April 8, 2020

Families First
Coronavirus Response
Act – Sample Policy
DISCLAIMER

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The sample policy below is generally applicable to private employers with fewer than 500 employees. If you are a private employer with fewer than 50 employees, however, you may claim an exemption to the Families First Coronavirus Response Act’s (“FFCRA”) child care leave provisions if the imposition of such requirements would jeopardize the viability of your business.

Additionally, employers of “health care providers” and “emergency responders” may exclude such employees. “Health care providers” include “anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity.” “Emergency Responders” includes “anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19.”

If you have any questions regarding the FFCRA’s applicability to your business, or how to implement the policy below, please contact an HEC Human Resources Consultant or a trusted employment attorney.

**Families First Coronavirus Response Act (“FFCRA”) Policy**

The purpose of this policy is to comply with the FFCRA and to assist eligible employees affected by the COVID-19 outbreak with job-protected leave and pay. This policy will be in effect from April 1, 2020, until December 31, 2020. Under the FFCRA, employees may be eligible to take expanded FMLA leave and/or Emergency Paid Sick Leave.

I. **Expanded FMLA Leave (EFMLA Leave)**

1. **Employee Eligibility.** All current employees who have been employed by [Company] for at least 30 days are eligible. Employees laid off or terminated on or after March 1, 2020, who are rehired on or before December 31, 2020, are eligible for leave upon reinstatement if they were employed with [Company] for 30 or more of the 60 calendar days prior to their layoff or termination.

2. **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. [For employers with less than 50 employees: However, if [Company] determines that the EFMLA leave would jeopardize the viability of the business as a going concern, the employee’s request for EFMLA leave may be denied.]

3. **Duration of Leave.** Employees will have up to 12 weeks of leave to use from April 1, 2020, through December 31, 2020. [For employers subject to FMLA: This time is included in and not in addition to the total FMLA leave entitlement of 12 weeks in a 12-month period.]
4. **Usage of Leave** [OPTIONAL]. Employees may take expanded FMLA leave intermittently and in any increment agreed to with their supervisor.

5. **Pay During Leave**. Leave will be unpaid for the first 10 days. However, employees may use accrued paid vacation, sick or personal leave during this time. Employees may also elect to use the paid leave provided by the Emergency Paid Sick Leave Act (described below in Part II). After the first 10 days, leave will be paid at two-thirds of an employee's regular rate 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). [Optional: Employees may also supplement the two-thirds pay with accrued paid time off (PTO) not to exceed 100% of regular pay. For example, an employee may choose to use one-third of an hour of PTO for each hour of EFMLA leave taken to reach 100% of normal pay per hour.]

6. **Employee Health Care**. [Company] 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.

7. **Procedure for Requesting Leave**. Employees are encouraged to notify [Company] about their request for emergency paid sick leave as soon as practicable if such leave is foreseeable. [Company] will provide employees with a form to complete their request. [A model form is available on HEC's website.]

8. **Employee Status**. Generally, an employee who takes EFMLA leave will return to either the same position or a position with equivalent status, pay, benefits and other employment terms. However, [Company] may choose to exempt certain key employees when returning them to the same or similar position will cause substantial and grievous economic injury to business operations. Key employees will be given written notice at the time EFMLA leave is requested of their status as a key employee.

[OR, for employers with fewer than 25 employees: Generally, an employee who takes EFMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. If the employee’s position no longer exists due to economic conditions or operational changes that are made because of COVID-19, and no equivalent position is available, the employee will not be returned to employment. However, for the period of one year after qualifying leave under this policy ends, [Company] will make reasonable efforts to contact the employee if an equivalent position becomes available.]

9. [For employers subject to FMLA: Our existing FMLA leave policy still applies to all other FMLA-qualifying reasons for leave outside of this policy.]

**II. Emergency Paid Sick Leave**
1. **Eligibility.** All employees.

2. **Reason for Leave.** Employees may take Emergency Paid Sick Leave ("EPSL") if they are unable to work (or telework) because:
   a. The employee is subject to a federal, state or local quarantine or isolation order related to COVID–19.
   b. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
   c. The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.
   d. The employee is caring for an individual who is subject to either (a) or (b) above.
   e. The employee is caring for his or her child if the school or place of care of the child has been closed, or the child care provider of such child is unavailable, due to COVID–19 precautions.
   f. 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.

   [For employers with less than 50 employees: If [Company] determines that EPSL for reason “e” above (i.e., child care leave) would jeopardize the viability of the business as a going concern, the employee’s request for EPSL may be denied.]

3. **Amount.** All eligible full-time employees will have up to 80 hours of EPSL. For purposes of this policy, a full-time employee works at least 40 hours each workweek. Eligible part-time employees with a normal schedule are entitled to the number of hours the Employee is normally scheduled to work over two workweeks. Eligible part-time employees without a normal schedule are entitled to leave as provided by 29 C.F.R. § 826.21(b)(2).

4. **Usage [OPTIONAL]:** Employees who are not teleworking may only take intermittent leave for reason “e” (i.e., to care for his or her child when the school or place of care is closed, or the caregiver is unavailable due to COVID-19-related reasons). Teleworking employees may take emergency paid sick leave intermittently and in any increment agreed to with their supervisor.

5. **Payment.** EPSL will be paid at the employee’s regular rate of pay, or minimum wage, whichever is greater, for leave taken for reasons (a)-(c) above. Employees taking leave for reasons (d)-(f) 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 (a)-(c) above.
   - $200 per day and $2,000 in total for leave taken for reasons (d)-(f) above.

6. **Interaction with Other Paid Leave.** Employees may use EPSL before using any other accrued paid time off for the qualifying reasons stated above. Employees on expanded

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FMLA leave may use EPSL concurrently with that leave. [Employers with FMLA: Emergency paid sick leave may also be used when an employee is on leave under traditional FMLA for his or her own COVID-19-related serious health condition or to care for a qualified family member with such a condition.]

7. Procedure for Requesting EPSL. Employees are encouraged to notify [Company] about their request for EPSL as soon as practicable. Employees must follow [Company’s] standard notice procedures for leave after the first workday (or portion above for which an Employee takes leave for any reason other than “e” above. [Company] will provide employees with a form to complete their request. [A model form is available on HEC’s website.]

8. Carryover. EPSL will not be provided beyond December 31, 2020. Any unused EPSL will not carry over to the next year or be paid out to employees.

9. Conditions. No employee will be discharged, disciplined or discriminated against for work time missed due to this leave. An employee’s use of EPSL will not be conditioned upon searching for or finding a replacement employee. Additionally, [Company] will not require an employee to use other paid time off or paid leave before the employee uses EPSL.

Please contact ______________ with any questions regarding this policy.