

From: Kelly Hardwick <Kelly.Hardwick@mspb.ms.gov>
Sent: Monday, March 16, 2020 8:59 AM
To: Brittany Frederick <Brittany.Frederick@mspb.ms.gov>
Cc: Joe Goff <Joe.Goff@mspb.ms.gov>; Ryan Beard <Ryan.Beard@mspb.ms.gov>; Richard Davis <Richard.Davis@mspb.ms.gov>
Subject: Emergency Declaration Guidance

In conjunction with the Mississippi State Department of Health guidelines and the State of Emergency Proclamation by Governor Reeves related to the spread of COVID-19, the Mississippi State Personnel Board advises the following:

1. The statutory requirement that accrued personal or compensatory leave must be used for an employee's illness requiring an absence of one day or less is temporarily suspended.
2. The statutory requirement that accrued personal or compensatory leave must be used for the first day of an employee's illness requiring his or her absence of more than one day is temporarily suspended.
3. The statutory requirement that in the event an employee has no accrued personal or compensatory leave, the first day of sick leave must be taken as Leave Without Pay is temporarily suspended.
4. The suspension of these requirements also applies to an employee's absence related to an illness in the employee's "immediate family" (defined in Section 3.2 of the State Employee Handbook).
5. The statutory requirement that an employee provides certification from an attending physician for Major Medical Leave for each absence of thirty-two (32) consecutive working hours is temporarily suspended.

If you have not already done so, please review the guidelines previously provided (see attachment) from our office concerning creating an emergency telework plan. Governor Reeves has encouraged temporary telework for employees able to do so. It is essential that employers maintain agency operations and continuity of service in assessing eligible employees to telework, and the attached guidelines provide guidance as you review your organizational structure.

Regarding whether administrative leave may be allowed for employees who are unable to telework, or for employees who are not symptomatic but have recently traveled to a possible at-risk area, Mississippi Code Annotated §25-3-92 states, "*The Governor or the appointing authority may grant administrative leave with pay to state employees on a local or statewide basis in the event of extreme weather conditions or in the event of a manmade, technological or natural disaster or emergency.*" It is the position of MSPB that your agency should contact MSDH at 877-978-6453 for guidance concerning the return-to-work status of employees who have recently traveled. If the employee is unable to telework and MSDH recommends a period of quarantine for the employee, administrative leave should be granted by the appointing authority. Further, appointing authorities are encouraged to use informed and good judgment related to administrative leave for staff unable to telework and affected by COVID 19 related issues.

As a reminder, it is a longstanding MSPB policy that an employer can require an employee who is experiencing signs of illness in the workplace be sent home and/or not come to work. For symptoms, see the [CDC symptoms guidance](#).

MSPB encourages all state agencies to follow the guidance of the Mississippi State Department of Health and take recommended precautions.

Guidance concerning the operations of MSPB will be forthcoming. Our staff is in the process of designating telework responsibilities.

Emergency Telework in the Event of Pandemic Declaration

Request

Pursuant to Executive Order 1457, the Mississippi State Personnel Board has developed the following policy guidance concerning emergency telework in the event of a pandemic declaration.

Introduction

It is the determination of MSPB staff that a “one size fits all” approach to telework would not be in the best interests of the State. It has been determined that the varied functions and priorities of our state entities would best be served through the provision of a set of guidelines which could be used by those entities to tailor an emergency telework policy to suit their individual needs and allocation of resources.

MSPB staff compiled the guidelines found herein for state entities to consider in the drafting of their telework policies for emergency situations, such as pandemic influenza. **In developing a policy based on these guidelines, MSPB staff strongly encourages state entities to consult with relevant staff, such as information technology and human resources personnel, as well as legal counsel prior to finalization and implementation of an emergency telework policy.**

Guidelines

Scope of Emergency Declaration

Specific implementation of an emergency telework policy in the event of a pandemic situation would be dependent upon the scope of the emergency declared. Any policy developed should allow for flexibility dependent upon the scope of the Governor’s or appointing authority’s declaration of an emergency.

Mission Essential Functions

State entities should review their current organizational structure to determine the following:

- Which employees perform essential duties required to carry out the entity’s mission in the event of an emergency;
- Which employees may be necessary in certain limited circumstances to continue entity operations during an emergency situation; and
- Which employees perform duties which may not be necessary while an emergency declaration is in effect.

For each of these groups, the state entity should then determine which employees will be required to work during the emergency situation. For those employees required to work, the entity should

review the individual job duties assigned to the included employees and determine which could be performed via teleworking. For example, employees such as nurses or highway patrol officers may be needed in a specific location or capacity that would make telework impossible. On the other hand, certain essential administrative employees might be able to telework if provided with the necessary equipment.

Leave and Timekeeping Policies

State entities should also consider timekeeping and leave in drafting an emergency telework policy. A fundamental leave policy regarding a declared emergency should be developed by the state entity.

Leave and Requirement to Work

Pursuant to Miss. Code Ann. § 25-3-92(2)(b):

The Governor or the appointing authority may grant administrative leave with pay to state employees on a local or statewide basis in the event of extreme weather conditions or in the event of a man-made, technological or natural disaster or emergency. Any employee on a previously approved leave during the affected period shall be eligible for such administrative leave granted by the Governor or appointing authority, and shall not be charged for his previously approved leave during the affected period.

Employees who telework during an emergency may be eligible to receive credit for compensatory leave pursuant to Miss. Code Ann. § 25-3-92(1):

When, in the opinion of the appointing authority, it is essential that a state employee work after normal working hours, the employee may receive credit for compensatory leave. Except as otherwise provided in Section 37-13-89, when, in the opinion of the appointing authority, it is essential that a state employee work during an official state holiday, the employee shall receive credit for compensatory leave.

The development of the leave and requirement to work portions of an emergency telework policy should take into account the federal Fair Labor Standards Act and any other relevant state or federal laws and regulations governing overtime, work schedules, and the accrual and usage of leave. The MSPB policies governing leave, overtime, and work schedules can be found in Chapter 3 of the *State Employee Handbook*.

In conjunction with leave policy, consideration should be made for how authorized time worked is determined and recorded.

Timekeeping

In the event of an emergency, a state entity may determine that a schedule other than normal working hours should be used for employees who telework. If that is the case, an emergency telework policy should address this contingency as well as who has the authority to determine the number and schedule of hours worked by teleworking employees, including any limitations to be imposed.

For timekeeping purposes, the entity should also make sure to include provisions regarding:

- How time worked will be recorded;
- Whether some independent system of verification will be used; and
- Who will approve/authorize time worked for the purposes of scheduling and payroll.

There are also other practical considerations which a state entity should take into account in the formation of an emergency telework policy.

Equipment and Networking

Equipment Availability and Distribution

State entities that intend to enact an emergency telework policy should review their inventory to determine if equipment is available to serve the needs of the entity in such instances. Relevant equipment could include:

- Laptop computers;
- Personal computers;
- Tablet or handheld devices; and
- Landline-based or cellular phones.

A plan for assignment and distribution of equipment to be used in an emergency telework situation should be included in an entity's emergency telework policy and may need to provide contingencies for different types of emergencies. Additionally, the entity should determine what requirements may exist, such as internet access, for an employee to telework in the event of an emergency. If an employee serving an essential function who would be required to work during the state of emergency does not have the necessary capability to telework due to a limitation, such as lack of internet access, the agency may need to determine if the work can be performed via a different method or if equipment to address such a contingency should be provided as needed.

Where an entity does not maintain sufficient equipment to allow for broad functionality in the event that emergency telework becomes necessary, the entity will need to prioritize the provision of equipment and review alternative solutions for facilitating telework. In some instances, this could include allowing employees to make use of personal equipment to perform the necessary

business of the entity; any use of personal equipment would likely give rise to security and recordkeeping concerns which would need to be reviewed and addressed.

Network Security

A state entity should incorporate provisions regarding secure remote access to the entity's network in its emergency telework policy. The policy should address:

- How to remotely access the network;
- Limitations on access, such as the use of a secured wireless network;
- Restrictions to limit the unintentional spread of malware and/or infected files and data;
- Any special provisions needed in the event that an employee uses personal equipment, such as necessary software; and
- Any other requirements which the entity feels are necessary in order to ensure that its operations and information are protected.

It is recommended that entities consult with both their individual information technology departments and the Department of Information Technology Services when determining the necessary equipment and network security components of their emergency telework policies.

Conclusion

The above guidelines are intended to provide a basis upon which an individual state entity may develop an emergency telework policy. They are not exhaustive, as each entity will want to address its specific operational needs through its policy. To reiterate, in developing a policy based on these guidelines, MSPB staff strongly encourages state entities to consult with relevant staff, such as information technology and human resources personnel, as well as legal counsel prior to finalization and implementation of an emergency telework policy.

From: Kelly Hardwick <Kelly.Hardwick@mspb.ms.gov>
Sent: Tuesday, March 17, 2020 3:22 PM
To: Brittany Frederick <Brittany.Frederick@mspb.ms.gov>
Subject: Emergency Declaration and Compensatory Leave

Agency Heads and Human Resource Directors:

Executive Order 1458 directed state employers to review and identify which employees perform essential duties to carry out the entity's core functions during the State of Emergency and determine if those core functions and duties could be performed by essential employees from home.

If such identified employees are unable to perform those duties from home and instead those duties must be performed in the workplace, those employees are not candidates for compensatory leave credit for **normal hours worked, just because he or she is required to perform duties in the workplace.**

Mississippi Code Annotated §25-3-92 (1) provides, *"When, in the opinion of the appointing authority, it is essential that a state employee work **after normal working hours**, the employee may receive credit for compensatory leave (emphasis added)."* An appointing authority's determination that an employee must perform his or her duties in the workplace, rather than through telework does not qualify the employee for compensatory leave credit for normal hours worked. Compensatory leave credit is determined by the number of hours worked and not the location of the work.

Consistent with Mississippi Code Annotated §25-3-92 (1), if, in the opinion of the appointing authority, it is essential that the employee work **after** normal working hours, the employee may receive credit for compensatory leave for each hour worked. Likewise, employees designated for telework who work **after** normal working hours may also receive credit for compensatory leave for such hours worked.

Note that this is a fluid situation, and an employee's designation for telework, administrative leave, performing duties in the workplace can change at the agency's discretion.

From: Kelly Hardwick <Kelly.Hardwick@mspb.ms.gov>
Sent: Tuesday, March 17, 2020 3:54 PM
To: Brittany Frederick <Brittany.Frederick@mspb.ms.gov>
Cc: Joe Goff <Joe.Goff@mspb.ms.gov>; Richard Davis <Richard.Davis@mspb.ms.gov>; Ryan Beard <Ryan.Beard@mspb.ms.gov>
Subject: Administrative Leave for Contract Workers

Fellow Agency Heads and HR Personnel:

Again, Executive Order 1458 directed state employers to review and identify which employees perform essential duties to carry out the entity's core functions during the State of Emergency. Regarding whether administrative leave may be allowed for contract workers who are unable to work at the office or telework is something that each appointing authority needs to determine for its agency. *Mississippi Code Annotated* § 25-3-91(c) defines "employee" as "a person appointed to a position in the state service or non-state service as defined in *Section 25-9-107*, for which he is compensated on a full-time permanent or provisional basis, a temporary basis, or a part-time basis." Mississippi law provides that contract personnel are considered non-state service pursuant to *Mississippi Code Annotated* § 25-9-107(c)(x).

The question of administrative pay only comes up if the agency has determined that these individuals are non-essential employees (not required to come into the office) and are unable to telework. It is the position of MSPB that while the payment of administrative leave may be allowed, it is discretionary, and each agency must make its determination of whether it will authorize it for non-essential, non-teleworking contract workers. In making this determination, MSPB recommends agencies review individual contract terms and their agency budgets in making determinations on whether it will authorize administrative leave for those non-essential non-teleworking contract workers.

From: Kelly Hardwick <Kelly.Hardwick@mspb.ms.gov>
Sent: Monday, March 30, 2020 1:40 PM
To: Brittany Frederick <Brittany.Frederick@mspb.ms.gov>
Cc: Joe Goff <Joe.Goff@mspb.ms.gov>; Richard Davis <Richard.Davis@mspb.ms.gov>; Ryan Beard <Ryan.Beard@mspb.ms.gov>; Heather Deaton <Heather.Deaton@mspb.ms.gov>
Subject: H.R. 6201 Update and Guidance

Agency Heads and Human Resources Directors:

Executive Order 1458 (*E.O. 1458*) directed state employers to review and identify which employees perform essential duties to carry out the entity's core functions during the State of Emergency. Employers are also to determine whether these essential-employees could perform those core functions and responsibilities from home, or they must take place at a worksite.

E.O. 1458 further stated that due to the State of Emergency, and under *Miss. Code Ann. Section 25-3-92 (2)(b)* agencies, boards, commissions, and other state entities may grant their employees administrative leave with pay for any one or more of the following reasons as determined by the appointing authority:

- a. *The period(s) of time that the employee's employer has closed in response to COVID-19.*
- b. *The period(s) of time that the employee's supervisor has determined the employee's duties are deemed non-essential during any period of time during the State of Emergency.*
- c. *The period(s) of time that the employee or a member of their immediate household is placed in quarantine or isolation as a result of being diagnosed with COVID-19.*
- d. *Other reasons as determined by the appointing authority in consultation with a health care professional that are necessary to prevent the risk of possible transmission of COVID-19 within the employee's workplace.*

H.R. 6201 Families First Coronavirus Response Act (FFCRA)

In addition to the leave authorized in *E.O. 1458*, Congress has passed *H.R. 6201*, the Families First Coronavirus Response Act (FFCRA), which goes into effect April 1, 2020, and will apply through December 31, 2020. Note that the administrative leave provisions in *E.O. 1458* are still in effect. Still, *H.R. 6201* provides employees who are unable to work or telework with a period of paid leave for possible additional qualifying-reasons. Beginning, Wednesday, April 1, 2020, employees unable to work or telework due to a qualifying-reason not previously enumerated in *E.O. 1458* are eligible for up to two weeks of fully or partially paid sick leave for specific COVID related reasons (see the attached Notice of Employee Rights). *Note, however, that there is an exception where employers who are health care providers or emergency responders may elect to exclude their employees from the public health emergency leave provisions of H.R. 6201.*

Employees eligible for administrative leave, according to *E.O. 1458* may continue in that status, without being required to use their leave entitlement under *H.R. 6201* for the same qualifying-reason. Under *H.R. 6201*, employees may use leave for qualifying purposes not provided for in *E.O. 1458*. An example is if an employee 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 (see reason #5 in the attached Department of Labor (DOL) Notice). If an employee is unable to work or telework due to this reason, he or she is eligible for up to two weeks of partially paid sick leave

(2/3 pay, up to \$200.00 daily and \$2,000.00 total). *E.O. 1458* does not authorize administrative leave for this particular circumstance, but *H.R. 6201* allows the employee to use up to two weeks of partially paid leave. **Please note**, all six qualifying-reasons for leave, according to *H.R. 6201*, are only available if the employee is unable to work or telework due to the noted reason(s).

H.R. 6201 also amended the Family and Medical Leave Act (FMLA), allowing an employee unable to work or telework due to qualifying-reason #5 up to ten (10) more weeks of partially paid leave. The employee's ten (10) additional weeks of leave is paid at 2/3 regular rate of pay up to \$200.00 daily.

Again, the administrative leave provisions authorized for appointing authorities in *E.O. 1458* are still in effect. Yet, additionally, *H.R. 6201* entitles an employee unable to work or telework up to 80 hours of fully or partially paid sick leave for the six qualifying-reasons stated in the attached DOL Notice. Beginning Wednesday, April 1, 2020, this leave is available for an employee to use for qualifying purposes not currently authorized in *E.O. 1458*. Up to ten (10) more weeks of partially paid leave (2/3 pay, up to \$200.00 daily and \$12,000.00 total) is also available for employees unable to work or telework due to qualifying-reason #5.

DOL Guidance

In the attached DOL guidance, numerous issues related to *H.R. 6201* are addressed, including:

1. Effective April 1, 2020, employees are immediately eligible for emergency paid leave. There is not a minimum amount of employment time for an employee to be eligible. However, to be eligible for ten (10) additional weeks of partially paid expanded FMLA, the employee must have been employed for at least 30 days before the leave request.
2. Employees unable to work or telework due to one of the six (6) qualifying-reasons in *H.R. 6201* are entitled to up to 80 hours of emergency paid sick leave, but the amount of pay depends on the reason for the leave. An employee receives 100% of his or her salary for qualifying-reasons #1-3, up to \$511.00 daily, and \$5,110.00 in total. Leave used for qualifying-reasons #4-6 entitle an employee to 2/3 regular rate of pay up to \$200.00 daily and \$2,000.00 total.
3. *H.R. 6201* does not permit an employee to take 80 hours of paid sick leave for a qualifying-reason and then use additional hours of paid sick leave for a different qualifying-reason. An employee is entitled to no more than 80 hours of paid sick leave for any combination of the six (6) qualifying-reasons.
4. If an employee is unable to work or telework because a school or place of care is closed or a child care provider is unavailable due to COVID-19 related reasons, they are eligible for expanded FMLA. However, the first two (2) weeks of expanded FMLA is unpaid. The remaining ten (10) weeks are paid at 2/3 regular rate of pay up to \$200.00 daily. During the first two (2) weeks of unpaid FMLA, the employee may use existing accrued paid leave to cover this period **OR** two (2) weeks of emergency paid sick leave for qualifying-reason #5. The employee would then have ten (10) additional weeks of expanded partially paid leave under FMLA.
5. An employee receiving 2/3 pay for a qualifying-reason #4-6 of paid sick leave or expanded leave under FMLA, may be permitted by an appointing authority to use enough preexisting paid

leave to receive his or her regular rate of pay. However, an employer cannot require an employee to supplement their *H.R. 6201* leave with preexisting paid leave. The employee would have to agree to use existing paid leave to supplement the amount received from partially paid sick leave or expanded FMLA.

6. An employer may permit an employee to use paid sick leave for one of the six (6) qualifying-reasons or expanded FMLA intermittently while teleworking. An employee working at his or her usual worksite cannot use paid sick leave intermittently for qualifying-reasons #1-4 and #6. An employee working at their usual worksite that begins using paid sick leave for one or more of these reasons must continue to take paid sick leave until either: a) the full 80 hours of paid sick leave has been exhausted or b) the qualifying-reason for taking paid sick leave no longer exists.

An employer may permit an employee who is working at their usual worksite to take paid sick leave for qualifying-reason #5 intermittently.

7. There is no distinction between essential employees, non-essential employees, and telework employees under *H.R. 6201*. If the employee establishes they are unable to work or telework for one of the six (6) qualifying-reasons, they are entitled to leave under *H.R. 6201* for either 80 hours emergency leave and/or an additional (ten) 10 weeks of partially paid leave under expanded FMLA.

8. An employee must provide documentation to an employer in support of a request for paid sick leave and expanded FMLA. For example, a notice of closure from a school or child care provider should be required to support a request for paid sick leave and expanded FMLA.

9. Independent contractors under the Fair Labor Standards Act are not eligible for paid sick leave or expanded FMLA. Contract workers are eligible for paid sick leave and expanded FMLA; however, the employer must have work for the contractor to do and the contract worker is prevented from being able to perform the work, either at the worksite or by teleworking, due to one of the six (6) qualifying-reasons in *H.R. 6201*. If a contract worker's assigned hours are reduced due to the employer not having work for the contract worker to do, paid sick leave or expanded FMLA is not available for the hours no longer scheduled to be worked.

Notice of Employee Rights

The attached Notice of Employee Rights, created by Wage and Hour Division of the U.S. Department of Labor, summarizes the leave protections for employees in *H.R. 6201*. Also attached is information from the DOL concerning an employer's obligations to post this Notice for employees, considering many of your employees are teleworking. The Notice must be posted in a conspicuous place on your premises, and an employer may satisfy this requirement by e-mailing or direct mailing the Notice to employees. The DOL advises that an employer may also post the Notice on an employee information internal or external website.

Conclusion

We know that this information can appear overwhelming. Our office will continue to be available for questions as agencies implement these guidelines. We will also update agencies concerning

any revisions to the leave provisions in *E.O. 1458*. Lastly, we will update agencies with any additional guidance from the DOL concerning *H.R. 6201*.

From: Kelly Hardwick <Kelly.Hardwick@mspb.ms.gov>
Sent: Friday, April 3, 2020 10:08 AM
To: Brittany Frederick <Brittany.Frederick@mspb.ms.gov>
Cc: Joe Goff <Joe.Goff@mspb.ms.gov>; Richard Davis <Richard.Davis@mspb.ms.gov>; Ryan Beard <Ryan.Beard@mspb.ms.gov>; Heather Deaton <Heather.Deaton@mspb.ms.gov>
Subject: DOL Guidance on FFCRA

Fellow H.R. Professionals:

Attached, find temporary regulations promulgated by the Secretary of Labor regarding the implementation of public health emergency leave under Title I of the Family and Medical Leave Act (FMLA), and emergency paid sick leave to assist working families facing public health emergencies arising out of Coronavirus Disease 2019 (COVID-19) global pandemic. **Please review these temporary regulations in the implementation of the Families First Coronavirus Response Act (FFCRA).**

This publication contains both explanations and examples of situations related to the implementation of FFCRA. Additionally, it includes the language of FFCRA, *Public Law 116-127, 29 CFR Part 826*. In this document, you will find useful information on many aspects of the FFCRA. Examples include definitions, documentation of the need for leave, intermittent leave, and prohibited acts.

Because of this guidance, we believe that this document will provide you answers to a significant number of questions related to FFCRA. Of note, the only discrepancy we have found that changes the original implications of any section relates to § 826.23. This current interpretation seems to replace the initial position that an employer may not require the use of personal leave if the qualifying reason for taking expanded family and medical leave is for school/daycare closings. This regulation clarifies that:

*Because the FFCRA amends the FMLA, and in particular references Section 102(d)(2)(B) of the FMLA, § 826.23 explains that an employee may elect to use, or **an employer may require an employee to use** [emphasis added], accrued leave that under the employer's policies would be available to the employee to care for a child, such as vacation or personal leave or paid time off concurrently with the expanded family and medical leave under the EFMLEA. See pp 25-26, and 95-96.*

As we've advised before, currently, *E.O. 1458* (and our guide to that) is still in effect and most applicable to your situations. However, as time passes during the current SIP, more employees may need to avail themselves to the FFCRA should their status (essential, telework, non-essential) change under *E.O. 1458*. Lastly, we believe you will find benefit by checking out the [Department of Labor on COVID 19](#) for fluid information related to the FFCRA.

From: Kelly Hardwick <Kelly.Hardwick@mspb.ms.gov>
Sent: Monday, April 6, 2020 2:26 PM
To: Brittany Frederick <Brittany.Frederick@mspb.ms.gov>
Cc: Joe Goff <Joe.Goff@mspb.ms.gov>; Heather Deaton <Heather.Deaton@mspb.ms.gov>; Richard Davis <Richard.Davis@mspb.ms.gov>; Ryan Beard <Ryan.Beard@mspb.ms.gov>
Subject: HR 6201 Update

Fellow H.R. Professionals:

I am writing to give a quick update on *HR 6201* guidelines from the Department of Labor. On Friday, the DOL updated their [Families First Coronavirus Response Act: Questions and Answers](#).

This document link is an update on the Q & A's sent last Monday. Three things stand out. First, there are twenty additional questions and answers. Second, the responses to Q & A's 31-33 dealing with pre-existing leave usage requirements are updated to reflect what we advised on Friday. Third, Q & A's 56-57 tweak language definitions for "health care provider" and "emergency responder;" add "child welfare workers and service providers" to the emergency responder definition and indicate an exemption for those who contract with any of the health care providers.

As a reminder, this document provides clarification and insight on many topics, especially the issues surrounding health care providers and emergency responders. I again encourage you to review this document for a better understanding of the implications of *HR 6201*. Lastly, one other issue that seems to crop up most often is the fluid employee status related to *E.O. 1458*. Please regularly make assessments related to employees' job status of essential, teleworking, or administrative status.

From: MSPB Communications <MSPB.Communications@mspb.ms.gov>

Sent: Tuesday, April 28, 2020 9:38 AM

Subject: Safer-At-Home Guidance

Executive Order 1477 is in effect until 8:00 a.m., Monday, May 11, 2020, unless rescinded, modified, or extended. During this period, state employers are encouraged to continue utilizing, to the maximum extent possible, work from home or other telework procedures. The MSPB also encourages state employers during this “Safer at Home” period to develop plans for previously identified “non-essential duties employees” to begin returning to the workplace.

The essential duties of many state employees have required them to continue to report to the workplace during this state of emergency. As these employees are re-joined by staff members previously on administrative leave or telework status, employers must take reasonable measures to ensure compliance with Mississippi State Department of Health and Centers for Disease Control guidelines to prevent the spread of COVID-19. As referenced in *E.O. 1477*, these include, but are not limited to, social distancing, sending sick employees’ home, and actively encouraging sick employees to stay home. State employers should also adopt and enforce regular and proper hand-washing and personal hygiene protocols. Hand sanitizers should be made readily available for employees. Common areas where employees or visitors are likely to congregate and interact should be closed or enforce strict social distancing protocol (maintaining a minimum of 6 feet distance between individuals and no gathering in groups of more than ten people). Employers should proactively encourage any employee with respiratory illness symptoms to not be in the workplace and minimize person to person interaction to the maximum extent possible.

As employees re-enter, by your direction, the workplace after the “Safer at Home” period, please be reminded of the leave provisions provided for eligible employees with certain qualifying conditions in *H.R. 6201*, the Families First Coronavirus Response Act (FFCRA). Our office will continue to be available to assist agencies with these issues, and further guidance will be issued when we approach the end of the “Safer at Home” period.

Sent: Friday, May 15, 2020 9:21 AM

To: Kelly Hardwick <Kelly.Hardwick@mspb.ms.gov>

Cc: Joe Goff <Joe.Goff@mspb.ms.gov>; Ryan Beard <Ryan.Beard@mspb.ms.gov>; Brittany Frederick <Brittany.Frederick@mspb.ms.gov>; Richard Davis <Richard.Davis@mspb.ms.gov>

Subject: Return to Work for State Employees

Governor Reeves recently signed [Executive Order 1484](#), which directs state agencies, boards, and commissions to begin the process of returning employees to the workplace. MSPB has compiled resources to help you during this transition:

- The Families First Coronavirus Response Act provides eligible employees who are unable to work or telework due to certain qualifying reasons related to COVID-19 with a period of paid leave. MSPB offers more guidance regarding the FFCRA [on our website](#).
- Additionally, MSPB has compiled policies to consider when developing your agency's returning-to-work guidance for employees. You may view this guidance [on our website](#).

From: MSPB Communications

Sent: Thursday, June 11, 2020 3:45 PM

Subject: Executive Order 1495

As you may be aware, Governor Reeves issued *Executive Order 1495*, which rescinded Paragraph 4 of *Executive Order 1458*. Paragraph 4 of *Executive Order 1458* dealt with the four instances, explicitly triggering administrative leave for state agencies during the state of emergency related to COVID-19.

Additionally, *Executive Order 1495* established that all state agencies should resume normal business operations by July 1, 2020.

To help facilitate this final transition to normal business operations, we ask that you review the policies and procedures implemented by the MSPB located at www.mspb.ms.gov. We have also posted “Returning to Work Guidance” to assist in facilitating a better understanding of *H.R. 6201*, the Families First Coronavirus Response Act, which deals with federal leave related to COVID-19.

Of note, your business operations may have undergone transformations that are still applicable, such as telework, social distancing, etc. We strongly encourage you to consult the Mississippi Department of Health and the CDC for guidance related to these issues, also.

As we move closer to July 1, we will be providing more guidance and templates to assist, but in the meanwhile do not hesitate to reach out to us with any questions.

From: Kelly Hardwick <Kelly.Hardwick@mspb.ms.gov>

Sent: Tuesday, August 4, 2020 4:29 PM

To: Brittany Frederick <Brittany.Frederick@mspb.ms.gov>

Cc: Joe Goff <Joe.Goff@mspb.ms.gov>; Ryan Beard <Ryan.Beard@mspb.ms.gov>; Richard Davis <Richard.Davis@mspb.ms.gov>; Jan Sims <Jan.Sims@mspb.ms.gov>

Subject: MSPB Back-to-School guidance

As part of our ongoing efforts to provide personnel guidance, MSPB has prepared a list of Frequently Asked Questions regarding childcare and returning to school under the Families First Coronavirus Response Act (FFCRA). A copy of the document is attached to this email. [You may read the FAQs on the MSPB website at this link.](#)

Please be mindful that the Department of Labor (DOL) guidance may evolve related to the FFCRA. You may view the DOL's FFCRA: Questions and Answers [here](#).

Lastly, as a reminder, all of the [MSPB Return-to-Work Guidance](#) is compiled on our website.

From: MSPB Communications
Sent: Friday, September 18, 2020 8:17 AM
To: Kelly Hardwick
Cc: Henry Williams; Richard Davis; Heather Deaton; Ryan Beard
Subject: FFCRA Guidance

In March, Congress passed the Families First Coronavirus Response Act granting specific paid leave for workers affected in various ways by COVID-19. On April 6, 2020, the U.S. Department of Labor promulgated a temporary rule construing the FFCRA. On August 3, 2020, a federal court in New York held that some parts of DOL's temporary rule were illegal under the Administrative Procedures Act. In response to the court ruling, on September 11, 2020, DOL gave notice of revisions to the temporary rule to be in effect beginning on **September 16, 2020**.

As a reminder, the FFCRA is a **time-limited** statutory leave provision that will expire on December 31, 2020 (unless Congress extends it). It contains the Emergency Family and Medical Leave Act, and the Emergency Paid Sick Leave Act. Both of those laws provided paid leave to most public employees if they meet specific criteria. Since its inception, MSPB has guided agencies on the FFCRA. You can find more particular references [here](#).

In short, the revisions did the following:

- Reaffirmed that employees may take FFCRA Leave only when work is actually available to them;
- Reaffirmed that employees must have employer approval before taking intermittent leave under the FFCRA;
- Substantially narrowed the definition of what constitutes a "healthcare provider" to "only employees who meet the definition of that term under the Family and Medical Leave Act regulations or who are employed to provide diagnostic services, preventative services, treatment services or other services **that are integrated with and necessary to the provision of patient care**, which, if not provided, would adversely impact patient care."
- Clarified the portions related to the documentation that employees must provide employers; and
- Corrected an inconsistency in the previous version of the temporary rule when employees may be required to provide notice of their need to take expanded family and medical leave.

For agencies relying upon the "healthcare provider" exemption from FFCRA, pay very close attention to the new definition. Remember that certain "healthcare providers" are not entitled to take FFCRA Leave. Previously, the definition of a "healthcare provider" was broad enough to encompass anyone who worked for an organization that provided health care services. The New York court criticized the breadth of that interpretation, and DOL responded by drastically narrowing the definition. Under the revisions, doctors, nurses, nurse assistants, medical technicians, and others that "directly provide" health care services and fall within the exemption. Health care workers who provide diagnostic, preventative or treatment services, or services integrated with and necessary to the provision of patient care also fall within the exemption, but not necessarily those employees supporting them. Administrative staff such as "IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers" do not provide health services and therefore are not health care providers, even if they work for a "health care" employer.

If any of your agency's policies related to FFCRA Leave might be potentially affected by any of these revisions, please carefully study the new temporary rule and DOL's updated frequently asked questions. You can find the temporary rule [here](#) and DOL's FAQs [here](#).

KELLY HARDWICK
EXECUTIVE DIRECTOR

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From: Kelly Hardwick
Sent: Wednesday, December 30, 2020 10:38 AM
To: Kelly Hardwick
Cc: Brittany Frederick; Richard Davis; Heather Deaton; Ryan Beard; Henry Williams; Jan Sims
Subject: FFCRA update

Fellow Agency Heads:

I hope this finds everyone well and looking forward to 2021. I'm writing to remind you and your agency that *H.R. 6201*, the Families First Coronavirus Response Act (FFCRA), that went into effect on April 1, 2020, will most likely expire December 31, 2020. **Beginning January 1, 2021**, your agency will revert to the **pre-COVID-19** applicable leave available to state employees.

However, please note that the following will still be effective for the duration of the gubernatorial executive order proclaiming a pandemic:

1. Suspension of the statutory requirement of the use of accrued personal or compensatory leave for an employee's illness requiring an absence of one day or less,
2. Suspension of the statutory requirement of the use of accrued personal or compensatory leave for the first day of an employee's illness requiring his or her absence of more than one day, and
3. Suspension of the statutory requirement that an employee provides certification from an attending physician for Major Medical Leave for each absence of thirty-two (32) consecutive working hours.

Additionally, you can find all of the MSPB [returning-to-work-guidance-for-state-agencies](#) at the link.

Take care, and Happy New Year!

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Brittany Frederick

From: MSPB Communications <MSPB.Communications@mspb.ms.gov>
Sent: Wednesday, May 5, 2021 8:22 AM
Subject: Rescinding Leave Directive

On March 14, 2020, Governor Tate Reeves declared a State of Emergency based upon the SARS-COV-2 (COVID 19) coronavirus spread. As a result of that State of Emergency, I, as State Personnel Director, utilized the authority granted under it to waive specific statutory requirements related to leave. Those included the following:

1. *The statutory requirement that accrued personal or compensatory leave must be used for an employee's illness requiring an absence of one day or less was temporarily suspended.*
2. *The statutory requirement that accrued personal or compensatory leave must be used for the first day of an employee's illness requiring his or her absence of more than one day was temporarily suspended.*
3. *The statutory requirement that in the event an employee has no accrued personal or compensatory leave, the first day of sick leave must be taken as Leave Without Pay was temporarily suspended.*
4. *The suspension of these requirements also applied to an employee's absence related to an illness in the employee's "immediate family" (defined in Section 3.2 of the State Employee Handbook).*
5. *The statutory requirement that an employee provides certification from an attending physician for Major Medical Leave for each absence of thirty-two (32) consecutive working hours was temporarily suspended.*

Because of the introduction of vaccines and various other mitigating factors, the spread of the virus has decreased. Therefore, I am rescinding those provisions from March 16, 2020. Beginning June 1, 2021, all leave taken by state employees should conform to the statutory requirements found in Miss. Code Ann. §§ 25-3-91, et seq. and in the State Employee Handbook. Please note that this rescission does not have anything to do with an agency's telework policies. It only concerns personal leave, administrative leave, major medical leave, and compensatory time.

In addition, beginning June 1, 2021, any agency head or appointing authority who grants an employee administrative leave should submit to MSPB at mspb.communications@mspb.ms.gov the amount of leave given, the number of employees receiving administrative leave, and the reason for granting administrative leave. Note, this information is for statistical purposes only.

If you have any questions, please feel free to contact us.

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