

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

Purpose

To comply with the Families First Coronavirus Response Act, Consolidated Appropriations Act of 2021, and the American Rescue Plan and to assist employees affected by the COVID-19 outbreak with job-protected leave and pay, where applicable. This policy will be in effect from January 1, 2021, until September 30, 2021. Our existing FMLA leave policy still applies to all other FMLA-qualifying reasons for leave outside of this policy.

Expanded FMLA Leave

Employee Eligibility

All current employees who have been employed with East Dakota Educational Cooperative d/b/a Teachwell Solutions (Teachwell) for at least 30 days and are actively scheduled for work are eligible for leave under this policy.

Reason for Leave

All current full- and part-time employees currently scheduled but 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 immediate family member, someone who regularly lives in employee's house, or roommate 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 child care 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.
7. Obtaining a COVID-19 vaccine,
8. Recovering from any illness or condition related to the COVID-19 vaccine; or
9. Seeking or awaiting results of a COVID-19 diagnosis or test if either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis.

"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:

- Under 15 years of age.
- 15 or older where special circumstances exist or the child is incapable of self-care because of a mental or physical disability.

"Child care provider" means a provider who receives compensation for providing child care services on a regular basis, including:

- A center-based child care provider.
- A group home child care provider.
- A family child care provider (one individual who provides child care 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 child care 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 1, 2021, through September 30, 2021, 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.

Increments & Intermittent Use of Leave

Employees may take expanded FMLA leave intermittently in quarter hour increments. For example, an employee may only need 4 hours per day of leave to care for his or her child or may only need to do so on Tuesdays and Thursdays. Managers and employees are expected to be flexible in scheduling wherever possible.

Pay During Leave

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 \$12,000 in total. Any unused portion of this pay will not carry over.

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

- If the employee has worked 6 months or more, 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.
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

Employees may also supplement the two-thirds pay with accrued agency paid time off not to exceed 100% of regular pay. For example, an employee may choose to use one-third of an hour of paid time for each hour of expanded FMLA leave taken to reach 100% of normal pay per hour.

Employee Status and Benefits During Leave

While an employee is on leave, the agency will continue the employee's SDRS, basic life, dental, health and long term disability 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 premiums and retirement contributions. During any unpaid portions of leave, the employee must continue to make premium payments per instructions from the HR manager.

If the employee contributes to supplemental benefits, 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. If the employee does not continue these payments, the employer may discontinue coverage during the leave.

Procedure for Requesting Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for leave to the HR manager as soon as practicable. Leave must then be submitted through the electronic leave software in place for employee use.

The leave submission must include:

- Name of the federal, state or local agency ordering quarantine applicable to the employee or individual whom the employee is caring for.

- Name of health care provider advising the employee or person the employee is caring for to self-quarantine due to concerns related to COVID-19.
- The name and relation of the individual the employee is taking leave to care for who is subject to a quarantine or isolation order or is advised to self-quarantine.
- The name and age of the child or children being cared for; the name of the school, place of care, or child care provider that closed or became unavailable; and a statement that no other suitable person is available to care for the child during the period of requested leave.
- For children over age 14, a statement indicating the special circumstances that require the employee to provide care during daylight hours.

On a basis that does not discriminate against employees on FMLA leave, the agency 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 agency 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 their status as a key employee.

Please contact the HR department with any questions.

Emergency Paid Sick Leave

Eligibility

All current full- and part-time employees currently scheduled but 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 immediate family member, someone who regularly lives in employee's house, or roommate 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 child care 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.
7. Obtaining a COVID-19 vaccine,
8. Recovering from any illness or condition related to the COVID-19 vaccine; or
9. Seeking or awaiting results of a COVID-19 diagnosis or test if either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis.

"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:

- Under 15 years of age.
- 15 or older where special circumstances exist or the child is incapable of self-care because of a mental or physical disability.

"Individual" means an immediate family member, roommate or similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined. Additionally, the individual being cared for must: a) be subject to a federal, state or local quarantine or isolation order as described above; or b) have been advised by a health care provider to self-quarantine based on a belief that he or she has COVID-19, may have COVID-19 or is particularly vulnerable to COVID-19.

Amount of Paid Sick Leave

All eligible full-time employees will have up to 80 hours of paid sick leave available to use between April 1 and September 30, 2021 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:

- If the employee has worked 6 months or more, 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.
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

Increments and Intermittent Use of Leave

When working from home, employees may take emergency paid sick leave intermittently in quarter hour increments. As in the example for FMLA leave, an employee may only need 4 hours per day of leave to care for his or her child or may only need to do so on Tuesdays and Thursdays. Managers and employees are expected to be flexible in scheduling wherever possible.

For those not teleworking and currently working onsite, an employee may only take intermittent leave for reason 5 above, to care for his or her child when the school or place of care is closed, or the caregiver is unavailable due to COVID-19-related reasons. Per the regulations, as all other reasons for emergency paid sick leave could potentially expose an employee or others in the workplace to the virus, employees must either use the full amount of paid sick leave or use it in full-day increments until the reason for leave is over and it is safe for the employee to return to work.

Rate of Pay

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 and 7-9 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 and 7-9 above.
- \$200 per day and \$2,000 in total for leave taken for reasons 4-6 above.

Interaction with Other Paid Leave

Employees taking leave for reasons 4-6 may also supplement the two-thirds pay with accrued agency paid time off not to exceed 100% of regular pay. For example, an employee may choose to use one-third of an hour of paid time for each hour of emergency paid sick leave taken at two-thirds pay to reach 100% of normal pay per hour.

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 concurrently with that leave. Emergency paid sick leave may also be used when an employee is on leave under traditional FMLA for his or her own COVID-19-related serious health condition or to care for a qualified family member with such a condition.

Procedure for Requesting Emergency Paid Sick Leave

All employees requesting emergency paid sick leave must provide verbal or written notice of the need for leave to the HR manager as soon as practicable. Leave must then be submitted through the electronic leave software in place for employee use.

The leave submission must include:

- Name of the federal, state or local agency ordering quarantine applicable to the employee or individual whom the employee is caring for.
- Name of health care provider advising the employee or person the employee is caring for to self-quarantine due to concerns related to COVID-19.
- The name and relation of the individual the employee is taking leave to care for who is subject to a quarantine or isolation order or is advised to self-quarantine.
- The name and age of the child or children being cared for; the name of the school, place of care, or child care provider that closed or became unavailable; and a statement that no other suitable person is available to care for the child during the period of requested leave.
- For children over age 14, a statement indicating the special circumstances that require the employee to provide care during daylight hours.

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 September 30, 2021. Any unused paid sick leave will not carry over 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.

Policy Adopted: April 15, 2020
Revised: May 18, 2021