

Newport School District #56-415

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Families First Coronavirus Response Act (FFCRA) Implementation FAQ

How are these new leaves different than what I had before April 1st?

The FFCRA contains provisions requiring protected and partially -paid leave fore employees forced to miss work when their child’s school is closed due to the outbreak, as well as provisions creating a right to emergency paid sick leave for certain absences related to the outbreak.

Expanded FMLA (EFMLA) – this section of the new law expands the FMLA by allowing eligible employees to take protected leave for Covid related childcare reasons and obligates the district to provide paid leave after the first two weeks of absence.

- **Covered Employees:** All school employees are covered.
- **Eligible Employees:** If you have been on the payroll for at least 30 days.
- **Covered Leave:** Entitled to take up to 12 weeks of protected leave if you are unable to work (or telework) based on a need to care for a child under age 18 due to closure of the child’s school or unavailability of the child’s childcare provider due to Covid.
- **Paid Leave Requirements:** The first ten (10) days may be unpaid, but employees may use to use their accrued paid leave during this time. For leave beyond the first ten (10) days, you will be paid 2/3 of your regular pay. By employee choice, you can supplement leave with accrued paid leave for the 1/3 of your day.

Emergency Paid Sick Leave (EPSLA) – this section of the new law requires employers to provide up to 10 days of emergency paid sick leave for certain Covid related reasons. This sick leave is in addition to the leave benefits already available to you.

Amount of Leave: Full-time employees get 80 hours. Part-time employees get the hours they work over a two-week period.

Qualifying Reasons:

Employee ...

1. is subject to a Federal, State, or local quarantine or isolation order related to Covid-19;
2. has been advised by a health care provider to self-quarantine related to Covid-19,
3. is experiencing Covid-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);

5. is caring for his or her child whose school or place of care is close (or childcare provider is unavailable) due to Covid-19 related reasons; or
6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

For qualifying reasons #1-3 above, the leave will be paid at 100% of the employee's regular rate of pay.

For employees with qualifying reasons #4-6 above, the Emergency Sick Leave will be paid at 2/3 of their regular rate of pay, up to \$200 daily and \$2,000 total. Employees may supplement this payment with their accrued paid leave banks to ensure they are paid at 100% of their normal wage rate.

Documentation

Employees will be required to submit documentation to verify that they meet the qualifications (#1-#6 described above) for the Emergency Sick Leave and/or Expanded FMLA. Documentation does not need to be immediately provided to begin receiving either paid leave type, but must be provided within a reasonable amount of time.

Job Restoration, Return to Work Recertification

An employee who is eligible for job-protected leave will be restored to the same or equivalent position at the conclusion of either Emergency Sick Leave or Expanded FMLA, unless unusual circumstances have arisen (i.e., the employee's position or shift was eliminated for reasons unrelated to the leave). The District may require a return-to-work certification from a health care provider before restoring the employee to work following either leave where the employee has taken leave for the employee's own serious health condition. If an employee taking either leave chooses not to return to work for any reason, the employee should notify the District as soon as possible.

How do I apply for any of these leaves?

HR has developed a leave of absence request form specific to these new leaves for employees to use. It is found on the Covid Resource page.

I am a substitute; do I qualify for these leaves?

The new emergency paid sick leave and expanded FMLA are for the purpose of ensuring pay and job protection for employees who are scheduled to work but are unable to because of one of the reasons outlined in the law. If you are not scheduled to work, then the leave does not apply to your situation. If you are asked to report to work as a substitute or hourly employee and you are unable to work because of one of the qualifying reasons, you could access this leave. If you are not sure of your work status as a sub, please contact Human Resources.

My child's school and/or childcare center is closed, and I cannot find another childcare provider. However, I am still able to work remotely. Do I qualify for Expanded FMLA?

Expanded FMLA is for employees who are unable to work, either on site or remotely, because their child's school or place of care is closed (or childcare provider is unavailable). If you have been able to make child care arrangements that allow you to still work, you do not need to apply for Expanded FMLA.

What form of documentation will be required for these various leaves?

NSD will be flexible on what kind of documentation is required, as long as it confirms that you need to take leave for Covid. Employees may begin receiving paid leave before they provide documentation as long as they get their documentation to the district office in a reasonable amount of time.

The CDC has explained that individuals age 65 and over are at higher risk for severe case of Covid if they contract the virus. Do employees age 65 and over have protections under the federal employment discrimination laws?

The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination against individuals age 40 and older. The ADEA would prohibit a covered employer from involuntarily excluding an individual from the workplace based on his or her being 65 or older, even if the employer acted for benevolent reasons such as protecting the employee due to higher risk of severe illness from Covid.

Unlike ADA, the ADEA **does not** include a right to reasonable accommodation for older workers due to age.

I am an employee that fits in the 65 and older category – what are my options?

If, with the appropriate paperwork, an employee is determined to be "higher risk" the following three options exist:

#1 - If the "higher risk" employee can't perform the essential functions of their job with or without reasonable accommodation:

1. The employee may use available sick leave including shared leave if available.
2. The employee can access 12 weeks of FMLA if he/she meets the qualifying number of hours and 12 months with the district. This is unpaid unless there is available sick leave but the district portion of the benefits premiums are paid. The employee must continue to pay their share of the premium.
3. The employee may file for Paid Family Leave (PFML) and/or Unemployment with Employment Security at the State of Washington. The determination of eligibility for

these programs does not fall on the district and the employee should reach out to the state for more information (<https://esd.wa.gov/paid-family-medical-eave> or <https://esd.wa.gov/unemployment>)

These options require an unpaid leave from the District and employee payment of benefits premiums for them to be continued.

1. Request an unpaid leave of absence from the district separate from Paid Family Leave or Unemployment
2. Resign/Retire

Please note that absences accessing paid leave or FMLA will require medical verification of the condition.

#2 - If the "higher risk" employee can perform the essential functions of their job with reasonable accommodation a form needs to be filled out to begin an interactive process as to what those reasonable accommodations might be. It is important to get this information to me soon so we can begin these discussions.

#3 - If the "higher risk" employee feels he/she can do the essential functions of the job without reasonable accommodation nothing needs to be done.

There is also leave available if the absence is directly related to COVID itself - not being at higher risk for contracting it. This is the link that describes this leave which is currently available until 12/31/2020. <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

If you are not in the category of higher risk but still don't feel comfortable returning to work you may request an unpaid leave of absence from the district and may be eligible for benefits through employment security (PFML or Unemployment) but again must check with employment security (<https://esd.wa.gov/paid-family-medical-leave>) regarding qualification.

The district communicated that this is a very individual thing and that they are available to work with any employee to explore options. They also conveyed the need to get going on this early! Several of the leaves described require at least 30 days notice and medical certification, and noted the district's need to determine staffing levels to serve its students.

Due to the pandemic, may an employer exclude an employee from the workplace involuntarily due to pregnancy?

No. Sex discrimination under Title VII of the Civil Rights Act includes discrimination based on pregnancy. Even if motivated by benevolent concern, an employer is not permitted to single out workers on the basis of pregnancy for adverse employment actions, including involuntary leave, layoff or furlough.

Is there a right to accommodation based on pregnancy during the pandemic?

There are two federal employment discrimination laws that may trigger accommodation for employees based on pregnancy. First, pregnancy-related medical conditions may themselves be disabilities under the ADA, even though the pregnancy itself is not an ADA disability. Second, Title VII specifically requires that women affected by pregnancy be treated the same as others who are similar in their ability or inability to work.

I am pregnant and I do not feel comfortable returning to work. What are my options?

Employees who fit this category may use their accrued paid leave time. If the employee fully exhausts their accrued paid leave time, the employee will be placed on leave without pay. Each employee situation will be re-evaluated by December 31, 2020.