



Emergency Family & Medical Leave Expansion Act (EFMLA) and Emergency Paid Sick Leave Act (EPSLA) Leave Policy

Purpose: The purpose of this temporary policy is to comply with the Families First Coronavirus Response Act (FFCRA) and to assist employees affected by the COVID-19 outbreak with job-protected leave and emergency paid sick leave. This policy will be in effect from April 1, 2020, until December 31, 2020; however, an employee may request to use emergency leave prior to April 1, 2020 for qualifying situations upon an acknowledgement that the leave used prior to April 1, 2020 is not an additional emergency leave accrual. The existing CBJ FMLA leave policy still applies to all other reasons for leave outside of this policy.

This policy addresses the two types of leave provided under the FFCRA: emergency paid sick leave under the EMSLA and emergency family medical leave under the EFMLA. One purpose of the Act is to expand access to emergency paid sick leave so that employees are not forced to choose between their paycheck, their health, and the health of the people around them. Another purpose of the act is provide families with critical protections to ensure that workers can care for their children without sacrificing a paycheck in response to widespread and potentially prolonged school closures. The purposes of this policy align with the purposes of the FFCRA.

Employee Eligibility

All CBJ employees who have been “employed for at least 30 calendar days” may be eligible. The CBJ will follow the guidance from the US Department of Labor in determining whether an employee has been “employed for at least 30 calendar days” and other eligibility determinations.

Amendments to Policy

As the CBJ receives additional guidance from the US Department of Labor, the CBJ reserves the right to change the terms of the policy. The most recent version with a version date will be posted on the CBJ intranet (SharePoint) HRRM site.

1. Emergency Family & Medical Leave Expansion Act (EFMLA)

This Act provides an employee with up to 12 weeks of protected time off when the employee is unable to work or telework due to the need to care for their child under 18 years old as a result of a school or child care closure related to COVID-19, providing specific conditions are met.

b. Reason for Leave

Eligible employees who are unable to work (or telework) due to a need to care for their child when the school or place of care has been closed, or the regular childcare provider is unavailable due to a public health emergency with respect to COVID-19.

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is-

(A) Under 18 years of age; or

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

“Childcare provider” means a provider who receives compensation for providing childcare services on a regular basis, including:

- a center-based childcare provider
- a group home childcare provider
- a family childcare provider (one individual who provides childcare services for fewer than 24 hours per day, as the sole caregiver, and in a private residence)
- other licensed provider of childcare services for compensation
- a childcare provider that is 18 years of age or older who provides childcare services to children who are either the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, at the direction of the parent.

“School” means an elementary or secondary school.

c. Duration of Leave

Employees will have up to 12 weeks of leave to use from April 1, 2020, through December 31, 2020, for the purposes stated above. An employee may request to use this leave prior to April 1, 2020 for qualifying situations upon an acknowledgement that the leave used prior to April 1, 2020 is not an additional emergency leave accrual. The emergency 12 weeks of additional leave is included in the total FMLA leave entitlement of 18 weeks in a 12-month period. For example, if an employee has already taken 8 weeks of FMLA leave, that employee would be eligible for another 10 weeks of FMLA leave under this policy.

d. Pay During Leave

Leave will be unpaid for the first 10 days of leave; however, employees may use any accrued personal leave, comp time, or donated leave during this time. The employee may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act, as further explained below. After the first 10 days, leave will be paid at two-thirds of an employee’s regular rate of

pay for the number of hours the employee would otherwise be scheduled to work. Pay will not exceed \$200 per day, and \$10,000 in total. Any unused portion of this pay will not carry over to the next year.

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

- The average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type. Or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

e. Employee Status and Benefits During Leave

While an employee is on leave, CBJ 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, CBJ will continue to make payroll deductions to collect the employee's share of the premium. During any unpaid portions of leave, the employee must continue to make this payment per instructions from the HRRM Department.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. During any portion of unpaid leave, the employer will maintain coverage until the employee returns to work. Upon an employee's return to work premiums will be collected from the employee.

f. Procedure for Requesting Leave

Employees must notify their supervisor/manager of the need and specific reason for leave under this policy. Employees should make the request for leave using the COVID-19 Emergency Family Leave and Emergency Paid Sick Leave Form as soon as practically possible. Verbal notice will otherwise be accepted until written notice can be provided. Prompt notice is essential for timely and accurate payroll processing.

Employees are required to provide documentation as evidence of qualification for the type of emergency leave in accordance with the US Department of Labor guidance.

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

On a basis that does not discriminate against employees on FMLA leave, CBJ may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

g. Employee Status After Leave

Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The CBJ may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to operations.

Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. If the position the employee held before leave started no longer exists due to economic conditions or operational changes that are made because of the public health emergency, and no equivalent position is available, the employee will not be returned to employment. However, for the period of one year after qualifying leave under this policy ends, City & Borough of Juneau will make reasonable efforts to contact the employee if an equivalent position becomes available.

g. Emergency Family and Medical Leave Expansion Act for first responders.

The FFCRA allows employers to exclude health care practitioners and first responders from the emergency leave benefits of the Act. The CBJ will extend EFMLA leave to first responders, as defined in the US Department of Labor FAQs (see below). However, in accordance with the US Department of Labor Guidance (FAQ 38), the employee's supervisor may deny the request for EFMLA for first responders on a case-by-case basis. A supervisor may deny a first responder's request for EFMLA leave, after consultation with Human Resources, for any of the following reasons:

1. It is necessary for the employee to work to respond COVID-19 emergency;
2. There are childcare or schooling options available to the employee; or
3. Any other reason necessary for the employee to work to protect the safety and health of the public during the COVID-19 emergency.

Definition of "first responder" (from <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>): For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care,

comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, 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. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

2. Emergency Paid Sick Leave Act (EPSLA)

This Act provides all fulltime employees with 75/80 hours of Emergency Paid Sick Leave to use for the COVID-19 reasons below. Part time employees are eligible on a prorated or reduced basis depending on how they are scheduled. This is a one-time grant of additional leave for these specific purposes:

1. The employee is subject to federal, state, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis.
4. The employee is "caring for" an individual who is subject to either 1 or 2 above.
5. The employee is "caring for" his or her child if the school or place of care of the child has been closed, or the childcare provider of such child is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with Secretary of the Treasury and the Secretary of Labor.
7. After August 20, 2020, employees who travel in state to areas that are at a Moderate to High COVID risk (at any point during the employee's travel to the area) according to the State of Alaska COVID dashboard are required to follow out of state travel directives. If an employee is unable to telecommute and must quarantine while awaiting test results in accordance with this CBJ guidance, the employee may request to use Emergency Sick Leave as a benefit granted by this policy, but not the FFCRA.

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is-

(A) under 18 years of age; or

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

Note: A definition for “individual” should be provided as soon as more guidance is available.

a. Amount of Paid Sick Leave

All eligible full-time employees will have up to 75/80 hours of paid sick leave available to use for the qualifying reasons above. Eligible part-time employees are entitled to the number of hours worked, on average, over a two-week period.

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

- The average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type. Or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

b. Rate of Pay

Paid emergency sick leave will be paid at the employee's regular rate of pay for leave taken for reasons 1-3 above. Employees taking leave for reasons 4-6 will be compensated at two-thirds their regular rate of pay, or minimum wage, whichever is greater. Pay will not exceed:

- \$511 per day and \$5,110 in total for leave taken for reasons 1-3 above;
- \$200 per day and \$2,000 in total for leave taken for reasons 4-6 above.

c. Interaction with Other Paid Leave

The employee may use emergency paid sick leave under this policy before using any other accrued personal leave, comp time, or donated leave during this time for the qualifying reasons stated above.

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

d. Procedure for Requesting Emergency Paid Sick Leave

Employees must notify their supervisor/manager of the need and specific reason for leave under this policy. Employees should make the request for leave using COVID-19 Emergency Family Leave and Emergency Paid Sick Leave Form as soon as practically possible. Verbal notice will otherwise be accepted until written notice can be provided, however, Employees are required to provide additional documentation in support of Emergency Family Medical Leave. Documentation could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provided.

Once approved, the employee (or designee) must enter the time off request in TimeConnect (KRONOS). Once emergency paid sick leave has begun, the employee and his or her supervisor/manager must determine reasonable procedures for the employee to report periodically on the employee's status and need to continue to receive paid sick time.

e. Emergency Paid Sick Leave Act for first responders.

The CBJ will extend EPSLA leave to all qualified employees, including health practitioners and first responders.

f. Carryover

Paid emergency sick leave under this policy will not be provided beyond December 31, 2020. Any unused paid sick leave will not carry over to the next year or be paid out to employees.

g. Job Protections

No employee who appropriately utilizes emergency paid sick leave under this policy will be discharged, disciplined or discriminated against for work time missed due to this leave.