TO: Manual Recipients
FROM: Jessica Rowe, Director Staffing Services Division
SUBJECT: Clarification of Policy Bulletin 2020-01, entitled *Guidance Related to Recent State and Federal Law and Policy Changes Due to COVID-19*

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 Policy Bulletin 2020-01 (April 2020).

Intermittent Use of FEPSLA and EFMLA

As of August 3, 2020, employees may intermittently use FEPSLA or EFMLA to care for the employee's son or daughter whose school or place of care is closed, or the child care provider is unavailable, because of reasons related to COVID-19, which is detailed as FEPSLA Category 5 in Policy Bulletin 2020-01 (April 2020).

Employees may not use FEPSLA leave intermittently for any of the remaining reasons that are classified as FEPSLA Categories 1 through 4 and Category 6 in Policy Bulletin 2020-01 (April 2020). For these FEPSLA Categories, an employee must take leave consecutively until the need for such leave ends. The employee retains and may use any remaining FEPSLA leave time if and when another FEPSLA reason arises before its expiration on December 31, 2020. Intermittent leave may be used in increments of ¼ of an hour.

Exclusions

As set forth in Policy Bulletin 2020-01 (April 2020), FFCRA allows employers to exempt health care providers and emergency responders from FEPSLA and EFLMA. As of August 3, 2020, the definition for health care provider is found in the Family and Medical Leave Act (FMLA). The emergency responder definition is found in the U.S. DOL regulations implementing the FFCRA. Both definitions are provided below.

Agencies should continue to comply with FFCRA by applying and implementing, where applicable, the definitions of these exemptions to their workforce, and to take the necessary steps to ensure that the law is followed based on these definitions. Agencies need not consult with, or get prior approval from, GOER before excluding employees under either of these exemptions, as was required by Policy Bulletin 2020-01 (April 2020).

Definitions

As of August 3, 2020, for the purposes of employees who may be excluded from FEPSLA or EFMLA leave under the FFCRA, the following definitions are to be applied.

The term "health care provider," as found at 29 C.F.R. § 825.102, means:

- A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; or
- Nurse practitioners, nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; or
- Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; or
- A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

  The phrase "authorized to practice in the State," as used in this definition, means that the provider must be authorized by the State of New York to diagnose and treat physical or mental health conditions.

The term "emergency responder," as found at 29 C.F.R. § 826.30(c)(2), means anyone necessary for the provision of transport, care, healthcare, comfort, and nutrition of such patients or others needed for the response to COVID-19. This includes, but is not limited to, military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any

individual whom the highest official of the State determines is an emergency responder necessary for the State's response to COVID-19.

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.