



Considerations for Use of Sample Policy

Revised April 7, 2020

We are pleased to offer a sample policy for use in implementing the Families First Coronavirus Response Act (FFCRA), should you choose to use a policy. Please note the following important information:

1. This policy is based on Department of Labor (DOL) guidance and regulations to date. DOL has been updating its guidance frequently; this summary and the sample policy may need to be updated in accordance with any updates or new information from DOL.
2. DOL does require dissemination to all active employees of the FFCRA Poster. The Poster and instructions for dissemination are found in the links below.
3. A written policy is not required by the FFCRA; this Sample Policy is provided only in the event your community chooses to use one.
4. Please note that this policy **excludes** emergency responders and health care providers, as permitted by the FFCRA. Employers can choose to exclude emergency responders and/or health care providers from the Paid Sick Leave benefit (Section A of the sample policy) and/or the Expanded Family and Medical Leave (Section B of the sample policy) coverage.

Links to the DOL guidance on the FFCRA is found here:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>. The definition of “health care provider” is found at question #56, and the definition of “emergency responder” is found at question #57.

56. Who is a “health care provider” who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?

For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary 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.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of



COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

57. Who is an emergency responder?

For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, 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 military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works 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. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

You will need to modify the sample policy if you choose to cover emergency responders and/or health care providers. Please note that you may have collective bargaining obligations if your staff are unionized and you should consult an employment law attorney in that event.

5. A Sample FFCRA Employee Leave Request Form can be found [here](#). This is a Sample Form only and it must be modified to suit the particular policies of your organization. Thank you to R&R Insurance for allowing our members to use their form.
6. We will continue to bring relevant information on the FFCRA as it becomes available.



Links to relevant DOL information:

Mandatory Poster:

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Poster Dissemination Instructions:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

DOL Final Regulations:

<https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>

DOL FFCRA Resources and Information Page:

<https://www.dol.gov/agencies/whd/pandemic>



SAMPLE (Second Revision)

Families First Compliance Policy

Effective April 1, 2020 to December 31, 2020

Introduction

The federal government has passed the “Families First Coronavirus Response Act” to assist employees during the current public health emergency. As a covered employer, we provide the temporary benefits required by the Act as summarized in this policy between April 1, 2020 through December 31, 2020. This policy may change in response to any new or revised guidance issued by the Department of Labor.

Eligibility

All employees, except emergency responders and health care providers. Staff who have been employed fewer than 30 days are not eligible for the temporary expansion of FMLA (section B). If you are eligible for leave under sections A and B, the total amount of leave available is capped at 12 weeks.

A. Emergency Paid Sick Leave Benefit

1. Full-time employees will receive up to two weeks (80 hours) of Paid Sick Leave to be used for covered absences. Part-time employees will receive pro-rated Paid Sick Leave based on the number of hours you work on average over a two-week period. The full benefit for which you are eligible is available for immediate use.
2. You are not required to exhaust accrued paid leave before using the Paid Sick Leave benefit. Paid Sick Leave is in addition to any accrued leave you already have.
3. Paid Sick Leave is available to you if you cannot work (in person or remotely) for any of the following reasons:
 - a. You are subject to a federal, state, or local Coronavirus quarantine or isolation order;
 - b. You are advised by a health care provider to self-quarantine for Coronavirus concerns;
 - c. You are experiencing symptoms of Coronavirus and seeking a medical diagnosis;
 - d. You are caring for an individual who is under a Coronavirus quarantine or isolation order or has been advised by a health care provider to self-quarantine;
 - e. You are caring for a child whose school or child care provider has been closed or is unavailable because of Coronavirus;
 - f. You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
4. We may require you to submit documentation of your need for leave, including a certification from a health care provider confirming the applicable circumstance of section 3 above.



5. If you qualify for Paid Sick Leave, we will pay you as follows:
 - a. If you require leave for reasons 3(a), (b), or (c) above, we will pay you your regular rate of pay, up to \$511 per day and/or \$5,110 in the aggregate.
 - b. If you require leave for reasons under 3(d), (e), or (f) above, we will pay you two-thirds of your regular rate of pay, up to \$200 per day and/or \$2,000 in the aggregate.
 - c. If Paid Sick Leave you receive does not equal 100% of your normal pay, you can choose to use any accrued leave time you have available to supplement the Paid Sick Leave benefit. [The employer decides whether or not to allow an employee to supplement the Paid Sick Leave benefit; remove this language if your organization will not permit supplementation].
6. Your ability to use Paid Sick Leave for purposes specified in the law will end upon termination of the qualifying event.
7. Paid Sick Leave provided under this law does not carry over year to year and unused leave is not paid out.

B. Temporary Expansion of Family & Medical Leave

Federal Family and Medical Leave is temporarily expanded to include a qualifying need related to the Coronavirus public health emergency, as declared by federal, state, or local authorities. The conditions of this expansion are outlined below.

1. You are eligible for the leave if you have worked at least 30 calendar days.
2. A “qualifying need” is limited to circumstances where you cannot work (in person or remotely) because of your need to care for your son or daughter under age 18 due to a Coronavirus-related public health emergency school or child care closing/unavailability.
3. You may take up to 12 weeks of leave for the temporary FMLA under this Section B; however, if you are eligible for Paid Sick Leave under section A as well, the total amount of leave available is capped at 12 weeks.
4. Pay for the temporary FMLA leave will be as follows:
 - a. The first two weeks of the leave are unpaid. You may elect to use the Paid Sick Leave Benefit (section A above) or any accrued paid leave you have available.
 - b. After the first two weeks, we will pay you up to ten weeks at two-thirds of your regular rate of pay, up to \$200 per day and \$10,000 aggregate. You can choose to use, or we may require you to use, your accrued vacation time or compensatory time to pay you 100% of your normal pay. Your paid vacation and compensatory time will run concurrently with the temporary FMLA benefit until your vacation and compensatory time is exhausted; if you continue to need temporary FMLA when your vacation and compensatory time is exhausted, we will continue to pay you at two-thirds of your regular pay up to the applicable caps. [The requirement in this policy to run accrued vacation and/or compensatory leave time concurrently with the temporary FMLA benefit is not



mandatory and is only included as sample language for those organizations who decide to include the requirement].

5. [If you are an employer subject to the “classic” FMLA law, include the following]: Your annual FMLA leave entitlement for any reason remains at 12 weeks.

Intermittent Leave

Intermittent leave will be permitted only if you need time off for childcare, as outlined in Section A.3.e or Section B. You and your manager must agree to the terms and schedule of such leave. The total amount of intermittent leave taken under Sections A and/or B will not exceed 12 weeks.

[Intermittent leave is permitted under the FFCRA for time off needed for childcare and for any other reason under Section A *if the employee is working remotely*. Intermittent leave *is not* permitted for reasons under Section A.3.(a)-(d) or (f) if the employee is working on premise. Intermittent leave that is permitted must be agreed to by the employer. If the employer allows intermittent leave, the employee and employer must agree to the increments of time that it may be taken. If the employer chooses not to allow it, the employee cannot take it. This section should indicate what your organization will or will not permit.]

Notice

You must communicate your need for leave under this policy as soon as possible by contacting your immediate supervisor or department head, or having someone do so on your behalf. You will be asked to document your need for leave. You must provide sufficient information to allow us to determine that your need for leave is covered by the terms of this policy.

Insurance Continuation

Your health insurance will continue while you are on leave under this policy, provided you continue to pay your share of the premium. [Explain whether other benefits such as life and disability insurance will be continued]. Payment arrangements can be discussed if needed by contacting

_____.

Return to Work

You will be entitled to reinstatement to the same or equivalent position once your leave ends, subject to the provisions of the FFCRA. [Please be aware of the applicable guidance and regulations on this subject, particularly for organizations who employ fewer than 25 persons. Requirements on job restoration are found at Q&A Guidance #43 and at 29 CFR § 826.130 of the Regulations (see links in the introduction)].

Conclusion

Please contact _____ if you have questions regarding this policy.