

**EMERGENCY FAMILY AND MEDICAL LEAVE (EFMLA)
AND EMERGENCY PAID SICK LEAVE (COVID-19 PANDEMIC)**

The United States Congress has enacted the *Families First Coronavirus Response Act* (FFCRA) to assist employees affected by the COVID-19 outbreak with job-protected leave and emergency paid sick leave. The provisions of this policy are based on the FFCRA and shall be in effect from April 1, 2020, until December 31, 2020.

EMERGENCY FMLA LEAVE

The *Emergency Family and Medical Leave Expansion Act* (EFMLEA) provisions found in FFCRA shall only apply to the COVID-19 outbreak. Existing *Family and Medical Leave Act* (FMLA) leave policies shall still apply to all other FMLA-qualifying reasons for leave outside of this policy.

Employee Eligibility

All employees who have been employed with the School Board for at least thirty (30) days shall be eligible for EFMLA leave. Employees laid off or otherwise terminated on or after March 1, 2020, who are rehired on or before December 31, 2020, shall be eligible for leave upon reinstatement if they had previously been employed with the School Board for thirty (30) or more of the sixty (60) days prior to their layoff or termination.

Reason for Leave

Eligible employees who are unable to work (or telework if permitted by employer) due to a need to care for their child due to the closure of a child's school or place of care, or the child's regular childcare provider is unavailable due to a public health emergency with respect to COVID-19.

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:

- under eighteen (18) years of age; or
- eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

“Childcare provider” means a provider who receives compensation for providing childcare services on a regular basis, including:

- a center-based childcare provider
- a group home childcare provider
- a family childcare provider (one individual who provides childcare services for fewer than twenty-four (24) hours per day, as the sole caregiver, and in a private residence)
- other licensed provider of childcare services for compensation
- a childcare provider that is eighteen (18) years of age or older who provides childcare services to children who are either the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, at the direction of the parent.

“School” means an elementary or secondary school.

Duration of Leave

Employees shall be entitled to up to twelve (12) weeks of leave to use from April 1, 2020, through December 31, 2020, for the purposes stated above. This time is included in and not in addition to the total traditional FMLA leave entitlement of twelve (12) weeks in a twelve (12)-month period.

For example, if an employee has already taken six (6) weeks of FMLA leave, that employee would then be eligible for another six (6) weeks of FMLA leave under this policy.

Pay During Leave

Leave shall be unpaid for the first ten (10) days of leave; however, employees may use any accrued paid vacation, sick or personal leave during this time, as appropriate in accordance with existing policies. The employee may also elect to use the paid leave provided under the *Emergency Paid Sick Leave Act* (EPSLA) as further explained below. After the first ten (10) days, leave shall be paid at two-thirds (2/3) of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. Pay shall not exceed \$200 per day, and \$10,000 in total, or \$12,000 in total if using emergency paid sick leave for the first two (2) weeks. Any unused portion of this pay shall not carry over to the next year.

For employees with varying hours, one of two methods for computing the number of hours paid shall be used:

- The average number of hours that the employee was scheduled per day over the six (6)-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type. Or,
- If the employee has worked less than six (6) months, the expected number of hours to be scheduled per day at the time of hire.

Employee Status and Benefits During Leave

While an employee is on leave, the School Board shall continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. While on paid leave, the School Board shall continue to make payroll deductions to collect the employee's share of the premium. During any unpaid portions of leave, the employee shall continue to make this payment per instructions from the School Board staff.

If the employee contributes to a life insurance or disability plan, the School Board shall continue making payroll deductions while the employee is on paid leave. During any portion of unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the School Board may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the School Board may discontinue coverage during the leave. If the School Board maintains coverage, the School Board may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

Procedure for Requesting Leave

All employees requesting emergency FMLA leave shall provide written notice, where possible, of the need for leave to the School Board as soon as practicable. Verbal notice shall otherwise be accepted until written notice can be provided. Within five (5) business days after the employee has provided this notice, the Superintendent or his/her designee shall complete and provide the employee with any Department of Labor (DOL) required notices.

The notice the employee provides should include a brief statement as to the reason for leave, and if possible, the expected duration.

On a basis that does not discriminate against employees on FMLA leave, the School Board may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

Employee Status After Leave

Generally, an employee who takes FMLA leave shall be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The School Board may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to business operations. Key employees shall be given written notice at the time FMLA leave is requested of his or her status as a key employee.

EMERGENCY PAID SICK LEAVE

The provisions included here are based on the *Emergency Paid Sick Leave Act* (EPSLA) of the FFCRA and shall only apply to the COVID-19 outbreak.

Eligibility

All full- and part-time employees unable to work (or telework) due to one of the following reasons for leave:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to either number 1 or 2 above.
5. The employee is caring for his or her child if the school or place of care of the child has been closed, or the childcare provider of such child is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:

- under eighteen (18) years of age; or
- eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

“Individual” means an immediate family member, roommate or similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined. Additionally, the individual being cared for shall:

- be subject to a federal, state or local quarantine or isolation order as described above; or,
- Have been advised by a health care provider to self-quarantine based on a belief that he or she has COVID-19, may have COVID-19 or is particularly vulnerable to COVID-19.

Amount of Paid Sick Leave

All eligible full-time employees shall be eligible for up to ten (10) days or eighty (80) hours of paid sick leave available to use for the qualifying reasons above. Eligible part-time employees are entitled to the number of hours worked, on average, over a two (2)-week period.

For employees with varying hours, one of two methods for computing the number of hours paid shall be used:

- The average number of hours that the employee was scheduled per day over the six (6)-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type. Or,
- If the employee has worked less than six (6) months, the expected number of hours to be scheduled per day at the time of hire.

Rate of Pay

Paid emergency sick leave shall be paid at the employee's regular rate of pay, or minimum wage, whichever is greater, for leave taken for reasons 1-3 above. Employees taking leave for reasons 4-6 shall be compensated at two-thirds (2/3) their regular rate of pay, or minimum wage, whichever is greater. Pay shall not exceed:

- \$511 per day and \$5,110 in total for leave taken for reasons 1-3 above;
- \$200 per day and \$2,000 in total for leave taken for reasons 4-6 above.

Interaction with Other Paid Leave

The employee may use emergency paid sick leave under this policy before using any other accrued paid time off for the qualifying reasons stated above.

Employees on emergency FMLA leave under this policy may use emergency paid sick leave concurrently with that leave. Emergency paid sick leave may also be used when an employee is on leave under traditional FMLA for his or her own COVID-19-related serious conditions or to care for a qualified family member with such a condition. If the employee qualifies for both emergency FMLA and emergency paid sick leave, the employee shall be entitled to use emergency paid sick leave for the first ten (10) work days of emergency FMLA leave which would otherwise be unpaid.

Procedure for Requesting Emergency Paid Sick Leave

Employees shall notify the School Board of the need and specific reason for leave under this policy. A form shall be provided to all employees on the School Board intranet and/or in a manner accessible to all. Verbal notification shall be accepted until practicable to provide written notice. Lack of required documentation by employee, shall be considered leave without pay.

Documentation supporting the need for leave shall be included with the leave request form, such as:

- A copy of the federal, state or local quarantine or isolation order related to COVID-19 applicable to the employee or the name of the governmental entity that issued the order.
- Written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19 or the name of the provider who advised the employee.
- The name and relation of the individual for whom the employee is taking leave because the individual is subject to a quarantine or isolation order or is advised to self-quarantine.
- The name and age of the child or children being cared for; the name of the school, place of care, or child care provider that closed or became unavailable; and a statement that no other suitable person is available to care for the child during the period of requested leave. For children over fourteen (14) years of age, a statement shall be included indicating special circumstances that require the employee to provide care during daylight hours.

Once emergency paid sick leave has begun, the employee and his or her supervisor shall determine reasonable procedures for the employee to report periodically on the employee's status and intent to continue to receive paid sick time.

Carryover

Paid emergency sick leave under this policy shall not be provided beyond December 31, 2020. Any unused paid sick leave shall not carry over to the next year or be paid out to employees.

Job Protections

No employee who appropriately utilizes emergency paid sick leave under this policy shall be discharged, disciplined or discriminated against for work time missed due to this leave.

New policy: July 7, 2020

Ref: 29 USC 2601 et seq (Families First Coronavirus Response Act (FFCRA)); 29 CFR Part 826 (Paid Leave Under the Families First Coronavirus Response Act).