ESD 105 Families First Coronavirus Response Act Policy & Procedure

Purpose
To comply with the Families First Coronavirus Response Act (FFCRA) and to assist employees affected by the COVID-19 pandemic with job-protected leave and pay, where applicable. This policy will be in effect from April 1, 2020, until December 31, 2020. Our existing FMLA leave policy still applies to all other FMLA-qualifying reasons for leave outside of this policy.

Emergency FMLA Expansion Leave

Employee Eligibility
All current employees who have been employed with ESD 105 for at least 30 days and are actively scheduled for work are eligible for leave under this policy.

Employees laid off or otherwise terminated on or after March 1, 2020, who are rehired on or before December 31, 2020, are eligible for leave upon reinstatement if they had previously been employed with ESD 105 for 30 or more of the 60 calendar days prior to their layoff or termination.

Reason for Leave
Eligible employees who are unable to work, or telework, due to a need to care for their child when a school or place of care has been closed, or when the regular child care provider is unavailable due to a public health emergency with respect to COVID-19.

“Child” means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:
- Under 18 years of age.
- 18 or older and incapable of self-care because of a mental or physical disability.

“Childcare provider” means a provider who receives compensation for providing childcare services on a regular basis, including:
- A center-based childcare provider.
- A group home childcare provider.
- A family childcare provider (one individual who provides childcare services for fewer than 24 hours per day, as the sole caregiver, and in a private residence).
- Other licensed provider of childcare services for compensation.
- A childcare provider that is 18 years of age or older who provides child care services to children who are either the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece or nephew of such provider, at the direction of the parent.

“School” means an elementary or secondary school.

Duration of Leave
Employees will have up to 12 weeks of leave to use from April 1, 2020, through December 31, 2020, for the purposes stated above. This time is included in and not in addition to the total FMLA leave entitlement of 12 weeks in a 12-month period.

For example, if an employee has already taken 6 weeks of FMLA leave, that employee would be eligible for only another 6 weeks of FMLA leave under this policy.
Increments & Intermittent Use of Leave
Employees may take expanded FMLA leave intermittently and in any increment agreed to with their supervisor. For example, an employee may only need 4 hours per day of leave to care for their child or may only need to do so on Tuesdays and Thursdays. Supervisors and employees should work collaboratively to establish a flexible schedule that considers both personal and operational needs - wherever possible.

Pay During Leave
Leave will be unpaid for the first 10 days of leave; however, employees may use accrued annual and/or sick leave during this time or they may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act (2/3 pay) as further explained below.

After the first 10 days, leave will be paid at two-thirds of an employee’s regular rate of pay for the number of hours the employee would otherwise be scheduled to work. Pay will not exceed $200 per day and $10,000 in total, or $12,000 in total if using emergency paid sick leave for the first two weeks. Any unused portion of this pay will not carry over to the next year. (Please note that the period during which employees are paid at two-thirds their regular pay is not reportable to the Department of Retirement Systems (DRS) and may affect the employee’s service credits for retirement.)

For employees with varying hours, one of two methods for computing the number of hours paid will be used:

- If the employee has worked 6 months or more, 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 leave, including hours for which the employee took leave of any type.
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

Employee Status and Benefits During Leave
While an employee is on leave, ESD 105 will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. While on paid leave, the ESD 105 will continue to make payroll deductions to collect the employee's share of the premium. During any unpaid portions of leave, the employee must continue to make their payment of the shared premium per instructions from the Human Resources and/or Payroll Department.

If the employee contributes to voluntary disability plans ESD 105 will continue making payroll deductions while the employee is on paid leave. During any portion of unpaid leave, the employee will be responsible for continuing to make payments to continue voluntary benefits or may elect to discontinue these benefits. If an employee chooses to discontinue their participation in a voluntary plan, they must contact the HR Department.
Procedure for Requesting Leave
All employees requesting FMLA leave must notify their supervisor and submit an Emergency Family and Medical Leave Request Form to the HR Department as soon as practicable. Verbal or written (email) notice will otherwise be accepted until written notice can be provided.

Notice of the need for leave must include:
- The name and age of the child or children being care for.
- The name of the school, place of care, or childcare provider that closed or became unavailable due to COVID-19 reasons.
- A statement representing that no other suitable person is available to care for the child or children during the period of requested leave. For children over the age of 14, a statement indicating the special circumstances that require the employee to provide care during daylight hours.

On a basis that does not discriminate against employees on FMLA leave, ESD 105 may require an employee on FMLA leave to report periodically on the employee’s status and intent to return to work.

Employee Status After Leave
Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. ESD 105 may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to business operations. Key employees will be given written notice at the time FMLA leave is requested of their status as a key employee.

Emergency Paid Sick Leave

Eligibility
All current full- and part-time employees scheduled but unable to work, or telework, due to one of the following reasons for 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 seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to either number 1 or 2 above.
5. The employee is caring for their child if the school or place of care of the child has been closed, or the childcare provider of such child 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.

“Child” means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:
- Under 18 years of age.
- 18 or older and incapable of self-care because of a mental or physical disability.
“Individual” means an immediate family member, roommate or similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined. Additionally, the individual being cared for must: a) be subject to a federal, state or local quarantine or isolation order as described above; or b) have been advised by a health care provider to self-quarantine based on a belief that he or she has COVID-19, may have COVID-19 or is particularly vulnerable to COVID-19.

**Amount of Paid Sick Leave**
All eligible full-time employees will have up to 80 hours of paid sick leave available to use for the qualifying reasons above. Eligible part-time employees are entitled to the number of hours worked, on average, over a two-week period.

For employees with varying hours, one of two methods for computing the number of hours paid will be used:
- If the employee has worked 6 months or more, 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 leave, including hours for which the employee took leave of any type.
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

**Increments and Intermittent Use of Leave**
When teleworking, employees may take emergency paid sick leave intermittently, in hourly increments, agreed to with their supervisor. As in the example for FMLA leave, an employee may only need 4 hours per day of leave to care for their child or may only need to do so on Tuesdays and Thursdays. Supervisors and employees should work collaboratively to establish a flexible schedule that considers both personal and operational needs, wherever possible.

For those not teleworking and currently working onsite, an employee may only take intermittent leave for reason 5 above, to care for their child when the school or place of care is closed, or the caregiver is unavailable due to COVID-19-related reasons.

Per the regulations, as all other reasons for emergency paid sick leave could potentially expose an employee or others in the workplace to the virus, employees must either use the full amount of paid sick leave or use it in full-day increments until the reason for leave is over and it is safe for the employee to return to work.

**Rate of Pay**
Emergency sick leave will be paid at the employee's regular rate of pay, or minimum wage, whichever is greater, for leave taken for reasons 1-3 above. Employees taking leave for reasons 4-6 will be compensated at two-thirds their regular rate of pay, or minimum wage, whichever is greater. Pay will not exceed:

- $511 per day and $5,110 in total for leave taken for reasons 1-3 above.
- $200 per day and $2,000 in total for leave taken for reasons 4-6 above.
Interaction with Other Paid Leave
The employee may use emergency paid sick leave under this policy before using any other accrued paid time off for the qualifying reasons stated above.

Employees on expanded FMLA leave under this policy may use emergency paid sick leave concurrently with that leave. Emergency paid sick leave may also be used when an employee is on leave under traditional FMLA for their own COVID-19-related serious health condition or to care for a qualified family member with such a condition.

Procedure for Requesting Emergency Paid Sick Leave
Employees must notify their supervisor and submit an [Emergency Paid Sick Leave Request Form](#) to the HR Benefits & Leave Administrator as soon as practicable. Verbal or written (email) notice will otherwise be accepted until written notice can be provided.

Documentation supporting the need for leave must be included with the leave request form, such as:
- A copy of the federal, state or local quarantine or isolation order related to COVID-19 applicable to the employee or the name of the government entity that issued the order.
- Written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19 or the name of the provider who advised the employee.
- The name and relation of the individual the employee is taking leave to care for who is subject to a quarantine or isolation order or is advised to self-quarantine.
- The name and age of the child or children being cared for; the name of the school, place of care, or child care provider that closed or became unavailable; and a statement that no other suitable person is available to care for the child during the period of requested leave.
  - For children over age 14, a statement indicating the special circumstances that require the employee to provide care during employee’s work hours.

Once emergency paid sick leave has begun, the employee and their supervisor must determine reasonable procedures for the employee to report periodically on the employee’s status and intent to continue to receive paid sick time. The HR Benefits & Leave Administrator shall be included on the status updates.

Carryover
Paid emergency sick leave under this policy will not be provided beyond December 31, 2020. Any unused emergency paid sick leave will not carry over to the next year or be paid out to employees.

Job Protections
No employee who appropriately utilizes emergency paid sick leave under this policy will be discharged, disciplined or discriminated against for work time missed due to this leave.

Please contact Human Resources with any questions.