



COUNTY ADVISORY BULLETIN

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UPDATED SAMPLE FMLA COVID-19 POLICY

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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.
2. "Emergency responder": An emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of

such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to police officers, fire fighters, emergency medical services personnel, emergency medical technicians, paramedics, emergency management personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. For the purpose of this Policy, the following are “emergency responders” for the County: full-time and part-time employees in the following positions: _____, or other positions designated by the State of Ohio or appointing authority, consistent with this definition.

3. “Health care provider.” A health care provider is anyone employed at any doctor’s office, hospital, health care center, clinic, postsecondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

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 prior to the commencement of the EFMLA.
2. 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.
3. 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 explicitly designating health care workers and emergency responders who are exempt from this policy and notifying the exempted workers.
4. Employees who have been furloughed or laid off are not eligible for EFMLA leave.

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 child

because the child's school or place of childcare has been closed or the childcare provider of the child is unavailable due to COVID-19. The child must be under the age of 18, or over the age of 18 and incapable of self-care because of a mental or physical disability.

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 EFMLA Leave

Requests for FMLA leave must be submitted in writing as soon as practicable after the commencement of leave using a form provided by the County. The employee must follow the regular reporting procedures for each absence.

The County reserves the right to require documentation verifying that the need for requested leave meets the conditions set forth in this policy.

F. Duration of Leave and Compensation.

Eligible employees are eligible for up to twelve (12) weeks of EFMLA leave. This leave entitlement is reduced by the amount of leave an eligible employee has taken under the FMLA in the current twelve-month leave year. The EFMLA taken under this policy by an eligible employee will be deducted from any remaining FMLA leave the employee has available for the current twelve-month leave year. As a result, eligible employees are entitled to a maximum of combined EFMLA and FMLA leave in the current twelve-month leave year.

The first 10 days (or two calendar weeks) of EFMLA leave are unpaid, but eligible employees may use emergency paid sick leave during these first 10 days to avoid loss of income. Employees eligible for EFMLA leave pursuant to the FFCRA in order to care for the employee's child as outlined in Section D above shall be eligible for up to ten (10) weeks of 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). Employees may supplement paid EFMLA leave with other accrued leave so that they are receiving their full regular rate of pay at the discretion of the County.

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 prior to the commencement of the leave or as soon as practicable following the commencement of leave if prior notice is not possible.

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 due to an action that would have affected the employee regardless of whether the leave was taken.

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.