

<i>Jefferson County Policies & Procedures</i>			
Policy Name:	FMLA Leave Expansion and Emergency Paid Sick Leave Policy (Coronavirus)	Approved:	04/02/2020 Rev: 04/08/2020
Policy Number:	216-A	Author:	Grove
Associated:	FMLA-216, Absence Time with Pay-208		

Purpose

To comply with the Families First Coronavirus Response Act and to assist employees affected by the COVID-19 outbreak with job-protected leave and emergency paid sick leave. This policy will be in effect from April 12, 2020, until December 31, 2020. The County’s existing FMLA leave policy still applies to all other reasons for leave outside of this policy. The policy replaces all personnel policies contained in both the County Commission Policy Declaration dated March 17, 2020, and the County Commission Second Emergency Declaration dated March 24, 2020. COVID-19 Emergency Paid Sick Leave and Expanded FMLA as outlined in this policy replace any paid leave entitlements contained in the previously enacted emergency declarations.

EXPANDED FMLA LEAVE

Employee Eligibility

All employees who have been employed with the County Commission of Jefferson County for at least 30 days.

Reason for Leave

Eligible employees who are unable to work (or telework) due to a need to care for their child when the school or place of care has been closed, or the regular childcare 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-

- (A) under 18 years of age; or
- (B) 18 years of age 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 childcare 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 2, 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 another 6 weeks of FMLA leave under this policy.

Employees may use expanded FMLA leave intermittently or on a reduced schedule basis.

Pay During Leave

Leave will be unpaid for the first 10 days of leave; however, employees may use any accrued paid vacation, sick or personal leave during this time. The employee may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act, 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. Any unused portion of this pay will not carry over to the next year.

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

- 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. Or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

Employees may elect to supplement their existing leave in conjunction with the expanded family medical leave in order to receive his or her normal pay.

Employee Status and Benefits During Leave

While an employee is on leave, the County 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 employer 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 this payment per instructions from the Finance Department.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. During any portion of unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

Procedure for Requesting Leave

All employees requesting FMLA leave must notify the County Administrator and their supervisor of the need and specific reason for leave under this policy. Employees must complete an Expanded FMLA Paid COVID-19 Leave Request Form and receive approval for use. Forms can be submitted via e-mail to sgrove@jeffersoncountywv.org.

Within five business days after the employee has provided this notice, the County Administrator will provide the employee with any Department of Labor (DOL) required notices.

On a basis that does not discriminate against employees on FMLA leave, the County 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. The County 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 his or her status as a key employee.

EMERGENCY PAID SICK LEAVE (COVID-19 LEAVE)

Eligibility Reasons

All full- and part-time employees 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 his or her 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-

- (A) under 18 years of age; or
- (B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

Categories of Leave

Generally, Emergency Paid Sick Leave will be categorized in three types of paid COVID-19 leave: 1) COVID-19 Health Leave, 2) COVID-19 Care Leave, and 3) COVID-19 Distance Leave. Leave usage for each category is outlined below:

I. COVID-19 Health Leave

To ensure continued operation of county government, employees are generally expected to report to work or to telework as directed by their supervisor. An employee who must be absent from work and is unable to telework, may use COVID-19 Health Leave for the following reasons:

1. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
2. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

Pursuant to the Families First Coronavirus Response Act, COVID-19 Health Leave will be paid at the employee's regular rate of pay, or minimum wage, whichever is greater. Pay will not exceed \$511 per day and \$5,110 in total.

II. COVID-19 Care Leave

To ensure continued operation of government, employees are generally expected to report to work or to telework as directed by their supervisor. An employee who must be absent from work and is unable to telework, may use COVID-19 Care Leave for the following reasons:

1. The employee is caring for an individual who is subject to eligibility reasons 1 or 2 above.
2. The employee is caring for his or her 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.

3. 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.

Employees eligible for telework should continue to telework even if the individual for whom they are caring is present in the remote work location, so long as the employee is actually conducting their job duties and actually working their normal schedule or flexing time as approved by their supervisor.

Pursuant to the Families First Coronavirus Response Act, COVID-19 Care Leave will be compensated at the 2/3 the employees regular rate of pay or minimum wage, whichever is greater, not exceed \$200 per day and \$2000 total.

III. COVID-19 Distance Leave

To ensure continued operation of government, employees are generally expected to report to work or to telework as directed by their supervisor. An employee who must be absent from work and is unable to telework, may use COVID-19 Distance Leave for the following reasons:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
2. The employee performs essential work but has been assigned reduced hours in an effort to limit the amount of staff present on the county campus at one time and the employee is unable to perform their assigned duties due to an inability to work remotely.
3. The employee's supervisor has instructed the employee not to report to the workplace for a COVID-19 related reason.

Pursuant to the Families First Coronavirus Response Act, COVID-19 Distance Leave will be paid at the employee's regular rate of pay, or minimum wage, whichever is greater. Pay will not exceed \$511 per day and \$5,110 in total.

Amount of Leave

All eligible full-time employees will have a total of up to 80 hours (pro-rated for 70 hour and part time employees) of emergency paid sick leave available to use for any combination of the three categories of COVID-19 leave. 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:

- 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. Or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

Rate of Pay

Paid emergency sick leave, 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 eligibility reasons 1-3 above;
- \$200 per day and \$2,000 in total for leave taken for eligibility reasons 4-6 above.

Interaction with Other Paid Leave

The employee must use COVID-19 emergency paid sick leave under this policy before using any other accrued paid time off for the qualifying reasons contained in this policy.

When use of COVID-19 emergency sick leave would result in less the full-pay for the employee, the employee may choose to supplement his or her COVID-19 paid leave with any accrued sick, vacation, or compensatory time in order to receive his or her normal pay.

Employees on expanded FMLA leave under this policy may use emergency paid sick leave during the first 10 days of unpaid FMLA leave for child care.

Procedure for Requesting Leave

Employees must notify the County Administrator and their supervisor of the need and specific reason for leave under this policy. Employees must complete a Paid COVID-19 Leave Request Form and receive approval for use. Forms can be submitted via e-mail to sgrove@jeffersoncountywv.org.

If the reason for the need for leave changes, employees must complete a new Paid COVID-19 Leave Request Form and receive a new approval.

Once emergency paid sick leave has begun, the employee and his or her manager must determine reasonable procedures for the employee to report periodically on the employee's status and intent to continue to receive paid sick time.

General Provisions

In instances where employees are unable to perform their assigned duties due to the type of work they perform (meaning the work cannot be performed remotely) but are assigned to other duties that can be performed remotely or duties in other departments where it is possible to practice good social distancing, an employee cannot refuse a reassignment of duties in order to take COVID-19 Leave.

All approvals of leave under this policy are subject to change to conform with any changes that may be made to this policy, and all leave approved under this policy expires when this policy is no longer in effect, except as may be required by law.

Paid COVID-19 Health and Paid COVID-19 Care leave that also constitutes FMLA can be taken on an intermittent or reduced schedule basis. All other types of PAID COVID-19 Leave may be taken on an intermittent or reduced schedule basis with permission.

Employees are not entitled to reimbursement of payout for unused Paid COVID-19 Leave.

All employees who use COVID-19 Leave and Paid Administrative Leave are expected to comply with the provisions of West Virginia Governor Justice's Executive Orders Nos: 9-20 and 20-20 while on COVID-19 Paid Leave. Employees are prohibited from working a second job while on COVID-19 Paid Leave or Paid Administrative Leave.

All employees on Paid Administrative Leave shall be deemed to be "on-call" and each such employees shall be expected to participate in helping to keep each of the offices open and providing services to the public as scheduled or as requested and necessary.

Nothing contained in the policy interferes with an employee's right to use sick leave to care for ill or injured family members as provided by the Federal Family and Medical Leave Act as outlined in County Policy No. 216: FMLA.

Use of Paid COVID-19 Leave that also constitutes FMLA leave will run concurrently with FMLA and will be counted against an employee's FMLA balance.

Paid COVID-19 leave that also constitutes FMLA will require the same medical certifications required for FMLA pursuant to County Policy No. 216: FMLA.

Paid COVID-19 Leave shall not exceed the employee's normal work schedule.

Paid Administrative Leave

Once an employee has exhausted all COVID-19 Distance Leave, the employee shall be entitled to take administrative leave with pay if the employee is working at least half of his or her normal work schedule as determined during the employee's regular two-week pay period.

Carryover

Paid emergency sick leave under this policy will not be provided beyond December 31, 2020. Any unused 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.

Effective Date

This policy becomes effective on April 12, 2020 and expires on December 31, 2020.