

Families First Coronavirus Response Act (FFCRA) Policy **Updated 4/6/2020**

NOTE TO EMPLOYER: *The Families First Coronavirus Response Act created two paid leave provisions for employers with fewer than 500 employees and public employers with at least one employee. The Emergency Paid Sick Leave Act provides up to two weeks of paid sick leave for qualifying reasons. The Emergency Family Medical Leave Act (EFMLA) expands the protections of the Family and Medical Leave Act (FMLA) to provide paid benefits in certain situations. Keep in mind that employers with 50 or more employees remain subject to traditional FMLA and should include the [bracketed] language addressing that as well.*

Employers of health care providers or emergency responders may elect not to provide this leave to those specific employees. In addition, small businesses (defined as fewer than 50 employees) may be exempted from providing paid sick leave only if the leave request is because of the child's school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.

This FFCRA sample policy outlines the rights and responsibilities that employers should communicate with their employees.

Statement of Policy

It is the policy of XYZ Company to comply with the requirements of the Federal Families First Coronavirus Response Act (FFCRA). The FFCRA provides employees with Emergency Paid Sick Leave and Emergency Paid Family and Medical Leave (EFMLA) for those affected by the COVID-19 pandemic, from April 1, 2020 through December 31, 2020.

Two Types of Leave Covered Under FFCRA

1. Emergency Paid Sick Leave (EPSL)

Emergency paid sick leave will be available for an employee who is unable to work or work remotely because:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;



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- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- The employee is caring for an individual who is subject to quarantine or isolation or advised to self-quarantine by a health care provider due to concerns related to COVID-19;
- The employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions; or
- The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Eligibility for EPSL

All employees, regardless of their tenure with the organization, with full-time or part-time status are eligible to receive this benefit.

Paid Benefits for EPSL

Eligible employees will receive up to two weeks of paid sick leave.

- **Full-time employees (regularly scheduled to work 40 or more hours per week):** 80 hours at their regular rate of pay, subject to caps and reasons noted below. A part-time employee may be considered full-time under this policy, if the average of their hours over a 6-month period is at least 40 hours per week.
- **Part-time employees (consistently works a set schedule of less than 40 hours per week):** the number of hours that the employee works over a two week period, subject to caps and reasons noted below.
- **Part-time employees (works a variable schedule per week):** the total hours worked in the 6-month period (or if worked less than 6 months, the total hours during the entire period of employment), divided by the number of calendar days in the period, then multiplied by 14, subject to caps and reasons noted below.

Payments are capped at \$511 a day (\$5,110 in total) for dealing with an employee's own illness or quarantine (reasons 1, 2 and 3 above). Employees who are caring for an individual affected by COVID-19 and those whose children's schools or childcare providers have closed (reasons 4, 5 and 6 above) receive up to two-thirds of their regular rate of pay, and that benefit is limited to \$200 a day (\$2,000 in total).

Return to Work Following EPSL

Employees are required to follow guidelines established by the Centers for Disease Control and Prevention as it relates to ceasing home isolation practices.

2. Emergency Family Medical Leave Act (EFMLA) Expansion

Employees will be entitled to take up to 12 weeks of job-protected leave if an employee is unable to work (or remote work) due to caring for the employee's son or daughter because the child's school or place of care has been closed or his or her childcare provider is unavailable due to the public health emergency.

Eligibility for EFMLA

Under this policy, full-time and part-time employees who have been on XYZ Company payroll for 30 days, prior to taking the leave, are eligible for leave.

Paid Benefits for EFMLA

The EFMLA provides for a combination of unpaid and paid leave.

- The first two weeks of EFMLA is unpaid. However, an employee may choose, or the employer may require the employee, to take any existing pay benefit (i.e. PTO, vacation, sick pay) during the unpaid period, OR the two weeks may be paid under emergency paid sick leave, if that leave was taken for the qualifying reason of caring for a son or daughter because the child's school or place of care is closed or unavailable due to the public health emergency.
- After two weeks of unpaid leave, employees are entitled to up to 10 additional weeks of job-protected leave of two-thirds their regular rate of pay. Part-time employees are entitled to be paid two-thirds of

their usual pay based on the average number of hours worked for the six months prior to taking the leave.

- The cap of the paid leave entitlement for employees is \$200 per day (\$10,000 in the aggregate).

Notifying Company of the Need for FFCRA Leave

Employees should request their need for emergency paid leave as soon as possible, by notifying their immediate manager or human resources. You are required to provide reasonable notice for foreseeable uses, such as needing leave for school closures/childcare unavailability. For all other qualifying reasons, notice is required after the first workday that leave is taken. A request form indicating the specific qualifying reason and date of requested leave should be filled out. If an employee is incapacitated, the employee's representative should give verbal notice as soon as possible. Calling in "sick" does not qualify as adequate notice. An employee must provide sufficient information regarding the reason for an absence for the company to know that protection and benefits may exist under this policy.

Insurance Benefit Continuation During FFCRA Leave

Coverage under group health insurance will continue while on leave, but employees must continue to pay their portion of the premium. Other employment benefits <<such as group life insurance, AD&D, etc.>> will also be continued during the leave, as long as the employee continues to pay any required contribution. Payment arrangements will be discussed with individuals upon their request for leave.

Certification for FFCRA Leave

Generally, the company will require certification to verify the qualifying reason for the leave. Employees should be prepared to provide documentation such as a copy of any quarantine or isolation order, or written note by a health care provider advising self-quarantine, or a notice of closure of school or childcare provider (i.e. email, notification on website, or news article). Employees should be prepared to provide additional information in support of various reasons for leave under FFCRA, such as the relationship of individual cared for, a statement of circumstances that exists requiring care for a child over the age of 14, and affirming that there is no other suitable person who can care for the child during the requested leave.



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We understand that requesting healthcare provider documentation may place additional burdens on our medical community during this pandemic, therefore if an employee is unable to obtain this documentation, at a minimum, the name, address, and phone number of your treating healthcare provider must be provided. XYZ Company also reserves the right to request additional documentation completed by your healthcare provider or childcare provider (as applicable) in situations where there is reason to believe an employee has fraudulently obtained leave or paid benefits.

Intermittent Leave

For employees working on the premises, intermittent leave will only be permitted for the qualifying reason related to caring for their child whose school or place of care is closed, or childcare provider is unavailable, and only if XYZ Company agrees to the schedule.

For employees working remotely, intermittent leave will be permitted if the employee is unable to work his or her normal schedule of hours. The employee and employer will come to an agreement on a schedule that provides for the least amount of disruption to an employee's job. For EFMLA purposes, the total amount of leave taken should not exceed the 12 weeks defined earlier in this policy.

EPSL, EFMLA and Traditional FMLA

If emergency paid sick leave (EPSL) is taken for the qualifying reason of caring for a child whose school or place of care is closed, or childcare provider is unavailable, that leave will run concurrently with, and will count toward, the total 12 weeks available under EFMLA [and traditional FMLA].

[EFMLA is an emergency law expanding FMLA and expires on December 31, 2020. If you qualify for leave under both EFMLA and traditional FMLA during the applicable 12-month period, the time off will count concurrently. You are not entitled to more than a total of 12 weeks under both EFMLA and traditional FMLA policies (except for qualifying military exigency leave of 26 weeks under traditional FMLA). You will be notified of your rights and responsibilities under traditional FMLA by separate correspondence.]

Rights Upon Return from FFCRA Leave

An employee who takes leave under this policy may be reinstated to the same job or an equivalent position upon completion of the leave. If an individual has exhausted all leave under this policy and is still unable to return to work, the situation will be reviewed on a case-by-case basis to determine what rights and protections might exist.

The law provides that an employee has no greater rights upon a return from leave than the individual would have had if s/he had continued to work. Therefore, an employee may be affected by a layoff, reorganization, furlough, change in job duties or other change in employment if the action would have occurred had the employee remained actively at work.

NOTE TO EMPLOYER: Under the EFMLA portion of FFCRA, employers with less than 25 employees are excluded from restoring the employee to his or her previous position if ALL four of the following hardship conditions exist:

- *The position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of the leave;*
- *The company made reasonable efforts to restore the employee to the same or an equivalent position;*
- *The company makes reasonable efforts to contact the employee if an equivalent position becomes available; and*
- *The company continues to make reasonable efforts to contact the employee for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after the leave began, whichever is earlier.*

Source: MRA – The Management Association, Inc.

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