

Healthy Families Workplace Act: Public Health Emergency Leave Employee Technical Guidance

Background

The Healthy Families Workplaces Act (HFWA) is a law that requires MSU Denver to provide employees with Public Health Emergency Leave (PHEL) for specified reasons related to a declared public health emergency (currently, COVID-19) effective January 1, 2021. MSU Denver will provide employees up to eighty (80) hours of paid leave (prorated for a part-time employee) during the entirety of a public health emergency even if such public health emergency is amended, extended, restated, or prolonged, and until four (4) weeks after the public health emergency leave ends. This leave is provided to all employees of MSU Denver, in addition to their normal accruals of annual and sick leave, if applicable.

PHEL provisions replace the required emergency paid sick leave and public health emergency leave provisions of the federal Families First Coronavirus Response Act (FFCRA), which expired on December 31, 2020. Please contact Amanda Berry, aberry11@msudenver.edu, in Human Resources with questions regarding this information.

FAQ

These Frequently Asked Questions have been developed to help address the implementation of the public health emergency paid leave (PHEL) provisions under the Healthy Families Workplaces Act (HFWA) effective January 1, 2021

Q: What are the specific reasons for PHEL?

A: Eligible employees may take PHEL for the following reasons:

1. Needing to self-isolate because the employee is diagnosed or experiencing symptoms of the communicable illness
2. Seeking or obtaining medical diagnosis, care or treatment, preventative care, or care of such illness;
3. Being exposed to, or experiencing symptoms of, such illness;
4. Being unable to work due to a health condition that may increase susceptibility or risk of such illness;
5. Caring for a child or other family member for reasons 1, 2, or 3 above, or whose school, child care provider, or other care provider is either unavailable, closed, or providing remote instruction due to the public health emergency; or
6. Closure of the temporary employee's work location and work cannot be

performed remotely.

Q: Which employees are eligible for PHEL?

A: Regardless of tenure, all MSU Denver employees are eligible including full-time and part-time employees, classified staff, student employees and temporary employees who are on MSU Denver's payroll.

Q: Can an employee take 80 hours of PHEL for self-quarantine and then another amount of PHEL for another reason provided under the Act?

A: Employees are limited to eighty (80) hours for a full-time employee (prorated for a part-time employee) of PHEL for any combination of the qualifying reasons. The total number of hours for which an employee receives PHEL is capped at eighty (80) hours during the entirety of a public health emergency even if such public health emergency is amended, extended, restated, or prolonged. Employees should work with their supervisor and human resources office if they have additional needs for leave.

Q: Are employees who exhausted FFCRA related leave eligible for PHEL?

A: PHEL is a new leave entitlement of 80 hours (prorated for part-time) to use for COVID-19 and not a continuation of the FFCRA related leave provisions. Employees who have used FFCRA related leave are eligible for PHEL effective January 1, 2021.

Q: If an employee is home with a child because his or her school or place of care is closed, or the child care provider is unavailable, does the employee get PHEL?

A: If an employee is unable to work remotely, they may take PHEL to care for the child whose school or place of care is closed, or their child care provider is unavailable, due to COVID-19 related reasons.

PHEL provides for eighty (80) hours of paid leave, prorated for part-time employees. Employees may use PHEL intermittently, up to eighty (80) hours, if they are able to work remotely with an adjusted schedule. Employees are encouraged to work with their supervisors to see how flexible scheduling may allow them to use or not use PHEL intermittently and continue to work remotely.

Q: Can MSU Denver deny PHEL if an employee who was given administrative leave and/or FFCRA related leave for a reason identified prior to the Act going into effect?

A: HFWA imposes a new leave requirement, PHEL, that MSU Denver must provide to employees beginning January 1, 2021, so we cannot deny the use of PHEL for eligible reasons. FFCRA expired on December 31, 2020 and should not be utilized.

Q: Does an employee qualify for leave for a COVID-19 related reason even if they have already used some or all of their leave under the Family and Medical Leave Act (FMLA)?

A: If an employee is an eligible employee, they are entitled to PHEL regardless of how much leave they have taken under the FMLA.

Q: What documents do employees need to provide to their agency for PHEL?

A: Documentation is not required for PHEL. However, employees shall notify Human Resources and their supervisor of their need for leave as soon as practicable if (1) the need for leave is foreseeable and (2) the employer's place of business is not closed. Please contact Amanda Berry in Human Resources.

Q: What does it mean to be unable to work, including working remotely for COVID-19 related reasons?

A: Employees are unable to work if MSU Denver has work for an employee and one of the COVID-19 qualifying reasons prevents an employee from being able to perform that work.

If an employee and their supervisor agree that they will work their normal number of hours, but outside of the normally scheduled hours (for instance early in the morning or late at night), then the employee is able to work and leave is not necessary unless a COVID-19 qualifying reason prevents them from working that schedule.

Q: Can an employee take PHEL intermittently while working remotely?

A: Yes, if the employee is unable to work remotely within normal schedule of hours due to one of the qualifying reasons. In that situation, the employee, Human Resources, and the supervisor may agree that PHEL can be taken intermittently while working remotely.

Similarly, if an employee is prevented from working remotely within normal schedule of hours because they need to care for a child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the employee, Human Resources, and the supervisor may agree that PHEL can be taken intermittently while working remotely.

Intermittent leave can be taken in any increment. For example, if a 90-minute increment is agreed upon, the employee could work remotely from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to remote work.

Supervisors and employees are highly encouraged to collaborate to achieve flexibility and meet mutual needs including voluntary arrangements that combine remote work and/or intermittent leave.

Q: Can an employee take PHEL intermittently while a child's school or place of care is closed, or the child care provider is unavailable, due to COVID-19 related reasons, if they are unable to work remotely and must report to work?

A: Yes, but only with Human Resources and the supervisor's permission. Intermittent PHEL is permitted only when an employee, Human Resources, and their supervisor agree upon such a schedule.

For example, if agreed upon, an employee may take PHEL on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays.

Supervisor and employees should collaborate to achieve flexibility. Therefore, if supervisors, Human Resources and employees agree to intermittent leave on a day-by-day basis, such voluntary arrangements are encouraged.

Q: Do high-risk individuals qualify for the PHEL?

A: Yes, under the [State of Colorado Public Health Order](#), individuals who are deemed high-risk by [CDPHE](#) are urged to remain home, and thus would be covered under HFWA. An employee shall notify their supervisor and Human Resources of their need for leave as soon as practicable if (1) the need for leave is foreseeable and (2) the employer's place of business is not closed.

Q: What is the age that is considered high risk?

A: [CDC guidelines](#) on high-risk individuals indicates anyone above age 65 is potentially at higher risk for infection.

Q: After 80 hours of PHEL, if the employee is still sick, do they use their own sick leave if FMLA is not applicable?

A: If the employee's illness is related to COVID-19, they may be granted up to 80 hours of PFML if the employee meets the eligibility and qualifying event requirements. If their illness continues and/or would be considered a serious health condition under FMLA or ADA, they should work through that process with Amanda Berry in Human Resources.

Q: When is an employee eligible for PHEL to care for someone who is subject to a quarantine or isolation order?

A: Employees may take PHEL to care for a family member who is, as a result of being subject to a quarantine or isolation order, unable to care for themselves and

depends on the employee for care and if providing care prevents the employee from working either in person or remotely.

Furthermore, employees may only take PHEL to care for a family member who genuinely needs care. Qualifying "family" members are immediate family (related by blood, adoption, marriage, or civil union), a child to whom the employee stands in loco parentis or a person who stood in loco parentis to the employee when the employee was a minor or anyone else for whom the employee is responsible for providing or arranging health- or safety-related care.

Q: When is an employee eligible for PHEL to care for someone who is self-quarantining?

A: Employees may take PHEL to care for a self-quarantining individual who is an immediate family member or someone who regularly resides in their home if a health care provider has advised that individual to stay home or otherwise quarantine because they may have COVID-19 or is particularly vulnerable to COVID-19 and provision of care to that individual prevents them from working (or working remotely).

Q: If an employee is assisting in taking care of a grandchild due to a school or daycare closure during COVID-19, what leave would they be able to take?

A: Employees may use any accrued leave (annual or sick leave) to help out with childcare.

Q: If a child's school is operating on a hybrid attendance schedule (e.g. alternate day in person with remote learning), can an employee take PHEL?

A: Yes, an employee may take PHEL on days when a child is not permitted to attend school in person and must instead engage in remote learning. For purposes of the HFWA, the school is effectively "closed" to a child on days that they cannot attend in person. An employee may take PHEL on each remote-learning day if their child requires care on those days and they are unable to work remotely.

Q: If a school gave a choice between having students attend in person or participate in a remote learning program and an employee chose the remote learning option due to concerns about COVID-19, can the employee take PHEL?

A: No, even if an employee chooses to keep a child at home, PHEL is not available to take care of a child whose school is open for in-person attendance. For the purposes of the PHEL, employees are not eligible to take paid leave because the child's school is not "closed." However, if a child is under a quarantine order or has been advised by a healthcare provider to self-isolate or self-quarantine due to COVID-19, employees may be eligible to take PHEL to care for the child.

Q: Can employees take paid leave under the HFWA if a child's school is beginning the school year under a remote learning program out of concern for COVID-19, but will continue to evaluate local circumstances and make a decision about reopening for in-person attendance later in the school year?

A: Yes, employees are eligible to take paid leave under the HFWA while a child's school remains closed. If a school reopens, the availability of paid leave under the HFWA will be available only on days when remote learning is required.