



COUNTY ADVISORY BULLETIN

CAB

Published by: County Commissioners Association of Ohio

209 East State Street • Columbus, Ohio 43215-4309

Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

Bulletin 2020-05

March 2020

SAMPLE FMLA COVID-19 POLICY

Prepared by Marc A. Fishel
Fishel Downey Albrecht Riepenhoff, LLP
March 30, 2020

I. TEMPORARY FAMILY MEDICAL LEAVE ACT (FFCRA) POLICY

A. Statement of Policy.

Under the Families First Coronavirus Response Act (FFCRA), eligible employees may request up to twelve (12) weeks of emergency family and/or medical leave for qualifying reasons related to COVID-19 with job protection and no loss of accumulated service provided the employee meets the conditions outlined in this policy. This policy is temporary and is in effect between April 1, 2020 and December 31, 2020.

The expanded FMLA leave provided by this policy is not in addition to FMLA leave available for other FMLA qualifying conditions, such as an employee's serious health condition, a serious health condition of an employee's immediate family member (spouse, child or parent), upon the birth, adoption or foster placement of a child or for certain military leave related reasons. The 12-month period applicable for traditional FMLA leave is applicable to the leave requested by employees under this policy.

B. Definitions.

As used in this policy, the following terms and phrases shall be defined as follows:

1. "Qualifying need related to a COVID-19": employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed or the child care provider of such son or daughter is unavailable due to COVID-19.

C. Eligibility.

To be eligible for leave under this policy, an employee must meet all of the following conditions:

1. Worked for the County for at least thirty (30) days.
2. Otherwise be entitled to FMLA leave during the 12 month period defined by the County's FMLA policy.
3. Spouses who are both employed by the County are jointly entitled to a combined leave total of twelve (12) weeks (rather than twelve (12) weeks each) for childcare purposes. Employees who are both employed by the County may not take leave under this policy at the same time.
4. An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this policy pursuant to the FFCRA. Each appointing authority is responsible for designating health care workers and emergency responders who are exempt from this policy.

D. Use of Leave.

Leave under this policy is limited to circumstances where an employee is unable to work (including telework) due to the need to care for the employee's minor child because the child's school or place of childcare has been closed or the child care provider of the child is unavailable due to COVID-19.

Employees taking leave under this policy must be present with the minor children during regular work hours and otherwise act in a manner consistent with the need for such leave.

E. Procedures for Requesting Emergency Sick Leave

Requests for FMLA leave must be submitted in writing as soon as practicable prior to the commencement of the leave. The employee must follow the regular reporting procedures for each absence.

F. Compensation.

Employees eligible for expanded FMLA pursuant to the FFCRA in order to care for the employee's minor child as outlined in Paragraph D above shall be eligible for to up to twelve (12) weeks of paid emergency sick leave and expanded family and medical leave paid at two-thirds the employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work (with a maximum payment of \$200 per day and \$12,000 total).

G. Intermittent/Reduced Schedule Leave.

An employee may take FMLA leave on an intermittent or reduced work schedule basis for a qualifying need related to a COVID-19 with the employer's approval. Requests for intermittent or reduced schedule FMLA leave must be submitted in writing as soon as practicable.

H. Reinstatement.

Employees who take leave under this policy will be reinstated to the same or a similar position upon return from leave except that if the position that the employee occupied prior to taking FMLA leave is not available, the employee will be placed in a position which entails substantially equivalent levels of skill, effort, responsibility, and authority and which carries equivalent status, pay, benefits, and other terms and conditions of employment as the position the employee occupied prior to taking FMLA leave. The determination as to whether a position is an "equivalent position" will be made by the Employer.

I. Retaliation.

Employee will not be retaliated against for exercising their rights to leave in accordance with this policy.

J. Expiration.

This policy is temporary and will be effective April 1, 2020 and expire on December 31, 2020.

Additional Information: The Department of Labor's website maintains a continually updated listing of Frequently Asked Questions and other relevant information for employers regarding the Temporary Emergency Paid Sick Leave and Families First Coronavirus Response Act ("FFCRA"). The web address for the Department of Labor's "Coronavirus Resources" is:

<https://www.dol.gov/coronavirus>

All members are encouraged to make use of available legal and consulting resources to the extent that specific issues and questions arise in your County.