

Guidance to Leaves

As we start to consider how to handle leave requests and returning employees back to work during the COVID Pandemic. We need to consider that the exemptions created by the governor in March of 2020 are no longer active. This means as employees are returning to work and navigating potential leaves, they will need to access the established federal and state leaves. Which includes:

- Paid leave under the [Families First Coronavirus Response Act \(FFCRA\)](#).
- Job protected leave under the [Family Medical Leave Act \(FMLA\)](#) or [VT Parental and Family Leave Law \(VPFL\)](#) for those who qualify.
- Available and appropriate paid leaves under contract.
- Unpaid leave or other accommodation under the [Americans with Disabilities Act as Amended \(ADAA\)](#) for those who qualify.
- Vermont's sick leave statute may provide paid time off after FFCRA paid time off has been exhausted.
- Unpaid leave of absence for a specific duration.

What if an employee indicates they cannot return to work because they feel anxious?

- Feeling anxious does NOT qualify an employee to take leave. If an employee indicates they cannot return because they are anxious, it is best practice to refer them to Invest EAP where they may seek assistance from qualified mental health counselors.
- On a case-by-case basis, an employee MAY access leave IF they have documented medical conditions due to anxiety that they are being treated for by a doctor.

When can an employee access the [Families First Coronavirus Response Act \(FFCRA\)](#)?

Families First Coronavirus Response Act (FFCRA)

FFCRA creates two new emergency leave benefits for eligible employees: (1) emergency paid family and medical leave and (2) emergency paid sick leave. Key provisions of FFCRA that will impact employers and employees are summarized below. These leave benefits are set to expire 12/31/20.

Emergency Family Medical Leave (EFML)

Qualifying Reason for Leave: Employees who are unable to work (or telework) because they need to care for their child whose school is closed, or whose child care provider is unavailable because of COVID-19 or other similar public health emergency.

Eligibility: Available to employees who have been employed a minimum of 30 days

Duration: Up to 12 weeks (running concurrently with FMLA).

Compensation and Benefits:

- The first ten (10) days of EFML is unpaid, but employees may elect to substitute other paid leave benefits during this period (e.g., EPSL leave (below), paid vacation leave).
- After the initial unpaid ten (10) day period, employees shall be paid two-thirds of their regular compensation, up to a maximum of \$200 per day or \$10,000 in the aggregate.
- The FMLA's job protections apply to EFML.

Certification: Employees requesting EFML may be required to provide acceptable documentation to support the reason for leave.

Emergency Paid Sick Leave (EPSL)

Qualifying Reason for Leave:

1. The employee is subject to a federal, state, or local quarantine or isolation order due to COVID-19;

2. The employee has been advised by a healthcare provider to self-quarantine because of concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who is quarantined or advised by a healthcare provider to self-quarantine;
5. The employee is caring for a son or daughter if the school or place of care for the child has been closed, or the child care provider is unavailable, because of COVID-19 precautions;
6. The employee is experiencing any other, substantially similar condition, as specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Eligibility: All employees for immediate use, regardless of their length of employment

Duration: Up to two weeks (or up to the average number of hours worked over a two-week period). There is no carry-over of leave allowed or payout of unused leave upon separation.

Compensation:

- For reasons 1 - 3 above: Employees shall be paid their regular compensation, up to a maximum of \$511 per day.
- For reasons 4 - 6 above: Employees shall be paid either two-thirds of their regular compensation or the minimum wage, whichever amount is greater, up to a maximum of \$200 per day.

Certification: Employees requesting EPSL may be required to provide acceptable documentation to support the need for leave. This certification may include, but is not limited to, medical certification, quarantine orders, notice from the childcare provider/school.

How often can an employee access FFCRA?

- ONCE!

What if an employee needs to quarantine due to a choice to travel for a vacation?

- An employee may access FFCRA in order to quarantine because it relates to [guidance from the VT Department of Health](#). They would be able to access FFCRA in addition to their contracted vacation time.

If an employee is sent home sick because of a fever or other symptoms, would that be administrative leave or something else?

- An employee would need to access FFCRA or use their own contracted/accrued sick time.

When can an employee access [Family Medical Leave Act \(FMLA\)](#)?

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

Qualifying Reason for Leave:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;

- any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty;”

Eligibility: Employee must have worked worked 1,250 hours during the 12 months prior to the start of leave

Duration: Twelve workweeks of leave in a rolling 12-month period

Compensation: FMLA is an unpaid leave, but an employee may use their available contractual and accrued paid leave time.

Certification: Medical certification may be required for access to FMLA. Please contact Human Resources for the appropriate certification form based on the reason for the request.

How often can an employee access FMLA?

An employee may access FMLA once in a rolling 12 month period. This means that once they access leave (regardless of time of school year or calendar year), the 12 month period is set. (example: If you access 12 weeks of leave in May of 2020, you cannot request to access FMLA again until May of 2021.)

When can an employee access [VT Parental and Family Leave Law \(VPFL\)](#)?

An employee who does not qualify for FMLA may qualify for VPFL.

Qualifying Reason for Leave:

- Parental Leave: during the pregnancy and/or after childbirth; or, within a year following the initial placement of a child 16 years of age or younger with the worker for the purpose of adoption;
- Family Leave: for the serious illness of the worker, worker’s child, stepchild, ward, foster child, party to a civil union, parent, spouse, or parent of the worker’s spouse

Eligibility: A worker who has worked for a covered employer for an average of 30 hours a week for a year is entitled to leave.

Duration: During any 12 month period, the worker is entitled to up to 12 weeks of leave.

Compensation: VPFL is an unpaid leave, but an employee may use their available contractual and accrued paid leave time

Certification: Medical certification may be required for access to VPFL. Please contact Human Resources for the appropriate certification form based on the reason for the request.

How often can an employee access VPFL?

An employee may access VPFL once in a rolling 12 month period. This means that once they access leave (regardless of time of school year or calendar year), the 12 month period is set. (example: If you access 12 weeks of leave in May of 2020, you cannot request to access VPFL again until May of 2021.)

When can an employee access their Contractual Leave?

An employee should check their paystub, individual contract, or their collective bargaining agreement to verify their available paid time off.

When can an employee access ADA Leaves and/or accommodations?

ADA leave or accommodation needs to be determined on a case by case basis. The employee should contact Human Resources to ask about qualification and the process associated with the request. An ADA request requires a medical certification.

When can an employee access an unpaid leave of absence?

If an employee has gone through the above options, and depending on the employee’s collective bargaining unit, the employee may petition the school board for an unpaid leave of absence. The petition is no guarantee of access.