

LCW Sample Documents
for CCDs
Due to COVID-19

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How Community College Districts Should Respond to COVID-19 Exposure and Communicate With Employees About Their Potential Exposure to COVID-19 In The Workplace

As the number of positive COVID-19 cases continues to rise, we anticipate that many community college districts will unfortunately be confronted with news that one of their students or employees has contracted the disease, and will need to face the challenges that come with notifying other employees about their potential exposure. LCW can assist you with navigating these difficult challenges and offers the following guidance on what to do if you become aware that an employee (other another individual close to the District) tests positive for COVID-19.

Inform Fellow Employees of Their Possible Exposure

Workplace safety and health regulations in California require employers to protect workers exposed to airborne infectious diseases such as COVID-19. Therefore, if your district discovers that an employee (or other another individual that has been in close contact with the district's employees such as an independent contractor) has tested positive for COVID-19, your district may notify affected employees in a way that does not reveal the personal health-related information of the individual who has tested positive for COVID-19.

Although providing affected employees information in this manner is consistent with recent guidance issued by the Department of Fair Employment and Housing ("DFEH") (the state administrative agency that largely enforces California's anti-discrimination laws including the Fair Employment and Housing Act ("FEHA")), community college districts should be particularly cautious when communicating with employees about a potential exposure, and take care to not violate California's Confidentiality of Medical Information Act ("CMIA"). The CMIA requires employers to protect the privacy and security of any medical information they receive about their employees. Under the CMIA, "medical information" means any "individually identifiable" information regarding the employee's medical history, mental or physical condition, or treatment. "Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the individual's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity. An employer that violates the CMIA may be liable for compensatory damages, punitive damages not to exceed three thousand dollars (\$3,000), attorneys' fees not to exceed one thousand dollars (\$1,000), and the costs of litigation.

Community college districts that become aware that their employees have been exposed to an individual who has tested positive for COVID-19 should develop narrowly tailored communications that balance the safety interests of employees that have possible been exposed with the privacy rights of the individual who has tested positive for COVID-19. Any communication to employees about their possible exposure should never identify any specific individual by name nor should the communication include information that would enable the reader to identify that person (i.e. the communication should not identify a specific work location if there is only one known employee that works in that location). Rather, community college districts should draft a notice that provides affected individuals with enough information to have a meaningful discussion with a healthcare provider and take the appropriate risk mitigating steps (i.e. increased social distancing, hand washing, self-monitoring of symptoms, etc.). In their notice to affected employees, community college districts should also consider advising that they will follow the Centers for Disease Controls (“CDC”) best practices for cleaning and disinfection. Community college districts might also refer affected employees to their county’s public health department’s website for guidance on monitoring for symptoms.

LCW has available to its clients a complimentary template notice for advising affected employees of their potential exposure which LCW can tailor specifically to the needs of your District.

Coordinate With Local Health Officials

When a community college district learns that someone who has been on the campus has tested positive for COVID-19, the district should immediately reach out to local public health officials. These officials will help administrators determine a course of action for community college district. The district should work with local public health officials to determine if the district needs to cancel classes or close buildings and facilities and for how long.

Clean and Disinfect Areas Used by the Employee Consistent with CDC Guidelines

In addition to providing notice of potential exposure to affected employees, community college districts should consider cleaning and disinfecting areas the individual who has tested positive for COVID-19 has come into contact with consistent with CDC guidelines which are available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

Reinforce Health Hygiene Practices

The CDC also recommends that employers that become aware of an employee who has tested positive for COVID-19 to support social distancing as well as respiratory etiquette and

hand hygiene for employees, customers, and worksite visitor and includes a number of suggestions available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

Monitor and Plan for Absenteeism

Guidance from the CDC, OSHA, and local public health departments all discourage employees from attending work if they are sick or exhibiting symptoms of COVID-19. Community college districts should therefore prepare for the possibility that some employees may be absent after receiving notice about a possible exposure to COVID-19. For example, community college districts should plan for alternative work coverage for the division or department with affected employees. Community college districts should also ensure that their attendance, sick leave policies, and policies related to the Families First Coronavirus Response Act (“FFCRA”) are updated. LCW has available complimentary template FFCRA policies and forms which it can tailor specifically to the needs of your District.

Consider Whether To Stop, Scale Back, Or Modify Support Services On Campus

A community college district dealing with a possible COVID-19 exposure should consider alternatives for providing students with essential medical, social, and mental health services. The district should identify services provided to students, staff, and faculty and consider ways to adapt these to minimize risk of COVID-19 transmission.

Sample Notice Regarding Confirmed Cases of COVID-19 at the Workplace

Dear [District] Community,

I am writing to share with you that [an employee of our district] [member of the community] who was last at our [building(s)] [time period] has tested positive for COVID-19. I realize that this news may cause concerns and raise questions. Please know that we take our obligation to appropriately balance privacy and community safety interests very seriously, which is why I am only able to share limited information. [We are in the process of individually contacting those individuals whom we have reason to believe may have had increased exposure.]

We are following best practices to respond to the situation based on guidance from local health officials and other public health authorities, such as the CDC. To that end, we are using this moment to remind everyone of the need to maintain social distancing at all times, to practice thorough hygiene, to monitor for symptoms, and if symptoms arise, to stay away from others and seek medical advice. Before the stay-at-home order, we also [practiced social distancing and implemented deep cleaning protocols. This included disinfecting shared surfaces that were frequently touched (wiping down desks, cleaning doorknobs, railings, phones, etc.).] We will continue to follow these procedures.

We wish our [community member] [employee] a swift recovery and thank them for notifying the [District] directly.

Sincerely,

[Insert Name]

[Insert Title]

Sample Agreement for Repayment of Leave Pay

In the event an employee has exhausted all vacation, sick leave, compensatory time off, **[insert any additional leave]**, an employee may accrue up to _____ additional hours of sick leave, according to the terms below.

Based on mutual written agreement between the employee and the **[Name of District]** District, the amount of extra sick leave taken must be repaid within _____ of the date of the last day of the leave.

Employee acknowledges and understands that except as modified by this Program, all District policies, procedures, regulations, Collective Bargaining Agreements, and Memoranda of Understanding remain in full force and effect. This is an emergency program of the District and is not intended to be a binding practice. This Program is subject to change at any time, based on changing circumstances and information known about the COVID-19 virus. The District will notify employees of any changes to this Program and will comply with all applicable laws regarding notice to bargaining units, as required.

Reason for Leave:

The Employee is requesting Leave for one of the following reasons (*Note to Employee: Employee should mark Reason with "X" or his/her/their initials*)

- _____ Leave because of the closure of my child(ren)'s school(s) or child care provider(s) or the unexpected unavailability my child(ren)'s child care provider.
- _____ Leave because I would like to follow Governor Gavin Newsom's March 15, 2020 guidance for the home-isolation of individuals over the age of 65 and those with chronic health conditions.
- _____ Leave due to a legal shelter-in-place order issued by a federal, state, or local agency, official, governing body, or other entity.
- _____ Leave because, within the last 14 days, I have had close contact with affected individuals, defined as (a) being within approximately 6 feet (2 meters) of a COVID-19 case for a prolonged period of time (close contact can occur while caring for, living with, visiting, or sharing a healthcare waiting area or room with a COVID-19 case); or (b) having direct contact with infectious secretions of a COVID-19 case (*e.g.*, being coughed on).
- _____ Leave because I am exhibiting symptoms (*e.g.*, fever [defined as 100.4° F [37.8° C] or greater using an oral thermometer], coughing, and/or shortness of breath)

associated with COVID-19 or I have obtained a positive diagnosis of COVID-19.

_____ Leave to care for a family member (as defined below) who is exhibiting symptoms of (e.g., fever (defined as 100.4° F [37.8° C] or greater using an oral thermometer), coughing and/or shortness of breath) or who has obtained a positive diagnosis of COVID-19. The family member I am caring for is my: _____ (Family Member’s Relation to You)

Repayment:

Commencing on _____, 20____ (payroll period ____ - ____), until the sick leave advanced is repaid Employee agrees to forego his/her/their biweekly:

- Sick Leave Accrual Vacation Leave Accrual Other Leave Accrual
Specify: _____

Employee understands and fully acknowledges that he/she/they are required to repay the District the number of hours of sick leave Employee accrues under this Agreement within _____ of the date of the last leave day Employee’s use. If Employee leaves District employment for any reason prior to the full repayment of the sick leave accrual, Employee consents to the withholding of the amount necessary to repay the District for the sick leave advance from Employee’s last payroll warrant. If any amount remains due after Employee has separated from the District, Employee agrees to pay the remaining balance back to the District within 60 business days of Employee’s date of separation from employment. Employee understands that if he/she/they fails to repay the full balance of the sick leave accrual, the District will commence litigation to recover the balance due.

Date: _____

Employee Signature: _____

Human Resources Director Signature: _____
(or designee)

Notes to District to be deleted before distribution to employees: Under Education Code section 87765, the governing board of any community college district may grant a paid leave of absence to academic employees who are ill or subject to quarantine. Additionally, Education Code section 88199, a board may grant paid leaves to classified employees for these reasons. Accordingly, unless the District has granted emergency powers to the Superintendent/President,

a program allowing classified or academic employees to negatively accrue leave balances must be approved by the Board of Trustees.

Employee Certification to Return to Work After Testing Positive for COVID-19, Exhibiting Symptoms of COVID-19, Having Known Exposure to COVID-19 or Suspicion of Having or Being Exposed to COVID-19

(For Employees Other than Healthcare Workers and Emergency Responders)

(May be used if a Doctor's Note is not practicable)

[DIRECTIVE TO EMPLOYER TO BE DELETED BEFORE USE: This form is intended to be provide to employees who are not considered healthcare workers or emergency responders. For such employees, the CDC, CalOSHA or local health orders may dictate different guidance regarding the standards for healthcare workers and emergency responders returning to work following certain COVID-19-related absences.]

I, _____, certify that, at least fourteen (14) calendar days prior to the date of this certification, I either tested positive for COVID-19, exhibited symptoms of COVID-19, had known exposure to an individual who tested positive for COVID-19, or had suspected exposure to SARS-CoV-2, the virus that causes COVID-19.

I further certify the following:

- I have been free of fever (a “fever” is defined as 100.4° F [37.8° C] or greater using an oral thermometer) for at least 72 hours without the use of fever-reducing medicines;
- Any other signs of other COVID-19 related symptoms that I may have experienced, including my respiratory symptoms (e.g., cough or shortness of breath) have significantly improved in the last 72 hours;

- At least 7 days have passed since any COVID-19 symptoms I may have had first appeared; and
- I have complied with all directives provided to me by my health care provider before seeking to return to work, including, but not limited to, directives regarding the length of time that I need to self-isolate/quarantine, follow-up testing, and social distancing.

I understand that if I do present symptoms of COVID-19 (*e.g.*, fever, cough, or shortness of breath) after returning to work, I must inform my supervisor immediately and the District may either direct me to stay away from work or may require me to undergo a fitness for duty examination at the District's expense and according to the District's policy regarding fitness for duty examinations.

Signature

Date

Request for FMLA Public Health Emergency Leave and/or Emergency Paid Sick Leave

[NOTE FOR EMPLOYER TO BE DELETED PRIOR TO FORM USE: This form is intended to serve as an administrative tool for employers to receive and document requests for Family and Medical Leave Act Public Health Emergency Leave (“EFMLA”) and/or Emergency Paid Sick Leave (“EPSL”) under the Families First Coronavirus Response Act (“FFCRA”). It is not intended to serve as an employer’s standalone protocol for EFMLA/EPSL. It is to be used in conjunction with the employer’s standalone protocols for EFMLA/EPSL. This form has been updated per the temporary regulations issued by the Department of Labor on April 1, 2020.]

Please complete the following form if you are requesting to take Family and Medical Leave Act Public Health Emergency Leave (“EFMLA”) or Emergency Paid Sick Leave (“EPSL”) under the Families First Coronavirus Response Act (“FFCRA”). The information requested in this form must be submitted as soon as practicable after the need for leave arises.

[NOTE FOR EMPLOYER TO BE DELETED PRIOR TO FORM USE: If employee fails to give proper notice of the request for leave, the employer should notify the employee of such failure and provide them an opportunity to submit the information below prior to denying any EFMLA or EPSL leave. Additionally, due to the emergency need for the leave, employees can give notice orally and can do so through a representative. If an employee provides oral statements to support their request for FFCRA leave, the employer must still retain documentation related to the oral request for 4 years, i.e. the employer should document the oral request.]

Employee Name: _____

Date of Request _____

I am requesting (check one or both):

_____ Family and Medical Leave Act Public Health Emergency Leave (“EFMLA”)

_____ Emergency Paid Sick Leave (“EPSL”)

If approved for EFMLA, the first 10 days of this leave are unpaid but you have the option to use any available accrued vacation personal, sick, or EPSL during those 10 days.

If you are requesting EFMLA and want to use EPSL for the first 10 days, check both options above and complete both Sections of this form.

If you are requesting EFMLA and want to use accrued leave other than EPSL, complete Section One of this form and request the vacation, personal, or sick leave as you would normally.

SECTION ONE: REQUEST FOR EFMLA

I am requesting EFMLA for the following reason (check one):

_____ I am unable to work (including telework) due to a need for leave to care for my son or daughter under 18 years of age because my son or daughter’s school or place of care has been closed due to a public health emergency and because no suitable person is available to care for my son or daughter during the period of such leave.

_____ I am unable to work (including telework) due to a need for leave to care for my son or daughter under 18 years of age because the child care provider of my son or daughter is unavailable due to a public health emergency and because no suitable person is available to care for my son or daughter during the period of such leave..

NOTE: “Son” or “daughter” is defined in the FFCRA protocol.

The name of my son or daughter who I am caring for is:

_____.

The name of my son or daughter’s school, place of care, or child care provider that is closed or unavailable is _____.

I am requesting EFMLA begin on _____, 2020.

I expect to use EFMLA until _____, 2020.

In making this request for EFLMA or EPSL and affixing my signatures to this form, I am certifying that the above information is true and correct.

Employee Signature

SECTION TWO: REQUEST FOR EPSL

I am requesting EPSL because I am unable to work or telework because of the following reason:

_____ I am subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

The government agency that has issued the quarantine or isolation order is _____ (e.g. state, county, city).

_____ I have been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

The name of the health care provider who has advised me to self-quarantine due to concerns related to COVID-19 is _____.

_____ I am experiencing symptoms of COVID-19 and seeking a medical diagnosis.

_____ I am caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

The government agency that has issued the quarantine or isolation order is _____ (e.g. state, county, city).

The name of the health care provider who has advised the individual to self-quarantine who I am caring for is _____.

NOTE: A qualifying “individual” for whom an employee is caring for is defined under the FFCRA protocol.

_____ I am caring for a son or daughter whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19 precautions.

The name of my son or daughter whom I am caring for is

_____.

The name of my son or daughter's school, place of care, or child care provider that is closed or unavailable is

_____.

I hereby represent that there is no other suitable person to car for my son or daughter during the period in which I am requesting EPSL.

Employee Signature

_____ I am 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.

I am requesting EPSL begin on _____, 2020.

I expect to use EPSL until _____, 2020.

[NOTE FOR EMPLOYER TO BE DELETED PRIOR TO FORM USE: An employee may take EPSL intermittently only if both the employer and employee agree. It is therefore at the employer's discretion to permit an employee to use EPSL intermittently.

However, non-telecommuting employees may only take EPSL intermittently if they are requesting the leave to care for a son or daughter whose school or place of care has been closed or the childcare provider of the son or daughter is unavailable. Telecommuting employees may take EPSL intermittently for any qualifying reason. If you are unwilling to permit intermittent use of ESPL for these reasons, delete the portion of this form in red below.]

I am requesting to take EPSL on an intermittent basis:

Yes

No

I am requesting to take EPSL on an intermittent basis as follows:

_____.

I am requesting to take EPSL on an intermittent basis for the following reason(s):

_____.

I acknowledge that the FFCRA limits identifies limited circumstances in which EPSL may be taken intermittently as follows: non-telecommuting employees may only take EPSL intermittently if they are requesting the leave to care for a son or daughter whose school or place of care has been closed or the childcare provider of the son or daughter is unavailable. Telecommuting employees may take EPSL intermittently for any qualifying reason. I acknowledge that my request to take EPSL intermittently may be denied if it is not for these reasons.

Employee Signature

In making this request for EFLMA or EPSL and affixing my signatures to this form, I am certifying that the above information is true and correct.

Employee Signature

[NOTE FOR EMPLOYER TO BE DELETED PRIOR TO FORM USE: The temporary regulations issued by the Department of Labor state that an employer may not require documentation beyond what is allowed for in the regulations. Additional materials may only be required by the employer if needed to support a request for tax credits. Those tax credits are not available to public agencies. This has eliminated the need to request additional documentation or certification requirements in the form for public agencies.]

FOR HUMAN RESOURCES USE:

THIS COMPLETED FORM AND ANY OTHER DOCUMENTATION RELATED TO THE REQUEST FOR EFMLA OR EPSL MUST BE RETAINED FOR 4 YEARS REGARDLESS OF WHETHER LEAVE IS GRANTED OR DENIED.

Date: _____

Request for EFMLA Approved: _____
Yes No

Dates of Approved EFMLA: _____

Request for EPSL Approved: _____
Yes No

Dates of Approved EFMLA: _____

NOTES:

APPROVED BY:

[area Vice President or Vice Chancellor] or Designee Name and Title

Signature of [area Vice President or Vice Chancellor]

[NOTE FOR EMPLOYER TO BE DELETED PRIOR TO FORM USE: If an employee is requesting, and the District is permitting, intermittent leave, we recommend the approval form

also include the area Vice President or Vice Chancellor's signature. This is because whether intermittent leave is reasonable may depend on the specific needs of a particular division/area. Single college districts should use the term "Vice President." Multi-college districts may choose one term or use both terms, as indicated above.]

Human Resources Director or Designee Name

Signature of Human Resources Director or Designee Name

Emergency Telecommuting Protocols

The purpose of these Emergency Telecommuting Protocols is to ensure that essential District functions continue to be performed at an alternative location during the disruption of normal operations. The District will implement these Protocols in keeping with the mission of the District and the respective Department. These Protocols are in response to an emergency and the **[Superintendent/President or Chancellor]** has discretion to withdraw or change these Protocols if deemed necessary at any time.

The area **[Vice President or Vice Chancellor]** shall designate and authorize specific times in which an Emergency Telecommuting Agreement (“ETA” or “Agreement”) shall apply. The District’s ETA form is attached as **Appendix A** to this Protocols.

Any ETA is subject to the terms and conditions set forth below.

Eligibility Criteria

Telecommuting is not suitable for all employees or positions. The area **[Vice President or Vice Chancellor]** has the discretion to determine the employees and positions who may telecommute on an emergency basis utilizing criteria that includes, but is not limited to:

1. The operational needs of the employee’s department and the District;
2. The potential for disruption to the District’s functions;
3. The ability of the employee to perform his/her/their specific job duties from a location separate from his/her/their District worksite (“Alternate Worksite”) without diminishing the quantity or quality of the work performed;
4. The degree of face-to-face interaction with other District employees and the public that the employee’s position requires;
5. The portability of the employee’s work;
6. The ability to create a functional, reliable, safe, and secure Alternate Worksite for the employee at a reasonable cost;
7. The risk factors associated with performing the employee’s job duties from a location separate from his/her/their District Worksite;

8. The ability to measure the employee's work performance from a location separate from his/her/their District Worksite;
9. The employee's supervisory responsibilities;
10. The employee's need for supervision;
11. Other considerations deemed necessary and appropriate by the employee's immediate supervisor, Department Head, and the Director of Human Resources.

Telecommute Assignment:

1. Any ETA is only valid for the time specified in the Agreement. The Agreement is invalid after this time unless the District approves an extension in writing. The District may, in its discretion, decide to terminate the Agreement earlier.
2. As part of the ETA, the employee must acknowledge and agree that the ETA is temporary and subject to the discretion of management. The District will approve telecommuting on a case-by-case basis consistent with the eligibility criteria above.
3. Non-exempt employees who are entitled to overtime shall set a work schedule in the ETA, including rest and meal breaks ("Work Schedule"). Any deviation from the Work Schedule must be approved in advance, in writing, by management. Non-exempt employees must take meal and rest breaks while telecommuting, just as they would if they were reporting to work at their District worksite. Non-exempt employees may not telecommute outside their normal work hours without prior written authorization from their supervisor. A non-exempt employee who fails to secure written authorization before telecommuting outside his/her/their normal work hours may face discipline in accordance with the District's policy for working unauthorized overtime. Such action may be grounds for rescission of the employee's ETA.
4. Telecommuting employees are required to be accessible in the same manner as if they are working at their District worksite during the established telecommuting Work Schedule, regardless of the designated location for telecommuting, or "Alternate Worksite." Employees must be accessible via telephone, email, videoconference, or network access to their supervisor and other District employees while telecommuting, as if working at their District worksite. Employees shall check their District-related business phone messages and emails on a consistent basis, as if working at their District worksite.
5. Employees shall work in accordance with the ETA's Work Schedule. Employees are required to maintain an accurate record of all hours worked at the Alternate Worksite and

make that record available to their supervisor upon request. Employees shall record all non-productive work time on their timesheet. A non-exempt employee's failure to track his/her/their hours properly and accurately while telecommuting will be grounds for rescission of the employee's ETA and may be grounds for discipline.

6. While telecommuting, employees shall adhere to the following:
 - a. Be available to the department via telephone or email during all ETA designated work hours.
 - b. Have the Alternate Worksite be quiet and reasonably free of distractions, with reliable and secure internet or wireless access.
 - c. All periods of the employee's unavailability must be approved in advance by management in accordance with department policy and documented on the appropriate leave of absence slip.
 - d. Employees shall ensure dependent care will not interfere with work responsibilities.
 - e. Employees must notify their supervisor promptly when unable to perform work assignments because of equipment failure or other unforeseen circumstances.
 - f. If the District has provided District owned equipment, employees agree to follow the District's protocol for the use of such equipment. Employees will report to their supervisor any loss, damage, or unauthorized access to District owned equipment, immediately upon discovery of such loss, damage, or unauthorized access.

General Duties, Obligations, and Responsibilities:

Employees must adhere to the provisions set forth in these Protocols and the terms of the ETA. Any deviation from the ETA requires prior written approval from the District.

1. All existing duties, obligations, responsibilities, and conditions of employment remain unchanged. Telecommuting employees are expected to abide by all District and departmental policies and procedures, rules, and regulations, applicable collective bargaining agreements, and all other official District documents, directives, and protocols, whether they are utilizing their personal equipment or District equipment to telecommute.
2. Employees authorized to perform work at an Alternate Worksite must meet the same standards of performance and professionalism expected of District employees in terms of job

responsibilities, work product, timeliness of assignments, and contact with other District employees and the public.

3. Employees shall ensure that all official District documents are retained and maintained according to the normal operating procedures in the same manner as if working at a District worksite.
4. Employees may receive approval to use personal computer equipment or be provided with District issued equipment at the sole discretion of the area [**Vice President or Vice Chancellor**].
5. The District shall not be responsible for costs associated with the use of computer or cellular equipment, including energy, data or maintenance costs, network costs, home maintenance, home workspace furniture, ergonomic equipment, liability for third party claims, or any other incidental costs (*e.g.*, utilities associated with the employee's telecommuting).
6. Employees may receive a virtual private network ("VPN") account, as approved by the District Manager. Employees who receive such a VPN should utilize the VPN, to the extent practical, when telecommuting.
7. Employees shall continue to abide by practices, policies, and procedures for requests of sick, vacation and other leaves of absences. Requests to declare vacation or take other time off from work must be pre-approved, in writing, by each employee's supervisor.
8. If an employee is unable to fulfill their agreed upon commitments or deliverables while teleworking, the employee must provide notice to the District as follows:
 - a. If an employee is unable to telework due to a qualifying reason for which he/she/they are eligible to utilize Emergency Paid Sick Leave as outlined in the District's COVID-19 leave protocols, other than for the qualifying reason that he/she/they need to care for his/her/their son or daughter as the result off his/her/their child's school or place of care being closed or child care provider being unavailable, the employee must notify his/her/their supervisor on the second workday on which he/she/they take such leave, or as soon as practical thereafter. However, the District encourages an employee who is unable to telework for such qualifying reasons to notify his/her/their supervisor sooner than the second workday, if he/she/they are able.
 - b. If an employee is unable to telework because he/she/they need to care for his/her/their son or daughter as the result of his/her/their child's school or place of care being closed or child care provider being unavailable, and he/she/they are eligible to utilize Emergency Paid Sick Leave or Emergency FMLA Leave as outlined in the District's

- COVID-19 leave protocols, he/she/they must inform his/her/their supervisor as soon as practicable of the need for such leave.
- c. If an employee becomes ill or is unable to fulfill his/her/their commitments or deliverables for any other reason, the employee must notify his/her/their supervisor immediately. The employee must record on his/her/their timesheet any hours not worked due to incapacitation.
 9. Requests to work overtime must be approved in advance, in writing, by the area [**Vice President or Vice Chancellor**] in his/her/their sole discretion. These requests will be severely limited to extraordinary circumstances. A non-exempt employee who fails to secure written authorization before working overtime may face discipline in accordance with the District's policy for working unauthorized overtime. Such action may be grounds for rescission of the employee's ETA.
 10. Employees must take reasonable precautions to ensure their devices (*e.g.*, computers, laptops, tablets, smart phones, etc.) are secure before connecting remotely to the District's network and must close or secure all connections to District desktop or system resources (*e.g.*, remote desktop, VPN connections, etc.) when not conducting work for the District. Employees must maintain adequate firewall and security protection on all such devices used to conduct District work from the Alternate Worksite.
 11. Employees shall exercise the same precautions to safeguard electronic and paper information, protect confidentiality, and adhere to the District's records retention policies, especially as it pertains to the Public Records Act. Employees must safeguard all sensitive and confidential information (both on paper and in electronic form) relating to District work they access from the Alternate Worksite or transport from their District worksite to the Alternate Worksite. Employees must also take reasonable precautions to prevent third parties from accessing or handling sensitive and confidential information they access from the Alternate Worksite or transport from their District worksite to the Alternate Worksite. Employees must return all records, documents, and correspondence to the District at the termination of the ETA or upon request by their supervisor, area [**Vice President or Vice Chancellor**], or Human Resources.
 12. Employees' salary and benefits remain unchanged. Workers' Compensation benefits will apply only to injuries arising out of and in the course of employment as defined by Workers' Compensation law. Employees must report any such work-related injuries to their supervisor immediately. The District shall not be responsible for injuries or property damage unrelated to such work activities, including injuries to third persons when said injuries occur at the Alternate Worksite.

13. All of Employees' existing supervisory relationships, lines of authority, and supervisory practices remain in effect. Prior to the approval of an ETA, supervisors and employees shall agree upon a reasonable set of goals and objectives to be accomplished. Supervisors shall use reasonable means to ensure that timelines are adhered to and that goals and objectives are achieved.
14. Any breach of the telecommuting agreement by the employee may result in termination of the Agreement or disciplinary action, up to and including termination of employment.

Commentary [To be deleted by District before publishing protocol]:

While bullet point number 5 above, states that the District will not be responsible for the costs of telecommuting, please note that there are legal obligations requiring employers to reimburse employees for certain business expenses. California Labor Code Section 2802 requires an employer to reimburse its employees for all reasonable and necessary expenses the employees incur in performing their jobs. In Cochran v. Schwan's Home Service, (2014) 228 Cal.App.4th 1137 a California court of appeal interpreted Labor Code Section 2802 as requiring employers to reimburse its employees for a reasonable percentage of the employees' cell phone bills if they require them to use their personal cell phones for work-related calls. Section 2802 obligations may extend to the cost of items like a laptop, if the employer requires employees to have a laptop to perform their work. Determining which costs of teleworking a District will reimburse may be subject to negotiation.

Single college districts should use the term "Vice President." Multi-college districts may choose one term or use both terms, as indicated above.

Appendix A: Emergency Telecommuting Agreement

Employee Acknowledgement:

I, the undersigned employee (“Employee”), have read the District’s Emergency Telecommuting Protocols and this Emergency Telecommuting Agreement (“ETA” or “Agreement”) in their entirety and I agree to abide by the terms and conditions they contain. I understand and agree that the ETA is temporary and contingent upon the area [**Vice President’s or Vice Chancellor’s**] approval. Approval does not imply entitlement to a permanently modified position or a continued telecommuting arrangement.

I understand and agree that the ETA is voluntary and may be terminated at any time. I further understand that the District may, at any time, change any or all of the conditions under which approval to participate in the ETA is granted, with, or without notice.

I agree to and understand my duties, obligations, and responsibilities. I understand and agree that these duties, obligations, and responsibilities include, but are not limited to the following:

- If I am unable to telework and am eligible to take Emergency Paid Sick Leave (pursuant to the District’s COVID-19 leave protocols) because of a qualifying reason to take Emergency Paid Sick Leave other than for the qualifying reason that I need to take leave to care for my son or daughter as the result off my child’s school or place of care being closed or child care provider being unavailable, that I must notify my supervisor of my need to take Emergency Paid Sick Leave on the second workday on which I am taking such leave, or as soon thereafter as practicable.
- If I am unable to telework because I need to care for my son or daughter as the result of my child’s school or place of care being closed or child care provider being unavailable and am eligible for and plan to utilize Emergency Paid Sick Leave or Emergency FMLA Leave for such a purpose, I must inform my supervisor as soon as practicable of the need for such leave.
- I will comply with the District’s COVID-19 leave protocols as a condition of taking Emergency Paid Sick Leave or Emergency FMLA Leave.
- If I am unable to keep any of the agreed upon commitments and/or deliverables for any other reason unrelated to Emergency Paid Sick Leave or Emergency FMLA Leave, it is my responsibility to provide adequate advance notification to my supervisor.
- If I fail to provide notice as required by District protocols, procedures, regulations or other rules, I understand that this Agreement may be immediately terminated.

The Agreement is valid from _____ to _____. I understand this Agreement expires on _____ and may not continue unless the District approves a new ETA in writing. The District may rescind this Agreement at any time.

Regularly Assigned Place of Employment: The days and hours the District expects the Employee to be physically present at the District Worksite are the following:

| Day | Morning | | Lunch | Afternoon | | Total Hours |
|------------------|---------|-----|-------|-----------|-----|-------------|
| | Start | End | | Start | End | |
| Sunday | | | | | | |
| Monday | | | | | | |
| Tuesday | | | | | | |
| Wednesday | | | | | | |
| Thursday | | | | | | |
| Friday | | | | | | |
| Saturday | | | | | | |

Alternate Worksite: The location and address of the Alternate Worksite is:

Street City

Zip Code State

The phone number to reach Employee at the Alternative Worksite while working under this Agreement is:

_____.

The days and hours (“Work Schedule”) the District permits the Employee to be physically present at the Alternate Worksite are the following:

| Day | Morning | | Lunch | Afternoon | | Total Hours |
|------------------|---------|-----|-------|-----------|-----|-------------|
| | Start | End | | Start | End | |
| Sunday | | | | | | |
| Monday | | | | | | |
| Tuesday | | | | | | |
| Wednesday | | | | | | |
| Thursday | | | | | | |
| Friday | | | | | | |
| Saturday | | | | | | |

The Employee agrees to report work-related injuries to the Employee’s supervisor at the earliest reasonable opportunity. The Employee agrees to hold the District harmless for injury to third parties at the Alternate Worksite.

I hereby affirm by my signature that I have read this Emergency Telecommuting Agreement, and understand and agree to all of its provisions.

Employee’s Name and Title Date

Employee’s Supervisor’s Name and Title Date

Director’s Name Date

Director of Human Resources

Submit the completed and executed Agreement to _____

Commentary (To be deleted by District before publishing Agreement):

Single college districts should use the term “Vice President.” Multi-college districts may choose one term or use both.

Sick Leave and Family Medical Care Leaves

User Note: In addition to the Board Policies, Administrative Procedures, and provisions in Collective Bargaining Agreements, there are new laws requiring Community College Districts to provide Emergency Paid Sick Leave and Emergency FMLA Leave to almost all employees regardless of status and classification. In some areas, we have provided user notes on the added provisions. This commentary is highlighted in **YELLOW**. The District should remove these comments before it uses the language regarding the new laws.

Definitions Applicable to Emergency Paid Sick Leave and Emergency FMLA Leave

- (a) “Child Care Provider” means a provider who receives compensation for providing child care services on a regular basis. The term includes a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that is licensed, regulated, or registered under State law; and satisfies the State and local requirements. However, under the Families First Coronavirus Response Act (“FFCRA”), the eligible child care provider *need not be compensated or licensed* if he or she is a family member or friend, such as a neighbor, who regularly cares for the Employee’s child.
- (b) “Emergency responder” means the following for the purposes of employees who may be exempted from Emergency Paid Sick Leave or Emergency FMLA Leave:
 - (1) Anyone necessary for the provision of transport, care, healthcare, comfort, and nutrition of such patients, or others needed for the response to COVID-19.
 - (2) This definition includes anyone who serves in the military or national guard, or as a law enforcement officer, correctional institution personnel, fire fighter, emergency medical services personnel, physician, nurse, public health personnel, emergency medical technician, paramedic, emergency management personnel, 911 operator, child welfare worker and service provider, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

- (c) “Health care provider” means the following for the purposes of employees who may be exempted from Emergency Paid Sick Leave or Emergency FMLA Leave:
- (1) 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; and
 - (2) Any individual employed by an entity that contracts with any of these institutions described above to provide services or to maintain the operation of the facility where that individual’s services support the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.
- (d) “Individual” for the purpose of Emergency Paid Sick Leave above means an employee’s immediate family member, a person who regularly resides in the employee’s home, or a 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 were quarantined or self-quarantined. “Individual” does not include persons with whom the Employee has no personal relationship.
- (e) “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 under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability. (29 U.S.C. 2611; 29 CFR 826.10(a).)
- (f) “Subject to a Quarantine or Isolation Order” means a quarantine or isolation order includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the Employee to be unable to work even though his or her Employer has work that the Employee could perform but for the order. This also includes when a Federal, State, or local government authority has advised categories of citizens (*e.g.*, of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of Employees to be unable to work even though their Employers have work for them.

User notes:

The agency may elect to exclude the leaves described below for any "health care provider" or "emergency responder," as those terms are defined in U.S. Department of Labor ("DOL") regulations. We provided those definitions above to help guide the District in deciding whom to exempt.

Emergency Paid Sick Leave

From April 1, 2020 through December 31, 2020, eligible employees can take Emergency Paid Sick Leave for one of the six qualifying reasons described below under subsections (a) and (b):

- (a) Eligible employees are entitled to up to 80 hours of Emergency Paid Sick Leave at their full regular rate of pay, subject to maximum dollar amounts as provided under the Families First Coronavirus Response Act ("FFCRA") if they are unable to work or telework for the following reasons:
 - (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19. An employee who lives with an individual who is among one or more of those categories of individuals advised to shelter in place, stay at home, isolate or quarantine will *not* qualify for Emergency Paid Sick Leave based on that reason under this subsection. However, such an employee may be qualify for Emergency Paid Sick Leave pursuant to the qualifying reason provided for in subsection (b)(1) below.
 - (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.
- (b) Eligible employees are entitled to up to 80 hours of Emergency Paid Sick Leave at two-thirds (2/3) of the employee's regular rate of pay, subject to maximum dollar amounts as provided under the FFCRA, if they are unable to work or telework because:

- (1) The employee is caring for an “individual,” who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or been advised by a health care provider to self-quarantine due to concerns related to COVID-19 as described in subsections (a)(1) and (2) above.
 - (2) The employee 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.
 - (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.
- (c) Employees hired on or after April 1, 2020 who took the full 80 hours of Emergency Paid Sick Leave when employed by another employer are not entitled to take any additional Emergency Paid Sick Leave with the District. An employee who has taken some, but not all, of the Emergency Paid Sick Leave to which they are entitled, when they were employed by another employer, is entitled only to the remaining portion of such leave from the District if the employee meets the eligibility requirements provided above.

(d) Other Statutory or Contractual Leaves

Leave taken as Emergency Paid Sick Leave is in addition to any other statutory or contractual leave to which the employee is entitled. Unused Emergency Paid Sick Leave does not carryover for any employee.

(e) Amount of Leave

(1) Full time employees

Full time employees working 40 hours per week may take up to 80 hours of Emergency Paid Sick Leave.

a. Part time employees

Part time employees may take up to the number of hours that they work on average over a two-week period as determined by reviewing the six-month period prior to the usage of leave. If the employee has not worked for the District for six months, the District should calculate the leave entitlement based on the period during which the employee has been employed.

(f) Caps on the Amount of Pay Provided for Emergency Paid Sick Leave

Emergency Paid Sick Leave is subject to the following caps:

- a. \$511 per day and \$5,110 in the aggregate for the following qualifying reasons:
 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 is seeking a medical diagnosis.

- b. \$200 per day and \$2,000 in the aggregate for the following qualifying reasons:
 1. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised to self-quarantine as described in subparagraph (2) of the preceding subsection.
 2. The employee 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.
 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.

(g) Supplementing Pay for an Employee on Emergency Paid Sick Leave with Use of Earned or Accrued Leaves

Employees may supplement the compensation they receive if taking leave under Emergency Paid Sick Leave up to the amount of the caps specified above with their earned or accrued leaves in order to achieve 100% of the pay the employee would normally receive in a given week for working their regularly scheduled hours.

User notes:

It is up to the employer whether it will enter into an agreement with employees (or employee associations) that permits employees to supplement compensation employees earn under the FFCRA's Emergency Paid Sick Leave provisions (\$511 or \$200 per day depending on the qualifying reason for taking leave, as outlined above). We have written the above provision to allow employees to supplement leave. If your agency chooses not to permit employees to supplement earned and accrued leaves, this section can either be deleted or edited to say that employees cannot supplement earned or accrued leaves.

(h) Intermittent Leave

An employee may take intermittent leave as follows:

- a. An employee who is teleworking may take Emergency Paid Sick Leave intermittently for any qualifying reason.
- b. An employee who is still working at the District's worksite may take Emergency Paid Sick Leave intermittently only if that employee has requested leave to care for their son or daughter or 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.

User notes:

It is up to the employer whether it will enter into an agreement with employees (or employee associations) that permits employees to take leave intermittently. However, the DOL regulations provide that intermittent leave for employees who are still coming into the worksite may only take intermittent leave if the leave is to care for the employee's son or daughter due to school and child care closures. We have written the above provision to allow employees to take intermittent leave.

While an agency may choose not to enter into such agreements, DOL guidance strongly recommends that employers remain flexible in regard to the intermittent use of leave.

If your agency chooses not to permit employees to take intermittent leave, this section can either be deleted or edited to say that employees cannot take intermittent leave.

(i) Exemptions

The District has elected to exempt the following positions from receiving Emergency Paid Sick Leave.

- a. The District has designated the following job classifications as “healthcare providers”: [List]
- b. The District has designated the following job classifications as “emergency responders”: [List]

User notes:

While the DOL regulations permit employers to exclude individual employees, we think the better course of action would be to exclude everyone in a particular classification unless there is a compelling reason to exempt individual employees.

If your agency chooses to exclude certain classes of employees who qualify as health care providers or emergency paid sick leave from the Emergency Paid Sick Leave provisions of this policy, it may want to provide agency leave based on

certain criteria, e.g. agency-paid leave if the employee tests positive for COVID-19 or has been exposed to COVID-19 and must self-quarantine.

(j) Restoration to Prior Position

An employee who uses Emergency Paid Sick Leave is entitled to reinstatement to their prior position unless the position held by the employee does not exist due to economic conditions or other changes in operating conditions caused by a public health emergency during the period of leave such that the employee would not otherwise have been employed at the time of reinstatement.

(k) Expiration

The provision of this section shall expire on December 31, 2020 or when the Emergency Paid Sick Leave provisions of the FFCRA are no longer effective.

(l) Protected Leave:

Emergency Paid Sick Leave is protected when used for the reasons specified in sections (a) and (b).

(m) Sick Leave Request:

An employee must provide notice of the need to use Emergency Paid Sick Leave, as soon as practicable or after the first workday of using the Leave.

An employee may provide notice of the need to use Emergency Paid Sick Leave orally or in writing, or may provide such notice through the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to provide such notice him or herself.

If an employee fails to provide proper notice, the District will provide the employee notice of the failure and provide the employee with an opportunity to provide the required documentation, described below, prior to denying the employee's request for leave.

(n) Certification or Documentation of Need for Leave

An employee using Emergency Paid Sick Leave must provide the following information prior to taking Emergency Paid Sick Leave:

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying reason for the leave; and
- (4) Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

In addition, the employee is required to provide to the District documentation in support of his/her/their request for Emergency Paid Sick Leave as follows:

- (1) To take Emergency Paid Sick Leave because the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, the employee must provide the name of the government entity that issued the Quarantine or Isolation Order.
- (2) To take Emergency Paid Sick Leave because the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, the employee must provide the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
- (3) To take Emergency Paid Sick Leave because the employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or been advised by a health care provider to self-quarantine due to concerns related to COVID-19 order, the employee must provide either:
 - i. The name of the government entity that issued the Quarantine or Isolation Order to which the individual being care for is subject; or
 - ii. The name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.
- (4) To take Emergency Paid Sick Leave because the employee 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, the employee must provide:
 - i. The name of the Son or Daughter being cared for;
 - ii. The name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and
 - iii. A representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave.



User notes:

Due to the emergency need for the leave, employees can give notice orally and can do so through a representative. DOL regulations provide that if an employee provides oral statements to support his or her request for Paid Sick Leave, the employer is required to document and maintain such information in its records for four (4) years.

In regard to provision that employees will need to certify that “no other suitable person” will be caring for their son or daughter, the comments to the DOL regulations provide that generally, an employee will be deemed to “need” to take such leave if another suitable individual—such as a co-parent, co-guardian, or the usual child care provider—is not available to provide the care the employee’s child needs. For example, these comments appear to suggest that employers may deny Emergency FMLA Leave if to a parent of an only child if another parent is able to take care of that child. From our perspective, it will be difficult to challenge an employee’s certification that no other suitable person is available. Additionally, making such a challenge may open the employer up to claims of discrimination.

Additionally, an employer must maintain employee certification and documentation of the need for Emergency Paid Sick Leave for four (4) years.

Lastly, DOL regulations require that where an employer denies a request for Emergency Paid Sick Leave or Emergency FMLA Leave, the employer must document the determination in writing and retain the record for four (4) years.

(o) Sick Leave on Separation from Employment

Unused Emergency Sick leave may not be cashed out upon separation. An employee who is laid off or otherwise terminated on or after March 1, 2020 and who is rehired on or before December 31, 2020 will be eligible for unused Emergency Paid Sick Leave for the qualifying reasons set forth above. Unused Emergency Paid Sick Leave will not be reinstated after December 31, 2020.

Emergency FMLA Leave

(a) Eligibility

Employees are entitled to up to 12 weeks of job-protected Emergency FMLA Leave if the employee satisfies the following requirements:

- (1) The employee has worked for the District for at least 30 calendar days (FMLA Sec. 110(a)(1)(A));

- (2) The employee is unable to work (or telework) due to a need to care for the son or daughter whose school or place of care has been closed, or whose child care provider is unavailable due to a COVID-19 emergency declared by either a Federal, State, or local authority, (FMLA Secs. 101(12); 110(a)(2)(A) & (B); 29 CFR §§ 825.102, 826.010);
- (3) The employee has not used all available FMLA leave. Emergency FMLA Leave is a form of FMLA leave, and is not in addition to any other FMLA leave;
- (4) There is no other suitable person available to care for the employee's son or daughter during the period for which the Employee takes Emergency FMLA Leave; and
- (5) The District did not exempt the employee as either a "health care provider" or "emergency responder."

An employee who is laid off or otherwise terminated on or after March 1, 2020 and who is rehired on or before December 31, 2020 will be eligible for unused Emergency FMLA Leave provide that the employee had been on the District's payroll for 30 or more of the 60 calendar days prior to the date the employee was laid off or otherwise terminated. Unused Emergency FMLA Leave will not be reinstated after December 31, 2020.

(b) Paid Leave

The first ten (10) days of Emergency FMLA Leave consists of unpaid leave. During this period, the employee may elect to use Emergency Paid Sick Leave if the employee has not exhausted such leave through use at the District or prior employer. If the employee has exhausted the Emergency Paid Sick Leave, an employee may use their earned and accrued leaves to supplement their unpaid Emergency FMLA Leave compensation they receive under Emergency FMLA Leave in order to achieve 100% of the pay they would normally receive in a given week for working their regularly scheduled hours. Use of such accrued and unused leave will run concurrently with use of Emergency FMLA Leave.

After the tenth day, and for the remaining ten (10) weeks of Emergency FMLA Leave, an employee is entitled to compensation for such leave at two-thirds (2/3) of the employee's

regular rate of pay, subject to a cap of \$200 per day and \$10,000 total. (FMLA Sec. 110 (b).) During this period, employees may supplement the compensation they receive under Emergency FMLA Leave with their earned or accrued leaves in order to achieve 100% pay of the pay they would normally receive in a given week for working their regularly scheduled hours.

An eligible employee is entitled to a maximum of twelve workweeks of FMLA Leave during the period in which the leave may be taken (between April 1, 2020 to December 31, 2020) even if the twelve workweeks spans two FMLA leave twelve-month period.

User notes:

It is up to the employer whether it will enter into an agreement with employees (or employee associations) that permits employees to supplement compensation employees earn under the FFCRA's Emergency FMLA Leave provisions (\$200 per day or \$10,000 in aggregate).

We have written the above provision to allow employees to supplement leave. If your agency chooses not to permit employees to supplement earned and accrued leaves, this section can either be deleted or edited to say that employees cannot supplement accrued leaves.

(c) Employee Notice

Where the need to use Emergency FMLA Leave is foreseeable, the employee shall provide the District with such notice as soon as practicable.

The District may not require an employee to provide notice of the need to use Emergency FMLA Leave until after the first workday of the usage of such leave.

After the first workday for which an employee takes Emergency FMLA Leave, the District may require that the employee provide reasonable notice for the usage of such as soon as is practicable thereafter.

An employee may provide notice of the need to use Emergency FMLA Leave orally or in writing, or may provide such notice through the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to provide such notice him or herself.

If an employee fails to provide proper notice, the District will provide the employee notice of the failure and provide the employee an opportunity to provide the required documentation, described below, prior to denying the request for leave.

(d) Certification or Documentation of Need for Leave

In order to certify the need for Emergency FMLA, the employee must provide the following information prior to taking leave:

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying reason for the leave;
- (4) Oral or written statement that the employee is unable to work because of the qualified reason for leave;
- (5) The name of the son or daughter being cared for;
- (6) The name of the school, place of care, or child care provider that has closed or become unavailable; and

- (7) A representation that no other suitable person will be caring for the son or daughter during the period for which the Employee takes Emergency Family and Medical Leave.

User notes:

Due to the emergency need for the leave, employees can give notice orally and can do so through a representative. DOL regulations provide if an employee provided oral statements to support his or her request for Expanded FMLA Leave, the employer is required to document and maintain such information in its records for four (4) years.

In regard to provision that employees will need to certify that “no other suitable person” will be caring for their son or daughter, the comments to the DOL regulations provide that generally, an employee will be deemed to “need” to take such leave if another suitable individual—such as a co-parent, co-guardian, or the usual child care provider—is not available to provide the care the employee’s child needs. For example, these comments appear to suggest that employers may deny Emergency FMLA Leave if to a parent of an only child if another parent is able to take care of that child. From our perspective, it will be difficult to challenge an employee’s certification that no other suitable person is available. Additionally, making such a challenge may open the employer up to claims of discrimination.

Additionally Employee certification and documentation of the need for Emergency FMLA Leave must be maintained by the employer for four (4) years.

Finally, DOL regulations are require that where an employee denies a request for Emergency FMLA Leave, the employer must document the determination in writing and retain the record for four (4) years.

(e) Restoration to Prior Position

An employee who uses Emergency FMLA Leave is entitled to reinstatement to their prior position unless the position held by the employee does not exist due to economic conditions or other changes in operating conditions caused by a public health emergency during the period of leave such that the employee who not otherwise have been employed at the time of reinstatement. (FMLA Sec. 110 (d).)

[Applicable only to agencies with fewer than 25 eligible employees: If the District is unable to restore the employee to an equivalent position to the employee’s prior position, the District will notify the employee if an equivalent position becomes available within 1-year of either, the date the public health emergency concludes or date which is 12 weeks after the employee started their Emergency FMLA Leave, (which ever date is earlier). Notification shall be by regular mail to the employees address on file.]

(f) **Intermittent Leave**

An employee may take intermittent Emergency FMLA leave if that employee has requested leave to care for their son or daughter or 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.

User notes:

It is up to the employer whether it will enter into an agreement with employees (or employee associations) that permits employees to take leave intermittently. We have written the above provision to allow employees to take intermittent leave.

Such an agreement should reflect the minimum increment of time by which an employee may take such leave. We recommend using the same increment of time as the Agency does for other leaves.

While an agency may choose not to enter into such agreements, DOL guidance strongly recommends that employers remain flexible in regard to the intermittent use of leave.

If your agency chooses not to permit employees to take intermittent leave, this section can either be deleted or edited to say that employees cannot take intermittent leave.

(g) **Supplementing Other Earned or Accrued Leaves**

If an employee takes Emergency FMLA Leave after taking all or a part of his or her Emergency Paid Sick Leave for a reason other than leave to care for their son or daughter, all or part of the employee's first 10 days of Emergency FMLA Leave may be unpaid because the employee will have exhausted his or her Emergency Paid Sick Leave entitlement. In such circumstances, the employee may choose to use earned or accrued leaves provided by the District pursuant to established paid leave policies in order to achieve full pay. Such leave will run concurrently with the unpaid portion of the Emergency FMLA Leave.

Beginning on the eleventh day of Emergency FMLA Leave, employees may supplement the compensation they receive if taking leave under Emergency FMLA Leave with their earned or accrued leaves in order to achieve 100% of the pay they would normally receive in a given week for working their regularly scheduled hours.

User Notes:

Whether an employee is entitled to supplement unpaid Emergency FMLA Leave depends on which portion of the Emergency FMLA Leave the employee is using:

- *If an employee takes Emergency FMLA Leave after taking all or a part of his or her Emergency Paid Sick Leave for a reason other than leave to care for their son or daughter, all or part of the employee's first 10 days of Emergency FMLA Leave may be unpaid because the employee will have exhausted his or her Emergency Paid Sick Leave entitlement. In such circumstances, the employee may choose to substitute earned or accrued leaves provided by the employer pursuant to established paid leave policies, leaves in order to achieve 100% of the pay they would normally receive in a given week for working their regularly scheduled hours. Such leave will run concurrently with the unpaid Expanded FMLA Leave.*

- *For days 11 through the end of the twelfth week of Emergency FMLA Leave, employees (or employee associations) and employers can also agree to allow employees to supplement the compensation they receive if taking leave under Emergency FMLA Leave (paid up to the specified limitations under the FFCRA) with their earned or accrued leaves in order to achieve 100% of the pay they would normally receive in a given week for working their regularly scheduled hours.*

- *We have written the above provision to allow employees to supplement leave. If your agency chooses not to permit employees to supplement earned and accrued leaves for days 11 through the end of the twelfth week of Emergency FMLA Leave, this section can either be deleted or edited to say that employees cannot supplement accrued leaves.*

(h) Exemptions

The District has elected to exempt the following positions from receiving Emergency Paid Sick Leave.

- a. The District has designated the following job classifications as “healthcare providers”: [List]

- b. The District has designated the following job classifications as “emergency responders”: [List]

User notes:

While the DOL regulations permit employers to exclude individual employees, we think the better course of action would be to exclude everyone in a particular classification unless there is a compelling reason to exempt individual employees.

If your agency chooses to exclude certain classes of employees who qualify as health care providers or emergency paid sick leave from the Emergency FMLA Leave provisions of this policy, it may want to provide agency leave based on certain criteria, e.g. agency-paid leave if the employee tests positive for COVID-19 or has been exposed to COVID-19 and must self-quarantine.

(i) Expiration

The provision of this section shall expire on December 31, 2020 or when the Emergency FMLA Leave provisions of the FFCRA are no longer effective.