Purpose:

On March 18, 2020 the Families First Coronavirus Response Act (FFCRA) was signed into law. Among other things, the FFCRA provides for Emergency Family Medical Leave Act Expansion to employees affected by COVID-19. This Reference Guide will detail the new leave entitlements and the circumstances that will make an employee eligible.

Effective Dates:

This Reference Guide will be in effect from April 1, 2020 through December 31, 2020. Employees are not eligible for any paid leave entitlements for any period of leave that occurred prior to April 1, 2020.

Eligibility:

All full-time and part-time Employees are eligible for Emergency Family Medical Leave Act Expansion if they have been employed at CUNY for at least 30 days prior to their taking leave under this Act. There is no 12 month/1250 hour waiting period as there is for FMLA Leave.

The Employee must be unable to work or telework because they are 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.

“Child” means 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 and older who is incapable of self-care because of a mental or physical disability.

“Child Care Provider” means a center-based child care, group-home child care or someone who cares for your child, including individuals paid to provide child care or individuals who provide child care at no cost such as a family member or nanny.

Duration of Leave:

Employees will have up to 12 weeks of Expanded Family Medical Leave to use from April 1, 2020 through December 31, 2020 provided they are unable to work or telework because they are 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.

This new period of Expanded Family Medical Leave does not provide an additional 12 weeks of FMLA leave during the FMLA leave year, September 1 through August 31. If an employee has already used FMLA leave from September 1, 2019 through the date they are requesting Emergency Family Medical Leave, they will have that amount deducted from the 12 weeks they are entitled to under Emergency Family Medical Leave.

**Example:** An employee took 3 weeks of FMLA in January 2020. They will only be eligible for 9 weeks of Emergency Family Medical Leave.

An Employee can only receive 12 weeks of Emergency Family Medical Leave in the April 1, 2020 through December 31, 2020 period, even though the period will span two FMLA leave years.

**Example:** Employee uses 7 weeks of Emergency Family Medical Leave in May and June 2020. The employee will only be able to take up to an additional 5 weeks from September through December 2020, even though the first 7 weeks were in the prior FMLA leave year.

**Pay During Leave:**

Eligible employees are entitled to up to 10 weeks of paid Emergency Family Medical Leave at 2/3 their regular rate of pay.

- **Initial 10 days:** The first 10 days of this leave may be unpaid. The employee may elect to take Emergency Paid Sick Leave (if available) or any accrued leave during this time.

- **After the initial 10 days:** The employee will be paid 2/3 their regular rate of pay for the remaining 10 weeks.

**Maximum Amounts of Pay:**

For employees who are entitled to 2/3 of their regular rate of pay for 10 weeks, their pay cannot exceed $200 per day and $10,000 in the aggregate for the 10 weeks.

**Variable Hour Employees:**

If an employee has a variable schedule of work, their regular rate of pay will be based on the average regular rate of pay for the employee over the 6-month period ending on the date on which the employee takes leave. This 6-month period will include any time that the employee was on any accrued leave. If the employee has not worked for a 6-month period, the regular rate will be based on the average regular rate of pay for each week that the employee has been employed.
Overtime:

Overtime earned by the employee will be used in calculating their rate of pay for purposes of the Emergency Family Medical Leave Act.

Intermittent Leave

Employees may take Emergency Family and Medical Leave intermittently, provided the scheduled leave has been agreed upon in advance.

Interaction with Emergency Paid Sick Leave:

The first two weeks of Emergency Family Medical Leave are unpaid. Employees have the option of using their own leave accruals at full pay or they can use Emergency Paid Sick Leave at 2/3 of their regular rate of pay, provided they have not used Emergency Paid Sick Leave previously.

If an employee chooses to take 12 weeks of Emergency Family Medical Leave and use the Emergency Paid Sick Leave for the first two weeks, the two leaves will run concurrently.

Health Insurance Coverage:

While on leave, the employee will continue on health benefits at the same level and under the same conditions as if the employee had continued to work. The employee's share of premiums will continue and will be collected through payroll deductions.

Other Leave Entitlements

Employees are not required to exhaust any leave accruals before receiving Emergency Family Medical Leave.

If an employee is receiving Emergency Family Medical Leave at 2/3 their regular rate of pay, they cannot use their own leave accruals to supplement this pay.

Procedures

All employees must complete an Emergency Family Medical Leave Expansion Act Attestation & Request Form and provide any additional information that is detailed on the Attestation & Request Form.

The Form should be submitted to the campus Human Resource Department as soon as possible following the first day of that leave. While advance notice is not required, employees are encouraged to provide notice of their intent to use this leave to the campus Human Resource Department as soon as practicable.