

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT POLICY

This Policy implements the Emergency Family and Medical Leave Expansion Act (“EFMLEA”), effective April 2, 2020. This Policy supplements, and should be interpreted in conjunction with, the Company’s current Family Medical and Leave Act (“FMLA”) policy. Under the EFMLEA, employees who are unable to work so that they may care for children if schools are closed or their daycare is unavailable because of a public health emergency with respect to COVID-19 may be eligible for a period of job-protected leave as described below. This Policy provides an overview of employees’ rights and responsibilities under the EFMLEA.

Eligibility for EFML

To be eligible for Emergency Family and Medical Leave (“EFML”) under this Policy, an employee must have worked at the Company for at least 30 days. Eligibility will be determined as of the date the EFML commences.

Types and Duration of EFML

An eligible employee may take up to 12 weeks of leave between April 2, 2020, and December 31, 2020 for the following reason: an eligible employee is unable to work due to a need to care for a son or daughter under the age of 18 if the son or daughter’s school or place of care has been closed, or the child care provider of such son or daughter is unavailable due to a public health emergency. Any leave taken under this Policy shall count toward any leave to which an employee is entitled under the FMLA Policy in the Employee Handbook.

Definitions

“Public health emergency” means an emergency with respect to COVID-19 declared by a federal, state or local authority.

“School” means an elementary or secondary school.

“Child care provider” means a provider who receives compensation for providing child care services on a regular basis.

Paid Leave

The first ten (10) days of EFML are generally unpaid, except that an employee may elect to use any accrued Paid Time Off (“PTO”) or Emergency Paid Sick Leave (“EPSL”) in accordance with the Company’s PTO Policy or EPSL Policy. Any EFML after the first ten (10) days will be paid by multiplying by two-thirds the employee’s regular rate of pay times the number of hours the employee would normally be scheduled to work ((employee’s regular rate of pay X number of hours employee is normally scheduled to work) X (2/3)).

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The EFMLEA applies to employers that are not large enough to be covered by the FMLA. If an entity is not covered by the FMLA, but is covered by the EFMLEA, then this policy will need to be revised to remove the references to the employer’s existing FMLA policy.

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This language is suitable for non-healthcare employers. Healthcare providers also have the option – but are not required – to use the following alternate language:

The following employees are ineligible to receive EFMLA leave:

Health care providers and emergency responders are excluded from the definition of “eligible employee” for purposes of EFML; and

Other employees who fall outside the statutory or regulatory definition of “eligible employee,” or who otherwise are ineligible for receipt of EFML under the Families First Coronavirus Response Act.

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If the employer also offers paid vacation in addition to or as opposed to PTO, then that also could be used.

It also is conceivable that an employer’s sick leave policy could apply under these circumstances, but this type of an absence generally falls outside of most sick leave policies, since it is based on a need to care for a child because the child is out of school or child care, not because the child is sick.

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This is the default language in the Act; the employer may pay a higher rate.

In no event shall the amount of paid EFML, however, exceed \$200 in any single day or \$10,000 in the aggregate.

If the employee's schedule varies from week to week to such an extent that the Company cannot determine the hours the employee would normally be scheduled to work, the Company will use the average number of hours the employee worked per day over the prior six months (including hours for which the employee took leave) ending on the date on which the employee takes EFML, or for an employee who has not worked during the preceding six months, the average number of hours per day the employee was expected to normally be scheduled to work at the time of hiring.

Notice of Need for EFML

To avoid a delay in EFMLEA protection, when the necessity for EFML is foreseeable, the employee must give notice as soon as possible and practicable under the circumstances. An employee who wants to take EFML must follow normal call-in policies and notify the person an employee would normally notify for an absence. Failure to adhere to normal company call-in procedures can result in discipline, as with any other type of leave.

If an employee unreasonably fails to give the required notice, EFMLEA coverage may be delayed for a period of time. This can result in discipline for absences taken prior to EFMLEA coverage commencing.

Restoration to Position and Benefits

Consistent with the FMLA policy, healthcare benefits will be maintained while an employee is on EFML, subject to the payment of premiums explained in this paragraph. For all other benefits, they will be maintained similarly to others on similar forms of leave (paid/unpaid). Employees on EFML will continue to have their premium payments deducted from their paycheck as if they were on non-EFMLEA paid leave.

Employees using EFML are entitled to return to the same position held when EFML commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. If the employee would have lost their position even if they had not taken the leave, then there exists no reinstatement right.

Return to Work

EFML must be used for its intended purpose. If the qualifying reason for taking EFML ends, then the employee must contact the Company and make arrangements to return to work, unless the employee is entitled to additional leave pursuant to Company policies. Employees on EFML must periodically inform their supervisor, management, or Human Resources of their intent to return to work while on EFML.

Failure to Return From Leave

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This language applies to employers with 25 or more employees. Employers with less than 25 employees may use the following alternate language:

Employees using EMFL generally are not entitled to return to the same or equivalent position if

(1) the position held by the employee at the start of the EFML does not exist due to economic conditions or other changes in operating conditions of the Company (a) that affect employment, and (b) are caused by a public health emergency during the period of leave, and

(2) the Company made reasonable efforts to restore or reinstate the employee to the employee's position or an equivalent position during the earlier of (a) the one-year period following the end of the declaration of COVID-19 related emergency made by a federal, state, or local authority, or (b) the one-year period following the date that is 12 weeks after the date on which an employee's EFML begins.

Unless required otherwise by law, if an employee fails to return to work upon expiration of EFML, the Company will apply the provisions of its attendance and disciplinary policy to further absences.