

Informal Guidance:
State Board of Education State of Emergency COVID-19 Sick Leave Policy

Issued: 4/6/2020

General Questions

(1) How was the new State of Emergency COVID-19 Sick Leave policy (“State of Emergency Leave”) developed?

The State Board of Education (SBE) adopted the new State of Emergency Leave policy to support public health objectives. It is based upon the State of Emergency Leave provided to North Carolina state employees through the Office of State Human Resources.

(2) Which entities are eligible for State of Emergency Leave?

The SBE State of Emergency Leave policy applies to local education agencies (LEAs), the Innovative School District, and the regional school. Charter schools may elect to adopt the State Board policy. Employees of laboratory schools are employees of the University of North Carolina system; consequently, this policy does not apply to those employees.

(3) Is there State funding for State of Emergency leave?

When an employee takes State of Emergency Leave, LEAs should code the pay for the employee’s leave from the same source of funding budgeted for the employee’s regular pay.

***Example:** TA is locally funded, then his/her leave pay must be coded to “local.” This is the case for federally funded positions, too.*

Note: There are no additional state funds for the new state leave; however, with the exception of receipt supported positions, the funding is already budgeted for and this should not be an additional cost to the local budgets.

(4) What funding source will be used for this leave? For example, grant funded positions, will the grants be responsible for paying this leave?

LEAs should follow guidance contained in this document and communicate as needed with their attorneys and with applicable grant organizations for guidance on using funds for State of Emergency Leave in special circumstances.

(5) We previously received communication that a “shelter in place” order does not qualify for emergency paid sick leave. Does the same apply to a “stay at home” order?

The State of Emergency Leave policy is in effect regardless of any “shelter in place” or “stay at home” order. Employers have the right to determine mandatory employees even under these orders. Please consult with your school attorney if you have specific legal questions about the operation of any Executive Orders and local orders that respond to the pandemic.

(6) How are we to pay the school nutrition and other receipt support positions?

Presently, LEAs may utilize existing receipts from the appropriate fund or use PRC154.

(7) Are all of the State of Emergency Leave benefits subject to retirement? If not, which leaves are, and which are not?

Yes, the State of Emergency leave benefit is subject to retirement, if the position is eligible for the retirement.

(8) The State of Emergency Leave policy refers to “hours.” May an LEA convert the benefit to days if it does not operate in hours for leave?

Yes. LEAs should convert the leave hours to days to accommodate full-time hours less than 8 for positions permitted under State Board of Education policy (e.g., teachers and teacher assistants.).

(9) Do employees have to exhaust all leave balances (i.e. comp time, sick, annual) before the State of Emergency Leave can be used?

No. The State of Emergency Leave policy may be used before other accrued leave.

(10) During spring break, do we still post the built-in annual leave for our employees in lieu of this leave? What about temporary employees that do not earn leave, they wouldn’t have been eligible for any leave during this week?

Employees are only permitted to use this State of Emergency Leave on days that are workdays. Therefore, if the LEA has built in annual leave days for spring break, the employee may **NOT** use the State of Emergency Leave. If an employee does not have sufficient accrued leave for the built in annual leave days, the employee will be leave without pay.

(11) Our spring break includes five built-in annual leave days and is scheduled for April 13-17. Section 3.1.3 (a) of the SBE Benefits Manual states 10 days of annual leave must be

scheduled in the calendar and taken by 10-month employees. Do we continue to follow this rule, regardless of the State of Emergency leave and the FFCRA?

Yes. These days continue to be annual leave days.

Telework

(12) Are employees who have signed a telework agreement ineligible for this leave?

All eligible employees have access to this leave, regardless of the ability to telework. If the employee can telework, then he/she is not eligible to use the State of Emergency Leave unless another factor outlined in the policy applies (e.g., caring for a dependent or is sick with COVID-19).

(13) Can employees now rescind their telework agreements and become eligible for this state emergency leave?

No, the State Board of Education State of Emergency Leave policy does not confer this right to employees. Telework agreements are governed by the employing LEA. As discussed elsewhere in this section, in some cases an employee who is assigned to telework may be eligible for State of Emergency Leave.

(14) Are there State guidelines that defines “unable to telework”?

No. As with other employee-specific decisions concerning work assignments, the LEA is responsible for determining the status of their employee’s ability to telework.

(15) Are employees who have telework options but report they are unable to do so due to childcare or eldercare needs eligible for State of Emergency Leave?

Yes, if childcare or eldercare prevents the employee from productively teleworking and there is no other suitable person in the home to provide such care, then the employee may utilize the leave consistent with provisions of the SBE policy and any local policy or procedure in place to implement the SBE policy.

(16) How do we make this equitable to those employees who are working? Some employees will be paid leave for the month without working and some are having to work for the same pay?

The intent of the leave is to provide pay to employees who do not have the opportunity to work or are unable to work due to COVID-19 related circumstances. LEAs are encouraged to rotate employees between teleworking and leave status when the work hours have been reduced. As with the emergency leave conferred by the State, the UNC System, and the community colleges, the primary goal of the SBE policy is to advance public health objectives by slowing the spread of COVID-19.

(17) What documentation is necessary for reimbursement to the district? We are currently using our regular leave form and writing COVID-19 as the comment. Should we have something different?

DPI will receive all hours coded to the different absence codes related to COVID-19. DPI does not require any additional documentation. In addition, School Business at DPI is working with the financial system vendors to ensure that the Department receives reporting on the associated costs.

(18) Many of our School Nutrition employees are currently working to prepare grab-and-go meals. Others have been helping custodians for the last two weeks but eventually we will run out of tasks for them. Under the new policy, it looks like all School Nutrition employees will get paid, but some will be working to prepare meals and others will be at home. I understand there is an option for teachers/teacher assistants who provide child care at schools to receive a bonus. Is this an option for School Nutrition employees if/when others are being paid and staying at home?

At this time, the State is not providing any additional pay to employees who are working as opposed to on leave. LEAs may use local funds or the PRC154-COVID-19 Supplemental funds to modify hourly rates. Under the leave policy an employee is paid for hours worked and is eligible for State of Emergency leave at full rate of pay for remaining daily hours where they have not been assigned remote duties.

Unemployment – also refer to [FBS website](#) for unemployment information

(19) If we offer the employee work, I assume they cannot file for unemployment or if they do we will respond as such and they will likely be disqualified.

Where work is available, the employer should respond to the claim, under Employer’s Reason for Separation, “Still Employed – Full Time” or “Still Employed – Part Time,” if there is no reduction to hours. Where work is available and the employee refuses to work, then unemployment benefits should not be awarded.

(20) I have unemployment claims due as early as 3/30/20, for employees who did not work. Should I report the reason for separation as “still employed” now that they are eligible for benefits under this Policy?

When the employer is accommodating the paid State of Emergency Leave options, no unemployment benefits should be awarded. Employees may file for unemployment, but employer should respond under Employer’s Reason for Separation, “Leave of Absence.” Add to the remarks section that the employee was granted paid State of Emergency Leave under COVID-19.

(21) If any staff apply for unemployment, how is their insurance accounted for during this time? How is it funded?

Under these circumstances, an LEA has TWO options under the State Health Plan, which are outlined online ([SHP Option Sheet](#)). Employers choosing “Option 1” identified by the SHP will need to decide how the premium is paid.

(22) Will staff members be required to use the state provided 168 hours of State of Emergency Leave or the FFCRA leave before they are eligible for unemployment?

If an employee is eligible to take FFCRA leave, the employee is likely not eligible for unemployment because work is available. FFCRA leave is only available where there is work or telework that the employee has been assigned, but the employee is unable to complete work or telework for an eligible FFCRA reason. If an employee takes State of Emergency Leave because of reduced or eliminated work assignments, they are not eligible for unemployment because they are receiving paid leave. If an employee is eligible for State of Emergency Leave but files for unemployment, the employer should respond under Employer’s Reason for Separation, “Leave of Absence.” Add to the remarks section, employee is eligible for paid State of Emergency Leave under COVID-19. If the employee is currently on paid leave, note the paid leave status the employee is using.

(23) If our hourly employees qualify for and receive unemployment benefits, how does this affect their health care coverage and status?

Refer to the State Health Plan [information](#).

Note: Please see [Filing Unemployment Procedures Document](#) for more information.

Employee Eligibility

(24) Do employees need to be employed more than 30 days with our district to be eligible as needed for FFCRA? For the state benefits?

For FFCRA, please refer to the Department of Labor site at: [DOL FFCRA](#).

Under the State of Emergency Leave policy, the employee does not have a waiting period.

(25) Who exactly are temporary employees?

As used in these policies “temporary employee” means a person who is either:

- a) Employed to fill a **vacancy** working less than 20 hours per week, or
- b) Employed to fill a **vacancy** for less than six full consecutive months of employment.

Temporary employees:

- May be classified as full-time or part-time;
- are not eligible to earn paid leave and do not participate in the retirement system;
- do not receive nor can purchase health benefits through the State Health Plan;
- may not use leave earned during any previous employment.

For the purposes of this policy, employees who are employed to “fill in” for a limited time for another who is out on approved paid leave are deemed “substitutes” and **NOT** eligible for Emergency Leave.

(26) Are non-mandatory employees who have been reassigned other work assignments and refuse those assignments eligible for SBE State of Emergency Leave?

Non-mandatory employees who were on other pre-approved leave, choose not to work, or are unavailable for reasons other than provided for in this State of Emergency Leave provision must use available and applicable leave types, such as vacation/annual leave, bonus leave, or compensatory time.

(27) Is the State of Emergency Leave applicable only to employees in a full or partial benefit status?

No, employees who are not eligible for benefits are eligible for a pro-rata the State of Emergency Leave benefit.

(28) Should we use this leave to get all permanent PT & FT to their standard hours for this time frame whether they chose to use leave or not? For example, can employees who did not receive their total standard hours of work access the State of Emergency Leave?

Non-mandatory employees (including temporary and permanent employees, as well as employees who report to work for reduced hours) who are unable to telework and who have not been authorized by their supervisor to continue to report to work will receive paid State of Emergency Leave up to the maximum hours allowed if they (i) cannot telework because their position duties cannot be performed remotely and (ii) reasonable alternate remote work is not feasible or productive, as determined by the employer. Mandatory employees who have a reduced on-site schedule, may at the discretion of the employer take paid State of Emergency Leave for the balance of hours where they have not been assigned on-site or remote duties.

Emergency Leave may be used to bring an employee, who is working reduced hours, to the employee's usual full day's pay. The combination of work and leave, however, may not exceed the employee's regular schedule or 40 hours per week, whichever is less.

(29) Are retire/rehires eligible for the State of Emergency Leave if they have qualifying circumstances (since they are not allowed to earn or use leave)?

Reemployed retirees, who are not working as a substitute, are eligible for State of Emergency Leave. The earnings cap applies to all earnings, including the leave pay.

(30) Is it permissible to grant emergency leave to employees currently on a leave of absence in lieu of charging them leave they have already earned (if they have conditions that qualify pursuant to the new policy)?

Non-mandatory employees who were on other pre-approved leave, choose not to work, or are unavailable for reasons other than provided for in this State of Emergency Leave provision must use available and applicable leave types, such as vacation/annual leave, paid parental leave, bonus leave, or compensatory time.

(31) Employees who are stranded on personal travel in an affected location and do not have adequate leave to cover this absence: Can they request paid sick leave under FFCCRA or SBE?

The employee would continue to use whatever leave was authorized for the duration of their time of personal travel. After that time, the employer should assign teleworking opportunity if feasible or productive. If no such work is available, the employee would qualify for State of Emergency Leave. If the employee is a mandatory employee or a non-mandatory employee who refuses telework, leave would likely not be available unless one of the other bases applies.

(32) Does the policy allow our school nutrition workers and bus drivers who are currently working food service to stop and still be paid?

Employers have the authority to designate any employee as mandatory when he or she is needed to provide support to operations at an agency worksite.

Any mandatory employee must work as directed by their supervisor, or may use emergency leave only under the following, as outlined by the policy:

- the employee is high risk;
- are sick due to symptoms consistent with COVID-19;
- are caring for a dependent with such symptoms;
- a health care provider has advised the employee to self-quarantine due to concerns related to COVID-19; or

- is unable to report to work because of childcare or eldercare needs because of COVID-19 facility closures and no other suitable person is available in the home to provide such care.

(33) How does this affect teachers that are doing remote learning?

Generally, teachers are considered like other teleworking employees. LEAs are encouraged to consider and provide remote work opportunities for teachers. As stated above, employees (including teachers) do not have the right to rescind teleworking agreements or reject a temporary reassignment of duties that would allow teleworking. However, if a teacher is unable to telework because of one of the qualifying emergency reasons, they are eligible to take leave.

(34) The policy states that substitutes are not eligible. Does this include long-term substitutes who have been working in an extended capacity for a classroom and the plan would be for them to return when we return to work?

If the substitute employee is a person employed to fill in for a permanent employee who is using paid leave, they are not eligible. If the long-term substitute is employed to fill a vacancy (i.e., a temporary employee) or is an interim employee as defined by the Benefits Manual, then he/she would qualify for the Emergency Leave.

Mandatory and Non-mandatory Employees

(35) Section A.1.a. Mandatory Employees--Employers have the authority to designate any employee as mandatory when he/she is needed to provide support to mandatory operations at an agency worksite. What is defined as mandatory operations? Meal delivery? When is the risk too great for continued frontline efforts for our employees?

The employer or supervisor determines how an employee is designated and may change the employee's designation:

- Mandatory employees are directed by their supervisor to work at a site other than home at specified dates/times. Mandatory employees are generally those whose work is essential to the functioning of the LEA *and* must be performed on a work site identified by a supervisor (as opposed to teleworking). Because of the nature of their responsibilities, school nutrition workers and bus drivers will likely be designated as mandatory employees.
- Non-mandatory employees are all other employees who have not been assigned to report to a site. They are expected to work from home and have been assigned duties to complete via telework.

Employers should offer teleworking (i.e., non-mandatory status) whenever possible.

Employers should encourage high-risk, mandatory employees to take State of Emergency Leave. The designation of employees as mandatory or non-mandatory should be determined by the individual context of each LEA. Note that LEAs have the authority and discretion to reclassify employees as “mandatory” or “non-mandatory” as circumstances evolve and the employers’ needs change.

High Risk

(36) May districts request a medical note for “high-risk employees” or it is an automatic based on the information the employee provides to apply Section A2?

If an employee has requested leave because of “high risk” status, LEAs may request medical documentation (reference FMLA guidelines in Section 8.2.16 of the NC public school Benefits Manual) only if needed to substantiate the employee’s high risk status.

See below for additional guidance on determining “high-risk” employees:

[FAQ about COVID-19](#)

Older adults and people who have severe chronic medical conditions like heart, lung or kidney disease and those with weakened immune systems seem to be at higher risk for more serious COVID-19 illness if they become infected with the virus. [Learn more](#) about who may be at higher risk for severe illness.

[People at Higher Risk for Severe Illness](#)

Early data suggest older people are twice as likely to have serious COVID-19 illness. On March 22, the Centers for Disease Control and Prevention (CDC) updated information about those who are at high risk for severe illness from COVID-19.

People at **high risk** include anyone who:

- Is 65 years of age or older
- Lives in a nursing home or long-term care facility
- Have a high-risk condition that includes:
 - ❖ chronic lung disease or moderate to severe asthma
 - ❖ heart disease with complications
 - ❖ compromised immune system
 - ❖ severe obesity - body mass index (BMI) of 40 or higher
 - ❖ other underlying medical conditions, particularly if not well controlled, such as diabetes, renal failure or liver disease

Pregnant women should be monitored closely since they are known to be at risk for severe viral illness. However, data so far on COVID-19 has not shown increased risk for severe COVID-19

illness. While children are generally at lower risk for severe infection, some studies indicate a higher risk among infants. [Learn more](#) from the CDC.

Additionally, the CDC has more information about [at-risk individuals](#), including [older adults](#), [people with asthma](#), and [people with HIV](#).

Please continue to monitor guidance from CDC and NCDHSS for the most current information regarding this topic.

(37) Are Child Nutrition and Bus Drivers who are 65 years or older and are currently working with food services automatically eligible for the State of Emergency Leave if they choose to no longer work? A memo was sent to CN Directors Friday urging “high risk” to stay home. In this policy, “high risk” employees are those who are over 65 and have underlying health conditions.

LEAs should consider the health and safety of high-risk employees and take all efforts to reduce the risk to all on-site employees by implementing social distancing and other safety and sanitation protocols to the greatest extent possible. If a mandatory employee who is “high risk” requests leave, then the employee is eligible for State of Emergency Leave.

(38) Are districts required to put “high risk” employees on this leave, or can the high-risk employees still choose to work?

If feasible and productive, high-risk employees should be offered telework opportunities. If the employee is mandatory, the employer should inform the employee of the leave options. Ultimately, if a mandatory employee is high risk, it is the employee’s decision regarding whether to work or take eligible leave. Non-mandatory high-risk employees should continue to telework unless another eligible leave basis applies.

(39) If the Americans with Disabilities Act protects the identity and medical information of people with communicable disease, can a LEA require documentation from the Certification of Health Care Provider for Family Member’s Serious Health Condition (FMLA) form?

The employer may require the employee to provide the identifying reason why he or she is seeking leave. If the employee is seeking leave because they have been advised by a medical provider or governmental entity to self-quarantine, the employer may ask for the name of the medical provider or governmental entity who issued the order. If the employee seeks extended leave because of the employee’s own or a family member’s “serious medical condition” under the FMLA, refer to the Section 8.2.16 of the [NC Public Schools Benefits and Employment Manual](#) for guidance to employers on acceptable medical documentation. Any medical information received about an employee should be kept confidential. Consult with your attorney regarding specific ADA and FMLA questions.

Dependents

(40) Under this State policy, are we to stick to the definition of a “dependent” as defined by the State Benefits Manual?

Yes, LEAs must use the same definition as defined in Section 1.1.12 of the North Carolina Public Schools Benefits and Employment Policy Manual.

(41) Can we define the age of a child that is being cared for? We have some information stating 18 years of age or younger, but in another instance, we heard 5th grade or younger.

Under present guidance, the State of Emergency Leave does not distinguish a dependent by age.

(42) Is it necessary to ask employees for documentation of childcare or eldercare needs due to COVID-19-related facility closings, or should we grant the leave upon request?

LEAs should have a procedure in place that is consistently applied to all employees. An LEA may ask for the name of the child, the name of the childcare provider that is closed, and whether another suitable person is available in the home to provide such care. Where the employee is assigned teleworking duties, the employer may also ask whether and to what extent the employee is unable to telework because of these childcare and eldercare needs.

(43) Is “childcare or eldercare facility” restricted to care that is provided outside the home or established businesses?

Not necessarily; LEAs have the authority to determine qualifying care situations. The local policy or procedure should address a variety of situations and apply uniformly for employees.

(44) What if the child is placed with someone whom the employee does not pay to care for their child while they work (such as a friend, family member or neighbor). Are they able to request State of Emergency leave if they submit in the documentation from the person caring for their child?

Possibly, depending on the LEA’s local policy or procedure. Under FFCRA regulations, an employee in this scenario may be eligible to request paid sick leave.

(45) Are copies of text messages that a daycare will be closing acceptable as documentation?

LEAs should develop local policies and/or procedures as to what types of documentation are acceptable.

(46) Does closing of schools equate to a closing of daycare/childcare facilities for purposes of the State of Emergency Leave policy?

In some cases, yes. The closing of daycare/childcare facilities is not, however, limited to school closures.

Dual employment

(47) Do “Non-mandatory employees (including temporary and permanent employees, as well as employees who report to work for reduced hours)” include paying dual employees for their hourly position? (i.e. A TA that is also a bus driver. The TA has been teleworking and would get paid for that position but has not been driving the bus so their hours are reduced. Does this leave cover paying those bus driver hours. If so, I am assuming they would be paid at straight time and not time & a half as they might normally make.

Where an employee has a variable schedule, the employee’s leave calculation should be based upon the employee’s average hours per week and over the course of the previous month. In no case will paid State of Emergency Leave exceed the employee’s regular schedule or 40 hours per week, whichever is less.

Leave Codes

Additional Leave March 16 to March 31-96 hours

(48) What code do we use during this leave period?

Absence code 24.

(49) During what period can this leave be used?

March 16 to March 31.

(50) What happens to unused leave?

It expires and shall not be paid out.

(51) Which employees are eligible for the State of Emergency Leave?

All employees who requested leave during the school closure period of March 16 - March 31, 2020 for reasons set out in the policy.

April 1 to April 30 – 168 hours

(52) What code do we use during this leave period?

Absence code 44.

(53) What happens to unused leave?

It expires and shall not be paid out.

(54) Which employees are eligible for this leave?

Temporary and permanent employees are eligible for this leave. Part-time employees are eligible for a prorated portion of the leave.

(55) Why does this only cover April 1 - April 30 while the Governor's order extends through May 15th?

It is anticipated that this policy will be revisited as the pandemic evolves. This time period is consistent with approach taken by OSHR for state employees.

(56) Are employees required to apply for this leave or are districts able to notify employees and then apply the leave unilaterally for staff covered by B.2.?

LEAs should set up policies and/or procedures that are best for their district.

(57) Does Section C of the State of Emergency Leave policy apply to only those employees who provided documentation from a healthcare provider between the specified period (March 16 to March 30) of needing leave for the reasons indicated in section B?

LEAs may require documentation for leave during this time period that is consistent with documentation required for the April 1 – April 30 period.

(58) Is absence code 24 that was initially set up for quarantine leave no longer an option since the SBE State of Emergency Leave is in play?

The SBE Contagious Disease Policy (9.4.1) specifically provides paid leave to an employee who is directed not to report to work by a state or local health director but is not diagnosed with an illness. If the employee becomes ill with COVID-19, then the employee would be able to use the State of Emergency Leave outlined in the new policy (9.4.2).

(59) If this paid leave is the employee's paid leave, which types of leave will they be able to use? Sick, annual, personal, bonus, extended sick leave, voluntary shared leave?

If the employee meets the conditions for leave under policies 9.4.1 or 9.4.2, then he or she is paid using the leave codes provided in this FAQ. The employee would not be charged leave from his/her accrued leave balances.

(60) May an employee donate his/her State of Emergency Leave to another employee through Voluntary Shared Leave?

No, State of Emergency Leave may not be donated or transferred from one employee to another.

Impact with FFCRA Leave

(61) Can employees elect to use FFCRA leave as opposed to the State of Emergency Leave?

Yes. An employee cannot be denied access to the FFCRA leave. Employees should be advised that the State of Emergency Leave is available only through April 30, 2020 and, if unused, will expire. FFCRA leave is available through December 31, 2020 (as long as the state of emergency continues) and has a limited duration of the benefit. NCDPI will follow the lead of OSHR regarding the expansion of Emergency Leave after April 30, 2020.

(62) Can the employee be required to exhaust the State of Emergency Leave and the FFCRA simultaneously?

The employee may choose which leave to take and may not be required to exhaust one type of leave before using the other. However, if an employee takes State of Emergency Leave for a childcare reason, it is possible that the use of the State of Emergency Leave for childcare may impact the amount of leave the employee may be eligible to take under the Emergency Family Medical Leave Expansion Act provisions of the FFCRA. The EFMLEA provisions of the FFCRA provide up to 12 total weeks of leave for certain childcare reasons related to COVID-19.