

BOARD OF TRUSTEES
HUMBOLDT COUNTY SCHOOL DISTRICT

POLICY 3046
BUSINESS, NON-INSTRUCTIONAL

EMERGENCY FAMILY AND MEDICAL LEAVE (EFML)

1. Policy

This policy complies with the Families First Coronavirus Response Act to grant eligible employees protected leave for qualified reasons.

Public employers are covered under the Emergency Family and Medical Leave Expansion Act (EFMLEA) and will comply with the requirements of the EFMLEA and advise employees if they meet the eligibility requirement.

Employers are required to post and keep posted Form WH-1422: Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act in a conspicuous place that can readily be seen by employees and applicants alike, even if no employees are eligible.

This policy is effective at 12:01 a.m. on April 1, 2020 and will remain in effect until 12:00 p.m. on December 31, 2020. It does not apply retroactively.

2. Eligibility

Employees who have been employed by the **employer** for 30-calendar days are eligible for EFMLEA leave. All employees meeting the above qualification qualify for EFMLEA, regardless of their seasonal, temporary, etc., status.

3. Duration of Leave

Any eligible employee, as defined above, may be granted a total of 12 weeks of FMLA leave, including EFML leave during a 12-month period. This period is measured backward from the date an employee uses any FMLA leave, including EFMLEA leave. A "week" is defined as a calendar week, regardless of the number of days the employee normally works. Twelve weeks does not entitle a part-time employee working three days a week to 60 leave days, but rather 12 weeks.

4. Reasons for Leave

EFMLEA may be granted for the following reason:

The employee is unable to work or telework due to a need for leave to care for a minor child if the school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency declared by a federal, state, or local authority.

5. Compensation During Leave

The first two weeks of EFMLEA leave will be unpaid leave unless the employee has accrued paid leave and is otherwise eligible to use the leave. Employees who are eligible for

Emergency Paid Sick Leave (EPSL, see Policy #) will be required to use EPSL during the first two weeks.

Weeks 3 through 12 of EFMLEA leave will be compensated at 2/3 the employee's regular rate of pay, up to \$200 a day and \$10,000 in the aggregate. Employees may substitute accrued personal and vacation leave for the pay not covered by EFMLEA, but employers are prohibited from requiring this substitution.

When substituting accrued paid leave for the pay not covered by EFMLEA, the employee must comply with the **employer's** procedural requirements, terms, and conditions of the paid leave policy as appropriate; once accrued leave is depleted, the remainder of the leave period will then consist of unpaid leave for the pay not covered by EFMLEA.

6. Intermittent Leave

Employees may take EFMLEA leave intermittently while working at the regular worksite or teleworking, and leave may be taken in any increments agreed upon by the employer and employee. Intermittent leave may be taken in one day increments.

7. Notice of Leave

An employee intending to take EFMLEA leave shall give notice as soon as practicable.

8. Certification of Leave

Employees are required to provide supporting documentation, such as:

- The employee's name,
- Qualifying reason for requesting leave,
- Documentation supporting the reason for leave (such as a notice that has been posted on a government, school, or day care website),
- Statement that the employee is unable to work, including telework, for that reason, and
- The date(s) for which leave is requested.

9. Benefits Coverage During Leave

During a period of EFMLEA leave, an employee will be retained on the **employer's** health plan under the same conditions that would apply if the employee was not on EFMLEA leave. To continue health coverage, the employee must continue to make any contributions that s/he would otherwise be required to make. Failure of the employee to pay his/her share of the health insurance premium may result in loss of coverage.

If the employee fails to return to work after the expiration of the EFMLEA leave, the employee may be required to reimburse the **employer** for payment of health insurance premiums during the leave, unless the reason the employee cannot return is due to circumstances beyond the employee's control. The definition of "beyond the employee's control" includes a large variety of situations such as: the employee being subject to layoff; continuation, recurrence, or the onset of an FMLA-qualifying event; or the employee's spouse's unexpected worksite relocation of more than 75 miles from the current worksite. Employees will accrue sick, personal and vacation (if eligible) leave for each regularly scheduled day on paid leave in accordance with the CBA.

10. Anti-Retaliation

An employee shall not be retaliated against for utilizing the leave described in this section. Any employee who believes s/he has been retaliated against in any manner whatsoever should immediately notify the EEO Officer or alternative EEO Officer. The **employer** will promptly investigate and deal appropriately with any allegation of retaliation. In the event retaliation is substantiated, disciplinary action up to and including termination may be taken.

11. Interaction with FMLA

All provisions included in Policy 3045 Family and Medical Leave not covered in this policy apply.

Related Form:

Designation Notice for Emergency Family and Medical Leave

Notice of Eligibility and Rights and Responsibilities for Emergency Family and Medical Leave

Designation Notice

for Emergency Family and Medical Leave

To (Employee Name)

From: (Employer

representative) Date:

We have reviewed your request for leave under the Emergency Family and Medical Leave Expansion Act and any supporting documentation that you have provided. We received your most recent information on and decided:

_____ Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave.

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:

Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement:

_____ Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

_____ The first 10 days of emergency FMLA will be unpaid (employees may elect to substitute accrued paid or Emergency Paid Sick Leave Act); weeks three through ten of emergency FMLA will be compensated at 2/3 your regular rate of pay up to \$200 per day (\$10,000 in aggregate).

Please be advised (check if applicable):

_____ Leave under the Emergency Paid Sick Leave Act (EPSLA) will be used during the first 10 days of your emergency FMLA leave. This leave will be compensated at 2/3 of the regular rate of pay for up to 80 hours of pay (pro-rated to part-time employees) up to \$200 per day.

_____ You have elected to use paid
_____ sick, _____ annual, and/or

_____ other leave during emergency FMLA leave to make up the difference between the 2/3 salary provided under the EPSLA and this provision and your full salary. If other, list: _____.

Any paid leave taken for this reason will count against your FMLA leave entitlement.

Additional information is needed to determine if your emergency FMLA leave request can be approved: The certification you have provided is not complete and sufficient to determine whether the FMLA applies to your leave request. You must provide the following information no later than (insert date) unless it is practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be

denied.

_____ (Specify information needed to make the certification complete and sufficient)

____ Your emergency FMLA Leave request is Not Approved.

_____The emergency FMLA does not apply to your leave request.

_____ You have exhausted your FMLA leave entitlement in the applicable 12-month period.

*All forms are temporary until DOL releases official EFMLEA Forms.

Notice of Eligibility and Rights and Responsibilities

for Emergency Family and Medical Leave

To (Employee Name)

From: (Employer

representative) Date:

Part A:

On (date), you informed us that you needed leave beginning on (insert date) because you are unable to work (or telework) due to a need for leave to care for a child or children under 18 because the school or place of care has been closed, or the child care provider is unavailable due to a public health emergency declared by a Federal, State, or local authority with respect to COVID-19.

This notice is to inform you that you:

_____ Are eligible for Emergency FMLA leave.

_____ Are not eligible for FMLA leave, because you have not been employed for at least 30 days.

Part B:

This Part will be completed if employee is eligible in Part A.

As explained in Part A, you meet the eligibility requirements for taking emergency FMLA leave and still have FMLA leave available in the applicable 12-month period. However, in order for us to determine whether your absence qualifies as emergency FMLA leave, you must return the following information to us by (insert date). If sufficient information is not provided in a timely manner, your leave may be denied.

- Qualifying reason for requesting leave,
- Documentation supporting the reason for leave (such as a notice that has been posted on a government, school, or day care website),
- Statement that the employee is unable to work, including telework, for that reason, and
- The date(s) for which leave is requested

You will be able to elect to use your available paid _____ sick, _____ vacation, and/or _____ other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on this form, you will be required to notify us as soon as practicable.

If your leave does qualify as emergency FMLA leave you will have the following rights:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:
 - _____ the calendar year (January – December).
 - _____ a fixed leave year based on _____.
 - _____ the 12-month period measured forward from the date of your first FMLA leave usage. _____ a “rolling” 12-month period measured backward

from the date of any FMLA leave usage.

- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.
- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)
- If you do not return to work following emergency FMLA leave, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as emergency FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact: (insert name) at (insert number).

*All forms are temporary until DOL releases official

EFMLEA Forms. (Adopted 4/14/20)