UNDERSTANDING THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

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“CRITICAL SECTOR WORKERS” IN THE PUBLIC SCHOOLS
Executive Order 20-02

Directs school employees to report to work in accordance with labor agreements and as required by employers

Addressing “at risk employees”

Executive Order 20-19

Per applicable labor agreements, schools must allow for remote work or telework to the extent possible.

To the extent it is necessary for staff to be physically present, schools must provide conditions that comply with MDH Guidance on social distancing.

Consistent with applicable labor agreements, schools must utilize available staff who are able to work during the distance learning period.

Districts must also provide employee accommodations as required by law.
Executive Order 20-20

“Critical Sector Workers” include:
- educators and other workers supporting public and private schools
- educators and other workers providing care to children

“Critical Sector Workers” are those “who are performing work that cannot be done in their home or residence through telework or virtual work and can be done only at a place of work outside the home or residence.”

BASIC FMLA PROVISIONS
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Employers must provide an eligible employee with up to 12 weeks of unpaid leave each year for any of the following reasons:

1. For the birth and care of the newborn child of an employee;
2. For placement with the employee of a child for adoption or foster care;
3. To care for an immediate family member (i.e., spouse, child, or parent) with a serious health condition; or
4. To take medical leave when the employee is unable to work because of a serious health condition.

TERMS DETERMINING QUALIFICATIONS

“Serious Health Condition” means an illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

Important Definitions:
- Incapacity
- Treatment
- Inpatient care
- Continuing Treatment by a Healthcare Provider
THE EMERGENCY PAID SICK LEAVE ACT
Effective April 1, 2020

ELIGIBLE EMPLOYEES

Employees can take emergency paid sick leave if they are unable to work (or telework) due to a need for leave because that 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 related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed for reasons related to COVID-19; or
6. is experiencing any other substantially similar condition specified by HHS, DOL and Treasury
ELIGIBILITY ENTITLEMENTS

Full time employees
- **80 hours of paid sick time to be used over a two week period**
- Only available for emergency purposes of the Act
- Available for immediate use as of April 1
- Not added to the employee’s regular sick leave bank
- Cannot be carried forward

Part time employees
- Paid sick time equal to the average number of hours normally worked in a 2 week time span
- Only available for emergency purposes of the Act
- Available for immediate use as of April 1
- Not added to the employee’s regular sick leave bank
- Cannot be carried forward

Rate of Pay

**Government Quarantine, Medically Advised Self-Quarantine, Seeking Medical Diagnosis:**
- Regular daily rate of pay, or the applicable minimum wage, whichever is higher
- Statutory cap of $511 per day
- Statutory cap of $5,110 over course of entire sick leave period

**Caring for Another Who is Quarantined or Whose School is Closed, Childcare is Unavailable, Other reasons:**
- 2/3 of the average daily rate or 2/3 of the minimum wage, whichever is higher
- Statutory cap of $200 per day
- Statutory cap of $2000 over the course of the entire sick leave period
THE EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT
Effective April 1, 2020

ELIGIBILITY

Entitlements

Applies When an Employee Is Unable To Work (or Telework) Because:

- The employee is caring for a son or daughter under 18 years of age of such employee if the school or place of care has been closed; or
- The employee’s child care provider of such son or daughter is unavailable.
- Applies only if the need for leave is related to a “public health emergency” meaning an emergency with respect to COVID-19 is declared by a Federal, State, or local authority.
**CONDITIONS**
FIRST 10 DAYS (2 WEEKS) ARE UNPAID BUT THE EMPLOYEE MAY SUBSTITUTE ACCRUED PAID LEAVE OR EMERGENCY PAID SICK LEAVE

**LEAVE LENGTH**
MAXIMUM OF 12 WEEKS (FOR MILITARY CAREGIVER)

**AMOUNT OF PAY**
- BASED ON THE AVERAGE NUMBER OF HOURS SCHEDULED PER DAY OVER PREVIOUS 6 MONTHS
- PAID AT 2/3 OF THE EMPLOYEE’S REGULAR RATE OF PAY OR MINIMUM WAGE
- STATUTORY CAP OF $200 PER DAY
- STATUTORY TOTAL CAP OF $10,000

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**MASBO MEMBER QUESTIONS**
Question 1

Does the FFCRA Apply Differently to Salaried Positions Versus Hourly Positions?

Question 2

What is Considered “Full-Time Employment?”
Question 3

Can Schools Set Specific Hours for Teleworking?

Question 4

Are the 80 Hours of Paid Sick Leave Contingent on Employees’ Teleworking?
Question 5

Can the 80 Hours of Paid Sick Leave Be Substituted for the Initial Two Weeks of Unpaid Expanded FMLA Leave?

Question 6

Who Does the Tax Credit Apply To?
Question 7

Can the Emergency Paid Sick or Expanded FMLA Leave Be Used Intermittently?

Question 8

How are Employer and Employee Contributions to Insurance Premiums Affected by Emergency Paid Sick Leave and/or Expanded FMLA under the FFCRA?
Question 9

How Does the FFCRA Affect Coaches Who Did Not Finish Their Activity’s Season?

Question 10

If an Employee Has Used FMLA in the Last 12 Months, Does That Count Against Their Leave Entitlement for Emergency FMLA?
Question 11

What is the Effective Date of the FFCRA?

Question 12

Can Employees Use FMLA Without Any Underlying Health Condition or Anyone to Care For (e.g., Solely to Avoid Potential Exposure)?
Question 13
Is the Tax Credit an Income Tax Credit, or Could It Be Treated as a Reduction in Federal Payroll Taxes?

Question 14
How Should Schools Respond to Employees Who are Objecting to or Refusing their Modified Responsibilities (e.g., Remote Teaching, Providing Child Care Services for Critical Sector Employees)?
Question 15

If an Employee Does Not Have PTO, but Cannot Work Due to Quarantine or Compromised Health, Are Schools Required to Pay Them?

Question 16

Can Employers Require Employees to Use Their Two Weeks of Emergency Sick Time Concurrently with Their Expanded FMLA Leave?