

**SAMPLE POLICY. PLEASE WORK WITH YOUR SCHOOL LAWYERS TO ENSURE POLICY MEETS THE NEEDS
OF YOUR SCHOOL**

**FMLA Leave Expansion and Emergency Paid Sick Leave Policy
(Coronavirus)**

Purpose

To comply with the Families First Coronavirus Response Act and to assist employees affected by the COVID-19 outbreak with job-protected leave and emergency paid sick leave. This policy will be in effect from April 2, 2020, until December 31, 2020. Our existing FMLA leave policy still applies to all other reasons for leave outside of this policy.

Expanded FMLA Leave

Employee Eligibility

All employees who have been employed with [Company Name] for at least 30 days.

Reason for Leave

Eligible employees who are unable to work (or telework) due to a need to care for their child when the school or place of care has been closed, or the 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-

- A. under 18 years of age; or
- B. 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 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 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 will have up to 12 weeks of leave to use from April 2, 2020, through December 31, 2020, for the purposes stated above. This time is included in and not in addition to the total FMLA leave entitlement of 12 weeks in a 12-month period.

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

[Omit the last two sentences in this section above if the employer has fewer than 50 employees and is not usually covered under the FMLA]

Pay During Leave

Leave will be unpaid for the first 10 days of leave; however, employees may use any accrued paid vacation, sick or personal leave during this time. The employee may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act, as further explained below. After the first 10 days, leave will be paid at two-thirds of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. Pay will not exceed \$200 per day, and \$10,000 in total. Any unused portion of this pay will not carry over to the next year.

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

- The average number of hours that the employee was scheduled per day over the 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 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 company will 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 employer will continue to make payroll deductions to collect the employee's share of the premium. During any unpaid portions of leave, the employee must continue to make this payment per instructions from the HR department.

If the employee contributes to a life insurance or disability plan, the employer will 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 employer 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 employer may discontinue coverage during the leave. If the employer maintains coverage, the employer 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 FMLA leave must provide written notice, where possible, of the need for leave to the HR manager as soon as practicable. Verbal notice will otherwise be accepted until written notice can be provided. Within five business days after the employee has provided this notice, the HR manager will 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 company 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 will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The company 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 will be given written notice at the time FMLA leave is requested of his or her status as a key employee.

[Employers with fewer than 25 employees may wish to adopt the following language in lieu of the preceding paragraph:]

Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. If the position the employee held before leave started no longer exists due to economic conditions or operational changes that are made because of the public health emergency, and no equivalent position is available, the employee will not be returned to employment. However, for the period of one year after qualifying leave under this policy ends, [Company Name] will make reasonable efforts to contact the employee if an equivalent position becomes available.

Please contact the HR department with any questions.

Emergency Paid Sick Leave

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 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-

- A. under 18 years of age; or
- B. 18 years of age or older and incapable of self-care because of a mental or physical disability.

[Note: A definition for “individual” should be provided as soon as more guidance is available.]

Amount of Paid Sick Leave

All eligible full-time employees will have up to 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-week period.

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

- The average number of hours that the employee was scheduled per day over the 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 6 months, the expected number of hours to be scheduled per day at the time of hire.

Rate of Pay

Paid emergency sick leave will 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 will be compensated at two-thirds their regular rate of pay, or minimum wage, whichever is greater. Pay will 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 expanded FMLA leave under this policy may use emergency paid sick leave during the first 10 days of normally unpaid FMLA leave.

Procedure for Requesting Emergency Paid Sick Leave

Employees must notify their manager or the HR manager of the need and specific reason for leave under this policy. A form will be provided to all employees on the company intranet and/or in a manner accessible to all. Verbal notification will be accepted until practicable to provide written notice.

Once emergency paid sick leave has begun, the employee and his or her manager must 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 will not be provided beyond December 31, 2020. Any unused paid sick leave will 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 will be discharged, disciplined or discriminated against for work time missed due to this leave.

Please contact the HR department with any questions.