE-1 EFML ELIGIBILITY CHART**

**FFCRA Leave Entitlement:** An NG employee is entitled to Paid Sick and EFML leave under FMLA if they are eligible and have a qualifying reason. All federal employees are eligible for paid sick leave. Eligible NG employees in Table 1 are entitled to EFML. Payment of these two types of leave and the leave codes are outlined below in Table 2. These leave codes are not programmed to account for the different rates of pay that may apply, and will not prevent an employee from taking leave over the statutory limits under the FFCRA, nor enforce the statutory caps on daily or aggregate pay. NG employees who incur a debt will be ineligible to submit a debt waiver for this overpayment. The last page has a statement of understanding that may be used as a template to ensure that employees understand their usage of the leave may cause them a debt.

<b>Reason Code Definitions, Pay Rates, and Time Codes</b>	
<b>1</b>	<b>Reason:</b> is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; <b>Pay Rate:</b> 100% pay rate up to 511 daily and \$5,110 total; <b>Time Code:</b> LV and reason code DX
<b>2</b>	<b>Reason:</b> has been advised by a health care provider to self-quarantine related to COVID-19; <b>Pay Rate</b> 100% pay rate up to \$511 daily and \$5,110 total; <b>Time Code:</b> LV and reason code DX
<b>3</b>	<b>Reason:</b> is experiencing COVID-19 symptoms and is seeking a medical diagnosis; <b>Pay Rate:</b> 100% pay rate up to \$511 daily and \$5,110 total; <b>Time Code:</b> is LV and reason code DX
<b>4</b>	<b>Reason:</b> is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); <b>Pay Rate:</b> 2/3 of pay rate up to \$200 daily and \$2,000 total; <b>Time Code:</b> LV and reason code DY
<b>5</b>	<b>Reason:</b> is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; <b>Pay Rate:</b> 2/3 of pay rate up to \$200 daily and \$2,000 total for (Sick leave) or \$12,000 (Emergency Family Medical Leave); <b>Time Code:</b> EFML- LV and reason code DZ; Sick Leave- LV and reason code DY
<b>6</b>	<b>Reason:</b> is experiencing any other substantially-similar condition specified by the U.S. Department of Health condition specified by the U.S. Department of Health and Human Services; <b>Pay Rate:</b> 2/3 of pay rate up to \$200 daily and \$2,000 total; <b>Time Code</b> is LV and reason code DY

**TABLE-2 REASON CODE DEFINITIONS, PAY RATES, AND TIME CODES**

**Other Considerations:** An eligible employee may use FFCRA leave beginning any day on or after April 1, 2020 and ending on Dec 31, 2020 for a qualifying reason.

Supervisors or management cannot direct the use of FFCRA Leave.

States should display the FFCRA Leave posters similarly to other DoL posters.

If any of the affected NG employees happen to be bargaining unit employees, labor relations staff should be consulted to determine any local bargaining obligations.

Part-Time employees receive FFCRA Leave in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek or as prescribed in 5 CFR 630.1203(e).

An employee covered by USERRA who is also an eligible NG employee with a qualifying reason is eligible to use FFCRA leave.

References:

1. Family First Coronavirus Response Act
2. 5 CFR Part 630 Subpart L Family Medical Leave Act
3. CNGB Instruction 1400.25 Vol 630, "National Guard Technician Absence and Leave Program"
4. 29 CFR 825.109 Federal Agency Coverage (Department Of Labor Regulation)
5. DoD FMR Volume 8 Chapter 0505 Family Medical Leave Act
6. 38 USC 4316 Rights, benefits, and obligations of persons absent from employment for service in a uniformed service
7. DCPAS Message 2020039- Family First Coronavirus Response Act

(Insert Letterhead Here)

DD MMM YYYY

MEMORANDUM FOR: (INSERT SUPERVISOR OR LEAVE APPROVING OFFICIAL NAME)

SUBJECT: Statement of Understanding for Payment of Leave From The Family First Coronavirus Response Act (FFCRA)

1. I, (INSERT NAME), have read and understand my maximum daily rate of pay allowed under FFCRA based on my reason for the use of leave.
2. I also understand that if it is determined that my civilian rate of pay is more than the allowable maximum rate for FFCRA based on my reason code I will incur a debt that will not be waived.
3. I have voluntarily elected to use this leave knowing that a debt may be created.

(Signature)  
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