

National Guard Civilian Employee (T5 & T32 Dual Status) Procedural Guidance for Family First Corona Virus Response Act (FFCRA) Paid Leave

This procedural guidance is for employees and their supervisors for determining eligibility with other information regarding to FFCRA.

There are two types of paid leave available for NG employees;

Paid Sick Leave- Provides up to 2 weeks (up to 80 hours) of emergency paid sick leave to all Federal civil service employees in specified circumstances related to COVID-19—unless they are in an exempted category

Emergency Family and Medical Sick Leave. Employees who are covered under Title I of the FMLA are also eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for specific reasons

Background Information: ALL NG Employees (T5 and T32 Dual Status) 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 assist 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.

Emergency Family and Medical Leave Eligibility Chart	Yes	No
Has the 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)? (not including Temp Promotions, or Temp Reassignments)	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 (Table 2, Reason 5). 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. NJNG employees who incur a debt will be ineligible to submit a debt waiver for this overpayment. (Additional Guidance is pending from DFAS). 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.

Reason Code Definitions, Pay Rates, and Time Codes	
1	Reason: is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; Pay Rate: 100% pay rate up to \$511 daily and \$5,110 total; Time Code: LV and reason code DX
2	Reason: has been advised by a health care provider to self-quarantine related to COVID-19; Pay Rate 100% pay rate up to \$511 daily and \$5,110 total; Time Code: LV and reason code DX
3	Reason: is experiencing COVID-19 symptoms and is seeking a medical diagnosis; Pay Rate: 100% pay rate up to \$511 daily and \$5,110 total; Time Code: is LV and reason code DX
4	Reason: is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); Pay Rate: 2/3 of pay rate up to \$200 daily and \$2,000 total; Time Code: LV and reason code DY
5	Reason: 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; Pay Rate: 2/3 of pay rate up to \$200 daily and \$2,000 total for (Sick leave) or \$12,000 (Emergency Family Medical Leave); Time Code: EFML- LV and reason code DZ; Sick Leave- LV and reason code DY
6	Reason: 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; Pay Rate: 2/3 of pay rate up to \$200 daily and \$2,000 total; Time Code is LV and reason code DY

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

DFAS has not released the update to ATAAPS in regards to the above reasoning codes. Until DFAS provides guidance resulting in FFCRA use, please utilize the temporary Time Code: LV, In the remarks section Type in FFCR and reason code #). A corrective action will be completed when DFAS release guidance.

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. 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

Employee Request/ Understanding for Leave

Employee complete forms and submits through their Supervisor to proper approving Official

DD MMM YYYY

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

SUBJECT: Request and Statement of Understanding for Family First Coronavirus Response Act (FFCRA)

Complete the applicable fields;

Full Name _____ Date(s) for Leave Request _____

COVID-19 qualifying reason code: _____

Please input a statement representing you are unable to work or telework because of the covid-19 qualifying reason _____

Name of Health Care Provider if ordered to quarantine _____

Also complete if Leave is for care of a child

Ages of children that require care _____

Please Initial If True or not applicable;

I concur that no other suitable person is available to care for my child during the period of requested leave _____

I concur that if my child is over 14 and I need to stay at home to care for my child under “special circumstances” under 26 CFR 570.2 _____

I have read and understand my maximum daily rate of pay allowed under FFCRA based on my reason for the use of leave _____

I also understand that if it is determined (by DFAS) 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 _____

I have voluntarily elected to use this leave knowing that a debt may be created by DFAS _____

(Signature)
(Signature Block)

Facts Regarding FFCRA

Son or daughter” over 14 and under 18 years.

The FFCRA adopted the FMLA definition of “son or daughter” which includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*. It also includes children either under 18 years of age or 18 years of age or older who are incapable of self-care because of a mental or physical disability.

As for children over 14, prior to the regulations, the IRS had issued guidance stating that an employee requesting leave to care for a child over the age of 14 for a school/place of care closure must certify that “special circumstances” exist requiring care of the child. The regulations failed to mention the “special circumstances” limitation for children over 14; however, the “Recordkeeping” section (§ 826.140) instructs employers to comply with the IRS FAQ document, which contains the “special circumstances” requirement, in order to claim the tax credit.

No other caretaker available.

When seeking leave to care for a child, employees must certify that no other “suitable” caretaker is available, such as a co-parent, co-guardian or the usual childcare provider.

12-week limitation.

No employee is entitled to more than 12 weeks of leave in a FMLA year. Thus, an employee who has already taken some FMLA leave in the current 12-month period will have their eligible extended family and medical leave reduced by that amount. If an employee has exhausted their 12 weeks of leave, they are still eligible for paid sick leave for a qualifying reason. Section 826.60, 29 CFR 825.200(b)

FFCRA is Beneficial for an employee when.

Employee is telework eligible and must telework, not eligible for W&S, needs to care for family member in quarantine or children whose daycare has closed

FFCRA, EFML is Beneficial for an employee when.

Temp employee is telework eligible and must telework, not eligible for W&S, needs to car for child because daycare/school is closed