



**JOHNSTON BUSINESS  
LAW GROUP**

122 E. Patrick Street, #103 Frederick, MD 21701  
(240) 351-9944 • [johnston-legal.com](http://johnston-legal.com)

*The following FFCRA leave policy is being offered at no cost by the Johnston Business Law Group. This policy may be used in company employee handbooks. Please note this policy expires on December 31, 2020, unless otherwise announced by U.S. Congress.*

### **Families First Coronavirus Response Act Leave Policy**

The Families First Coronavirus Response Act (FFCRA) passed by Congress creates a separate category of leave that employers with fewer than 500 employees are required to provide. This FFCRA is limited to COVID-19 leave requests and therefore is different from a standard Paid Time Off or state mandated sick leave policy.

There are six reasons under the law in which an employee may request FFCRA 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 is seeking a medical diagnosis.
- (4) The Employee is caring for an individual subject to an order described in (1) or who has been advised as described in (2).
- (5) The Employee is caring for his or her son or daughter whose school or place of care has been closed or whose child care provider is unavailable due to COVID-19 related reasons.
- (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.

FFCRA leave is only available under these six circumstances. For any other leave requests, employees must use other paid time off or take the time off as unpaid leave, subject to Company approval. To the extent necessary, the Company may request that the Employee provide the documentation required to substantiate the need.

### **Paid Sick Leave (PSL)**

Availability and Reasons for Leave. Paid Sick Leave (PSL) is limited to a maximum of 80 hours for full-time employees. Part-time employees will receive PSL hours equal to the average number of hours worked per week for the past six months (or as long as the

Employee has been employed) multiplied by two. PSL is available for reasons (1)-(4) from the list above.

**PSL Pay.** Employees will be paid the lesser of their average daily pay or \$511 per day. Employees may only take PSL in half-day or full-day blocks.

To request PSL under items (1)-(4) above, an employee must provide a written request via a form or in writing to their direct supervisor along with any additional requested documentation, such as doctor's notes for themselves or their family.

### **Expanded Family and Medical Leave Act Leave (EFMLA)**

The other type of FFCRA leave that is available is the EFMLA. This leave is modeled on the existing federal Family Medical Leave Act, but EFMLA is possible only under limited circumstances provided by the FFCRA.

***(NOTE TO EMPLOYERS: The following language in bold and italics applies if the employer has fewer than 50 employees)***

***The Company wants to make clear that we as a Company are not required to provide any other Family Medical Leave Act leave because we are not a covered employer.***

**Availability and Reason for Leave.** EMFLA is available for employees who need to care for their child whose school or childcare providers are unavailable due to COVID-19 closures (reason number (5) from above). Based on government policy, if a child is 14 or older, absent special circumstances, the employee may not be eligible for EFMLA to care for teenage children. The maximum benefit period for the EFMLA is 12 total weeks of leave. EFMLA may be taken in intermittent blocks of no less than half-day blocks. To request EFMLA, the Employee must request the leave in writing using Company forms, or in the case of an emergency, by emailing their supervisor.

**EFMLA Pay.** The first two weeks of EFMLA leave are unpaid, but an employee can substitute the PSL benefit described above for the first two weeks. If the Employee has used the PSL benefit, the Employee may instead substitute with Company Paid Time Off (PTO) leave to the extent it is available. If the PTO available is less than two weeks, the Employee will be paid only to the extent of PTO availability.

For the remaining ten weeks of EFMLA, Employees must use their Company PTO, or other mandated paid sick leave, if available, under state or local law, concurrently with their EMFLA leave until their Company PTO is exhausted. If the Employee uses PTO, the Employee will be paid their average daily rate of pay until the PTO or Company leave is used.

After all paid leave options are exhausted, the Employee will receive EFMLA benefits equal to the lesser of two-thirds of their average daily rate of pay or \$200.00 per day.

## **Potential Exemption to PSL or EFMLA Pay**

The FFCRA provides that businesses with fewer than 50 employees may be exempt from the requirement to give PSL or EFMLA if the Company certifies that

- (1) Granting the requested leave would cause the Company's expenses and financial obligations to exceed available revenue and cause the Company to stop operating at a minimal capacity;
- (2) the absence of the Employee or employees requesting such leave would pose a substantial risk to the financial health or operational capacity of the Company because of the Employee's specialized skills, knowledge of the business, or responsibilities; or
- (3) the Company cannot find enough other workers who are able, willing, qualified, and available at the time and place needed, to perform the labor or services the employee requesting leave provides, and these labor or services are required for the Company to operate at a minimal capacity.

For reasons (1), (2), and (3), the Company may deny PSL or EFMLA only to those otherwise eligible employees whose absence would cause the Company's expenses and financial obligations to exceed available business revenue, pose a substantial risk, or prevent the small employer from operating at minimum capacity, respectively.

The Company will take reasonable steps to make PSL and EFMLA available to all employees. However, the Company is also focused on remaining in business through the pendency of the COVID-19 emergency. Therefore, the Company may find it necessary to invoke the exemption.

## **Documentation for FFCRA Leave**

The Company will require the Employee to provide reasonable information related to the reasons for the requested leave. The purpose of this documentation is to allow the Company to apply for and receive tax credits available under FFCRA. All documentation will be kept confidential to the extent possible.

## **Expiration of Policy, No Carry-Over of Leave**

This policy will expire on December 31, 2020, unless the FFCRA is extended by Congress or replaced with a similar law.

The Company may, but is not obligated to, allow Employees who have started PSL or are actively on EFMLA leave to complete their leave, so long as that leave does not exceed the first two weeks of 2021. Otherwise, an Employee will not be able to carry either PSL or EFMLA leave into next year. If an Employee does not use any PSL or EFMLA, the Employee may not carry that leave balance into 2021. If an Employee's employment is

terminated for any reason, the Employee will not receive a payout of unused PSL or EFMLA under any circumstances.

Any questions about this policy should be directed to your supervisor or the Company president.