

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT POLICY

## FAMILY & MEDICAL LEAVE EXPANSION AND EMERGENCY SICK LEAVE

Effective April 1, 2020, and ending on December 31, 2020, employees will be entitled to the limited use, expanded leave in the following manner:

### I. Family & Medical Leave Expansion- "Public Health Emergency Leave"

The County's Family & Medical Leave policy is hereby amended to include eligible employees who, because of a qualifying need related to a public health emergency, have need to avail themselves of "Public Health Emergency Leave," as defined below.

Traditional FMLA will remain available to all employees otherwise entitled to such leave, unpaid and under existing County policy, and its provisions are only changed herein insofar as the application of the new "Public Health Emergency Leave" benefit described herein.

- A. An eligible employee is entitled to take up to twelve (12) weeks of FMLA leave, provided the employee has not already utilized such leave prior to the need for *Public Health Emergency Leave*, and such leave is for a qualifying need related to COVID-19/Coronavirus. An employee becomes eligible for *Public Health Emergency Leave* after being employed for at least thirty (30) calendar days with the County.
- B. *Public Health Emergency Leave* will only be for a qualifying need related to this public health emergency. The only qualifying need recognized by this policy is for an employee who is unable to work (or telework) in order to care for his/her child, under eighteen (18) years of age, because the child's school or place of care has been closed, or the child care provider is unavailable, due to this public health emergency.
- C. *Public Health Emergency Leave* will be unpaid (under this provision) for the first ten (10) days of the leave. An employee may elect to substitute any accrued vacation, personal, or sick leave (or emergency sick leave) during the first ten (10) days of this *Public Health Emergency Leave*.

After the first ten (10) days, the County shall provide paid leave for each day of *Public Health Emergency Leave* remaining of the employee's overall FMLA entitlement (up to 10 weeks).

The amount of pay that an eligible full-time employee may receive, as provided in the previous paragraph, will be calculated based on an amount that is not less than two-thirds (2/3) of an employee's regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work

- D. For part-time employees or employees with varying schedules, and to the an extent that the County is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken *Public Health Emergency Leave* or other leave, the County shall use the following in place of such number:

a number equal to 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 such leave, including hours for which the employee took leave of any type.

Or, if the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

- E. Regardless of whether the employee is full-time, part-time, seasonal, or otherwise, in no event shall any pay in this policy for *Public Health Emergency Leave* exceed \$200 per day and \$10,000 in the aggregate.
- F. In any case where an employee has the necessity for *Public Health Emergency Leave* and the need is foreseeable, an employee shall provide the County with such notice of leave as soon as is practicable. The County will provide a form for such request that the employee must fill and return to the County as soon as is practicable. A failure to provide practicable notice may result in the employee being absent without approved leave.
- G. **Special Rule for Health Care Providers and Emergency Responders**

An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions in the amendments made under of section 3102 of this Act.

**EXCLUSIONS:** The County has elected, pursuant to the Family & Medical Leave Expansion provision of the FFCRA to exclude health care providers and emergency responders from the application of the new public health emergency leave. Thus, any such employees are excluded from receiving these additional leave *Public Health Emergency Leave* provisions. Please discuss any leaves that may be available with the appointing authority if you meet the definition of a health care provider or emergency responder. See II (C) and (D) below.

## II. **Definitions**

- A. **Child care provider:** a provider who receives compensation for providing child care services on a regular basis.
- B. **Eligible Employee:** an employee who has been employed for at least 30 calendar days by the County with respect to whom leave is requested.
- C. **Health Care Provider:** Those employed by the health department and nursing home, including any permanent or temporary facilities or locations, or site where medical services are provided that are similar to such institutions. This definition includes any individual employed by or contracting with any of the above to provide services or to maintain the operation of the facility, including the highest official.
- D. **Emergency Responder:** 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 law enforcement officers, correctional institution personnel, physicians, nurses, public health personnel, 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, including the highest official.

- E. Public Health Emergency: an emergency with respect to COVID–19 declared by a Federal, State, or local authority.
- F. Public Health Emergency Leave: a particular type of Family & Medical Leave that is in part unpaid and paid that qualified employees may utilize in response to the COVID-19/Coronavirus pandemic.
- G. School: an elementary school or secondary school as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

### **III. EMERGENCY PAID SICK LEAVE**

- A. The County’s Sick Leave policy is hereby amended to include Emergency Paid Sick Leave to eligible employees who are unable to work or telework, due to a need for leave because
  - 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 an order as described in subparagraph (1) or has been advised as described in paragraph (2).
  - 5. The employee is caring for his/her child because their school or place of care has been closed, or their child care provider 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.

There is an exception whereby the County of an employee who is a health care provider or an emergency responder may elect to exclude such employees from the application of this subsection regarding Emergency Paid Sick Leave. The definition for emergency responder can be found in the definitions section above in Section II (C) and (D).

**EXCLUSIONS:** The County has elected, pursuant to the Emergency Paid Sick Leave provision of the FFCRA, to exclude health care providers and emergency responders from the application of the new public health emergency leave. Thus, any such employees are excluded from receiving these additional leave provisions. Definitions of these categories is provided above, section II (C) and (D).

- B. An employee shall be entitled to emergency paid sick leave for two (2) weeks, up to 80 hours, for full-time employees. For part-time employees, the employee will be entitled to a number of hours equal to the number of hours that such employee works, on average, over a 2-week period. The paid sick leave under this policy shall be available for immediate use by the employee for the purposes described in this policy, regardless of how long the employee has been employed by the County. Emergency paid sick leave under this policy will be in addition to any accrued sick leave already accrued by an employee, and the use of emergency paid sick leave will not be deducted from an employee’s existing sick leave accrual.

- C. Emergency paid sick leave will be calculated for full-time employees based upon the number of hours the employee would otherwise be normally scheduled to work at the employee's regular rate of pay.

For part-time employees or employees with varying schedules, and to the an extent that an County is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken leave, the County shall use the following in place of such number:

a number equal to 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 such leave, including hours for which the employee took leave of any type.

Or, if the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

- D. With respect to any emergency paid sick leave provided for any use described in III(A)(4),(5), or (6) referenced above in this policy, the employee's required compensation under this subparagraph shall be two-thirds of the amount described in Section II(C.) of this policy.

Additionally, regardless of the employee's full or part-time status, in no event shall such paid sick time exceed—

1. \$511 per day and \$5,110 in the aggregate for a use described in III(A)(1),(2), or (3) as referenced above regarding qualifying reasons for emergency sick leave; and
2. \$200 per day and \$2,000 in the aggregate for a use described in III(A)(4),(5), or (6) as referenced above regarding qualifying reasons for emergency sick leave.

- E. An employee may first use the paid sick leave provided under this policy for the purposes described in this policy, and the County may not require an employee to use other paid leave provided by the County to the employee before the employee uses the emergency paid sick leave under this policy for the purposes specified above.
- F. Paid sick leave provided to an employee under this policy shall cease beginning with the employee's next scheduled shift immediately following the termination of the need for paid sick leave, or the maximum allowed duration under this policy.
- G. Any employee requesting such leave provided in this section shall provide notice to the County as soon as is practicable that the employee requires the need for leave. The County will provide a form for the employee to complete designating the request for leave, and the type of leave to be requested. A failure to provide practicable notice may result in the employee being absent without approved leave.
- H. The County may not require, as a condition of providing Emergency Paid Sick Leave under this policy, that the employee involved search for or find a replacement employee to cover the hours during which the employee is using paid sick leave under this policy

- I. Paid sick leave under this section shall not carry over from 1 year to the next.
- J. After the first workday (or portion thereof) an employee receives paid sick leave under this Act, the County may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick leave.
- K. The County shall post and keep posted, in conspicuous places on the premises of the County where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements described in this Act.