# **COVID-19 Employee Leave Policy**

[COMPANY NAME] (the “Company”) desires to support employees’ health and wellness and to do its part to slow the community spread of the novel coronavirus COVID-19. In an effort to provide transparency, support, and guidance, the Company has prepared this COVID-19 Employee Leave Policy (this “Policy”). This Policy is effective from April 1, 2020 until December 31, 2020.

## **FAMILIES FIRST CORONAVIRUS RESPONSE ACT (“FFCRA”)**

The Families First Coronavirus Response Act (“FFCRA”) alleviates some of the financial pressures endured by those who are negatively impacted by COVID-19. Department of Labor (“DOL”) notices related to the FFCRA are posted on the Company intranet.

## **EMERGENCY PAID SICK LEAVE ACT (“EPSLA”)**

The EPSLA provides a paid benefit to eligible employees. Employees are not required to exhaust existing vacation or sick time prior to using this benefit.

**Eligibility**

The EPLSA allows an eligible employee to take paid leave if the employee is unable to work because the employee is:

1. subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. experiencing COVID-19 symptoms and seeking medical diagnosis;
4. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
5. caring for the employee’s child if the child’s school or place of care is closed or operating on a different schedule or virtually or the child’s care provider is unavailable due to COVID-19 related reasons; or
6. 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.

For purposes of this Policy, “unable to work,” means the Company has work for you and one of the COVID-19 qualifying reasons (1-6 listed above) prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of telework. Employees on furlough or scheduled for reduced hours are not eligible for paid leave.

**Health Care Provider Exclusion**

The Company may, at its discretion, exclude “Health Care Providers” from taking leave under this Policy.

(It is recommended the Company makes the determination up front on which employees will receive EFMLA and EPSL and including that in the policy so employees will be treated consistently and will know the leave they may be entitled to receive. For example, healthcare employers could determine Health Care Providers will not receive EFMLA but receive EPSL. That determination should be placed in this policy)

For purposes of this Policy, a Health Care Provider is an employee who is capable of providing health care services, meaning that the person is employed to provide diagnostic services, preventative services, treatment services, or other services that are integrated with and necessary for the provision of patient care, and, if not provided, would adversely impact patient care. Examples of a Health Care Provider include, but are not limited, director of nursing, registered nurses, licensed practical nurses, and certified nurse aides.

**Paid Sick Leave Benefit**

The Company will provide up to two weeks of paid sick leave for full-time and part-time employees (subject to limitations below, at the employee’s regular rate and regardless of the employee’s duration of employment prior to leave) who need time off for any of the coronavirus-related qualifying reasons listed in 1, 2 or 3 listed above or two-thirds the employee’s regular rate to care for qualifying reasons 4, 5, or 6 listed above. Paid sick leave wages are limited to $511 per day up to $5,110 total per employee for their own use and to $200 per day up to $2,000 total to care for others.

Full-time employees are entitled to take up to 80 hours of leave. Part-time employees are entitled to leave based on the average number of hours they work in a given two-week period. If the part-time employee’s hours change from week to week, employers must determine the average number of hours worked during the prior 6 months and provide leave equal to the number of hours they typically work in a two-week period. Holidays are included in the total two-week hour calculation. If EPSLA leave is no longer needed by the employee, benefits cease on the next regularly scheduled payday.

**Procedure**

When an employee plans to take leave under this policy, the employee must give as much notice as is practicable. All employees requesting leave under this policy must submit the request in writing to their immediate supervisor, with a copy to HR.

An employee requesting paid sick leave must provide the Company with appropriate documentation in support of the reason for the leave, including: the employee’s name, qualifying reason for requesting leave, statement that the employee is unable to work, including telework, for that reason, and the date(s) for which leave is requested. The employee must also provide documentation of the reason for the leave, such as the source of any quarantine or isolation order, or the name of the health care provider who has advised you to self-quarantine. For example, this documentation may include a copy of the Federal, State or local quarantine or isolation order related to COVID-19 applicable to the employee or a statement of the date on which they saw the health care provider advising the employee to self-quarantine due to concerns related to COVID-19. For paid sick leave for reason 5 above, such documentation may include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider.

Unless you are teleworking:

* Paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments, and
* Once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either:
  1. use the full amount of paid sick leave, or
  2. no longer have a qualifying reason for taking paid sick leave.

This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

Employees may only take paid sick leave intermittently if they are teleworking or the leave is being taken because the employee is caring for the employee’s child if the child’s school or place of care is closed or the child’s care provider is unavailable due to public health emergency.

If you no longer have a qualifying reason for taking paid sick leave before you exhaust your paid sick leave, you may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

While on leave, employees may be required to periodically report to the Company regarding the status of their intent to return to work.

**Returning From Leave**

Employees taking leave under this policy will be returned to the same jobs they held when their leaves began. If this is not feasible, employees will be returned to a position that entails substantially equivalent skill, effort, responsibility, and authority as the position they had previously held. The only exceptions to this rule will be in circumstances of reductions in force or reorganizations, where the employees’ positions would have been eliminated even if they had not been on leave. Employees returning from a leave of absence due to their own coronavirus illness will be required to follow healthcare expectations prior to their return to work. The Company may require return-to-work information prior to approving an employee to resume their work.

**Expiration of Benefit**

The benefits covered in this section are mandated by the federal DOL and expire on December 31, 2020. Any unused benefits will not carry over. In the event of any conflict between Company policy and applicable law, employees will be afforded all rights required by law.

**Retaliation**

The Company abides by federal, state, and local laws prohibiting retaliation. The Company will not tolerate retaliation against employees for taking this leave and any such retaliation will be subject to disciplinary action, up to and including termination.

## **Emergency Family and Medical Leave Expansion Act (“EFMLEA”)**

In accordance with the law, the Company grants up to twelve (12) weeks of Family and Medical Leave Act (“FMLA”) leave to eligible employees. The Emergency Family and Medical Leave Expansion Act (“EFMLEA”) is an emergency expansion of the FMLA. The EFMLEA is a temporary amendment to the FMLA. Unless expressly stated, nothing in the EFMLEA alters employees’ or employers’ rights and obligations pursuant to the FMLA.

**EFMLEA Eligibility**

An employee is eligible for leave under the EFMLEA, if the employee:

* has worked for the Company for at least 30 days (before the first day of leave);
* is unable to work or telework; and
* requires leave to care for a minor child because the child’s school or place of care is closed or operating on a different schedule or virutually or the childcare provider is unavailable due to a COVID-19-related reason.

Eligibility under traditional FMLA remains unchanged.

**Health Care Provider and Emergency Responder Exclusion**

The Health Care Provider Exclusion described above also applies to EPSLA and EFMLEA leave under this Policy. The Company may, at its discretion, exclude “Health Care Providers” from taking leave under this Policy. See above for details.

(SEE ABOVE for recommendations regarding changes to this section for each Company)

**Certification of the Need for Leave**

An employee requesting EFMLEA leave must provide the Company with appropriate documentation in support of the reason for the leave. This includes the reason for the leave; the duration of the requested leave; and documentation of the closure, altered schedule, or change to distance learning of their child’s school, place of care, or child care. Such documentation may include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider. This requirement also applies when the first two weeks of unpaid EFMLEA leave run concurrently with paid EPSLA leave taken for the same reason.

**Procedure**

When an employee plans to take leave under this policy, the employee should give as much notice as is practicable. All employees requesting leave under this policy must submit the request in writing to their immediate supervisor, with a copy to HR.

EFMLEA leave may be used intermittently. Leave can be taken in one-hour or full-day increments or a schedule that is deemed reasonable by the employee and the Company.

While on leave, employees may be required to periodically report to the Company regarding the status of their intent to return to work.

**Duration of Leave**

Eligible employees may take up to twelve (12) weeks of leave under the EFMLEA until December 31, 2020. However, the EFMLEA does not extend the total number of weeks of FMLA leave available to employees beyond twelve (12) weeks in the applicable 12-month period.

**Paid Leave**

While FMLA leave is traditionally unpaid, the EFMLEA offers paid benefits for eligible employees. The first ten (10) days of EFMLEA leave are unpaid. Employees may use EPSLA paid leave (if eligible), available vacation or sick time, or unpaid leave during this time. Starting on the eleventh day, full-time employees will be paid two-thirds of their normal pay rate, capping at $200 per day and $10,000 total. The first two weeks of leave under the EFMLEA are unpaid, but employees may utilize paid sick leave (at two-thirds of their regular rate up to $200 per day) or other accrued employer-provided paid time off during those two weeks, up to a maximum of $12,000 for the twelve weeks that include both paid sick leave and expanded family and medical leave. Employees who substitute accrued employer-provided paid time off during the first two weeks of EFMLEA leave are entitled to the full value of the leave, even if it is greater than $200 per day.

Part-time employees or employees on an irregular schedule are entitled to two-thirds of their pay based on the average number of hours the employee worked for the six months prior to taking leave under the EFMLEA. Employees who have worked for less than six months prior to leave are entitled to the employee’s reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

Benefit accruals, such as vacation or sick time, will be suspended during any periods of unpaid leave, and will resume upon return to active employment. Employees will continue to accrue such benefits for the portion of the leave during which they use paid leave.

**Employee Benefits during Leave**

While an employee is on leave, the Company will continue the employee’s medical, dental, vision, and/or other benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. While on a paid leave, the Company will continue to make payroll deductions as normal to collect the employee’s share of the premium. While on unpaid leave, employees will continue to be responsible for their share of the insurance premiums, and will be required to make monthly payments while out on leave. The employee must make premium payments by the 1st day of each month. If the payment is more than 30 days late, the employee’s health and other coverage may be dropped for the duration of the leave.

If the employee does not to return to work, the Company may require the employee to reimburse the Company the amount it paid for the employee’s health insurance premium during the leave period.

**Returning From Leave**

Employees taking leave under this policy will be returned to the same jobs they held when their leaves began. If this is not feasible, employees will be returned to a position that entails substantially equivalent skill, effort, responsibility, and authority as the position they had previously held. The only exceptions to this rule will be in circumstances of reductions in force or reorganizations, where the employees’ positions would have been eliminated even if they had not been on leave.

**Rights, Remedies, and Additional Information**

The Company fully complies with the provisions of the FMLA and EFMLEA. Accordingly, any employee who has questions regarding this policy is encouraged to contact HR. Further information on employee rights and remedies under the FMLA and EFMLEA can be located on the Company intranet or online on the DOL’s website.

**Expiration of Benefit**

The benefits covered in this section are mandated by the Department of Labor (DOL) and expire on December 31, 2020. Any unused benefits will not carry over. In the event of any conflict between Company policy and applicable law, employees will be afforded all rights required by law.

**Retaliation**

The Company abides by federal, state, and local laws prohibiting retaliation. The Company will not tolerate retaliation against employees for taking this leave and any such retaliation will be subject to disciplinary action, up to and including termination.