

Sample notice to employees regarding EPSL and EFML (4/3/20)

Date: [date]

To: All [employer name] Employees

From: [name], [title]

Re: Notice regarding Emergency Paid Sick Leave and Family and Medical Leave

This notice clarifies components of leave for eligible employees attributable to the COVID-19 outbreak under the recently enacted federal Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave Expansion (EFML) Acts.

Disclaimer

This notice supplements existing employment policies, rules, procedures, and regulations to ensure compliance with the new laws. All current employment policies, rules, procedures, and regulations remain in full effect, such as FMLA and paid leave policies and procedures, except for instances where this notice directly contradicts another current policy, rule, procedure, or regulation in which case this notice supersedes existing policy, rule, procedure, or regulation. Therefore, employees are encouraged to review all other such policies, rules, procedures, and regulations in conjunction with this notice when requesting a leave.

[employer name] reserves the right to modify or rescind this notice at any time.

Government agencies may be issuing additional or modified regulations, guidance, and notices and forms to clarify implementation of these laws. Accordingly, [employer name] may be supplementing, clarifying, and/or modifying applicable portions of this notice as such items are issued. [employer name], however, desires to provide this notice now to clarify the applicable leaves for employees and to allow them to prepare sufficiently.

Effective Date

This notice applies to EPSL and EFML taken from April 1, 2020 through December 31, 2020.

Emergency Paid Sick Leave

- **Qualified employees**

An employee who is not [define any emergency responders excluded] qualifies for EPSL to the extent that the employee is unable to work or telework and is absent from work because the employee:

1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

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2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. Is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. Is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
6. 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.

As relates to employee qualification for EPSL, “son or daughter” 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.

- **Employee Notice**

By no later than after the first workday of EPSL taken, an employee who plans to take EPSL must follow the same procedures, to the extent practicable, for notifying [employer name] as are typically required when requesting regular sick leave. An employee’s request should include the date(s) for which leave is requested, the coronavirus-qualifying reason for leave, the name of the government entity or health care provider advising or issuing any applicable quarantine or isolation order, and a statement that the employee cannot work or telework because of this reason.

- **Leave**

- **Duration**

The amount of hours of EPSL to which a qualified employee is entitled for absences from work is as follows:

1. For full-time employees, 80 hours;
2. For part-time employees, a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.

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○ Pay

[employer name] will pay an employee for EPSL at his or her regular rate for any hours he or she is absent that he or she would have normally been scheduled to work if the employee:

1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
3. Is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

The employer, however, will not pay the employee more than \$511 per day and \$5,110 in total for EPSL for these uses.

[employer name] will pay an employee for EPSL two-thirds his or her regular rate for any hours he or she is absent that he or she would have normally been scheduled to work if the employee:

1. Is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
2. Is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
3. 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.

The employer, however, will not pay the employee more than \$200 per day and \$2,000 in total for EPSL for these uses.

A part-time employee whose schedule varies from week to week to such an extent that [employer name] is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken EPSL, will be compensated in accordance with: (i) 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 EPSL, including hours for which the employee took leave of any type; or (ii) if the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

● Interaction with Other Paid Leave

The employee may use EPSL before using any other accrued paid time off for the qualifying reasons stated above.

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Employees using EFML may use EPSL during the first 10 days of the normally unpaid EFML.

- **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.

- **Job Protections**

No employee who appropriately uses EPSL under this policy will be discharged, disciplined or discriminated against for work time missed due to this leave.

Emergency Family and Medical Leave

The provisions of [employer name]'s Family and Medical Leave Act (FMLA) policy apply to EFML in their entirety to the extent they are not inconsistent with the provisions of this notice and the EFML law. This notice primarily covers items requiring clarification, or which deviate from the FMLA policy. Employees should, therefore, review [employer name]'s FMLA policy in conjunction with this notice to determine the requirements of using EFML.

- **Qualified Employees**

An employee who is not [define any emergency responders excluded] qualifies for EFML leave if he or she:

1. Has been employed by [employer name] for at least 30 calendar days before the first day of the leave;
2. Is unable to work or telework due to having to care for a minor child whose school or regular care provider is closed or unavailable because of an emergency involving COVID-19 declared by local, state, or federal officials; and
3. Is absent from work for such reason.

As relates to employee qualification for EFML, "minor 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:

- c. under 18 years of age; or
- d. 18 years of age or older and incapable of self-care because of a mental or physical disability.

- **Notice**

In any case where the necessity of taking EFML foreseeable, an employee shall provide the employer with written notice of leave as is practicable. Verbal notice will otherwise be accepted until written notice can be provided.

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The notice the employee provides should include the name of the child being cared for; the name of the school, place of care, or child care provider that closed or became unavailable due to coronavirus reasons; the duration of the requested leave; and a statement representing that no other suitable person is available to care for the child during the period of requested leave.

- **Leave**

- **Duration**

Employees may take up to a combined twelve weeks of EFML and other FMLA leave during the applicable FMLA twelve month period. If an employee is eligible for EFML and other FMLA leave concurrently, such leave times will run concurrently. An employee cannot take EFML after December 31, 2020.

- **Pay**

The first 10 work days of EFML taken by a qualifying employee will be unpaid. During this 10-day period, an employee may, however, elect to substitute all or any of: (i) the EPSL described in the previous section of this notice; or (ii) other accrued paid leave to be paid for some or all of the 10-day unpaid period.

After the first 10 work days of EFML, [employer name] will pay an employee for EFML two-thirds of his or her regular pay rate as defined by the federal Fair Labor Standards Act of 1938 for any hours he or she would have normally been scheduled to work. The employer, however, will not pay the employee more than \$200 per day, nor more than \$10,000 total, for any EFML taken. An employee may elect to substitute all or any of accrued paid leave to be paid for the difference between the employee's regular pay rate and the amount paid by [employer name].

An employee who takes EFML, and whose schedule varies from week to week to such an extent that [employer name] is unable to determine with certainty the number of hours the employee would have worked during the time EFML was taken, will be paid two-thirds of his or her regular pay rate based on: (i) the average number of hours worked per day by the employee over the six months prior to taking EFML; or (ii) for employees who have worked for less than six months prior to leave, the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

- **Employee Status and Benefits During Leave**

While an employee is on leave, the [employer name] 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 [employer name].

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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.

Administration

Forms to make requests for these leaves and other notices are [specify location, on the web portal, at the City Clerk's office, etc.]

If you have any questions regarding this notice, please contact [title] [name] at [phone] or [email address].