

FAMILIES FIRST CORONAVIRUS RESPONSE ACT POLICIES
(Addendum to Richland COVID-19 & Viral Contagion Plan)
Effective April 2, 2020

President Trump signed legislation on March 18, 2020 which modifies the requirements of the Family and Medical Leave Act (Emergency Family and Medical Leave Expansion Act), expands access to Unemployment Compensation Insurance Benefits (Emergency Unemployment Insurance Stabilization and Access Act of 2020) and creates paid sick leave (Emergency Paid Sick Leave Act) for employees while the employee or his/her family members are impacted by COVID-19. The legislative responses to the COVID-19 pandemic are all within the scope of what is known as the FAMILIES FIRST CORONAVIRUS RESPONSE ACT (the "Act"). The Act will take effect on April 2, 2020, with a sunset date of December 31, 2020.

I. The Emergency Paid Sick Leave Act (PSLA)

Provides a limited term paid sick leave benefit for employees outside of the FMLA or EFMLEA.

- A. Employee eligibility:** All regular full-time and regular part-time employees actively employed by Richland County. *Excludes health care providers and emergency first responders.* (clarification provided at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> Questions 56 and 57)

For purpose of this policy the following positions are considered exempt:

- County Administrator
- Public Health nurses and all staff
- Pine Valley Community Village ~~nurses and all staff~~ healthcare providers including: Director of Nursing, Registered Nurse Manager, Social Service Supervisor, Social Worker, Registered Nurse Supervisor, Registered Nurse, Licensed Practical Nurse, Medication Aide, Unit Clerk, Certified Nursing Assistant, CBRF Unit Clerk, Activity Aide, Personal Care Worker, Resident Assistant (changes effective 11 September 2020)
- Law enforcement officers
- Jail personnel
- Emergency medical services personnel and all staff
- Dispatchers
- Highway patrolmen and equipment operators
- Management Information Systems personnel

- B. Qualifications:** The employee must be unable to work or telecommute because:

1. the employee is subject to a Federal, State or local quarantine or isolation order relative to the COVID-19 virus;

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 the COVID-19 (fever, cough, sore throat, shortness of breath) and is seeking medical diagnosis from an appropriate health provider;
4. the employee is caring for a family member subject to a federal, state or local order related to COVID-19—"family member" is defined according FMLA; Spouse, Children, and Parents
<https://webapps.dol.gov/elaws/whd/fmla/10b1.aspx>;
5. the employee is caring for a son or daughter whose school or place of care is closed or child care provider is unavailable due to COVID-19 precautions; or,
6. the employee is experiencing a substantially similar condition to COVID-19 as has been identified by the Secretary of Health and Human Services.

C. Pay During Leave: The amount of Emergency Paid Sick Leave available to employees is limited:

- Regular full-time employees will be eligible for up to 80 hours over a two-week period of emergency paid sick leave.
- Regular part-time employees will be pro-rated based upon their regular hours of work.
- Employees who work a variable work schedule, the average bi-weekly hours of work over the preceding six-month period will be utilized.

The actual pay to which an employee will be entitled will depend on the reason for the absence.

1. If absent due to reasons identified under 1), 2) or 3) under qualifications above (generally arising from the employee's quarantine), the employee will be entitled to:
 - a. 100% of his/her regular hourly rate of pay (as long as in excess of minimum wage) for the hours of work missed and
 - b. Subject to the cap of \$511 per day, to a maximum aggregate payment of \$5,110.
2. If absent due to reasons identified under 4), 5) or 6) under qualifications above, the employee will be entitled to:
 - a. 2/3 of the employee's regular rate of pay or minimum wage, whichever is greater, and
 - b. Subject to the cap of \$200 per day, \$2,000 in the aggregate
 - c. use of available benefit time off can be utilized to make up the approximate 1/3 to make employee whole (to the extent of reasonable calculation by payroll)

D. Benefits During Leave: Benefits will continue as actively working during this leave at normal accrual rates.

E. Procedure for Requesting Leave and Certification:

The Paid Sick Leave Law requires that the employee give notice to the employer of the desire to use the available paid time. Notice must be given to the employer no later than the first workday (or portion of such workday) that the employee receives Emergency Paid Sick Leave.

Please refer to Procedures as set forth in Section II, Emergency Family Medical and Leave Expansion Act.

- F. **Return to Work:** Employees shall return to work in accordance with the Richland County COVID-19 & Viral Contagion Plan.
- G. **Enforcement:** Nothing in this provision shall be construed in any way to diminish the rights or benefits that an employee is entitled to under any law, collective bargaining agreement, or existing County policy. An employee is encouraged to consult with their department head regarding any questions or concern.

An employee may not carry over any unused Emergency Paid Sick Leave. Further, upon an employee's separation from employment, any unused Emergency Paid Sick Leave is forfeited.

II. **Emergency Family and Medical Leave Expansion Act (EFMLEA)**

- A. **Employee eligibility:** All regular full-time and regular part-time employees employed by Richland County for at least 30 calendar days. *Excludes health care providers and emergency first responders.* (clarification provided at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> Questions 56 and 57)

For purpose of this policy the following positions are considered exempt:

- County Administrator
- Public Health nurses and all staff
- Pine Valley Community Village ~~nurses and all staff~~ healthcare providers including: Director of Nursing, Registered Nurse Manager, Social Service Supervisor, Social Worker, Registered Nurse Supervisor, Registered Nurse, Licensed Practical Nurse, Medication Aide, Unit Clerk, Certified Nursing Assistant, CBRF Unit Clerk, Activity Aide, Personal Care Worker, Resident Assistant (changes effective 11 September 2020)
- Law enforcement officers
- Jail personnel
- Emergency medical services personnel and department staff
- Dispatchers
- Highway patrolmen and equipment operators
- Management Information Systems personnel

- B. **Qualifications:** Employee is unable to work or telecommute to care for a minor child if the child's school or childcare has been closed or is unavailable due to a public health emergency (COVID-19).

- C. **Pay During Leave:** The EFMLEA provides for time away from work for up to 12 weeks. The first ten (10) work days of EFMLEA leave is unpaid, unless the employee has available accrued vacation, personal or sick leave which can be substituted for the otherwise unpaid time. The employee will not be required to substitute pay for the first 10 days of unpaid leave. After the 10th unpaid work day, the employee will be eligible for pay from the County equal to 2/3 of the employee's regular rate of pay for the remainder of the available FMLA leave associated with the qualifying COVID-19 reason, not to exceed a daily cap of \$200 or aggregate cap of \$10,000, per person. Use of available benefit time off can be utilized to make up the approximate 1/3 to make employee whole (to the extent of reasonable calculation by payroll)

For full time employees, the paid leave opportunity will be based on the regular base rate of pay of the employee for the hours the employee would normally work. Part-time employees pay eligibility will be based on their regular hours worked per week – or if variable – the average hours worked in the preceding six months.

An employee may be eligible for regular FMLA leave if they have a COVID-19 diagnosis and they meet the normal requirements of the FMLA. An employee who is not ill but merely quarantined because of coming into contact with COVID-19 would not be eligible for EFMLEA or regular FMLA.

Employer Paid EFMLEA leave is allowed **only** for the reason of closure of the child's school or childcare and need to provide child care due to the public health emergency and not allowed for other FMLA reasons.

It is important to note that while an employee is entitled to 12 weeks of leave under the EFMLEA, the length of the leave is reduced by any FMLA Leave previously taken by the employee – this is not a separate 12-week entitlement. In other words, the Emergency Leave for childcare purposes is automatically reduced by the amount of leave an employee has already taken in the current administrative year, without regard to the reason for the previous leave.

- D. **Benefits During Leave:** Benefits during leave will be applied the same as FMLA Leave
- E. **Employee Status after Leave:** The FMLA's job protected leave requirements and anti-retaliation provisions also apply to EFMLEA scenarios.
- F. **Procedure for Requesting Leave and Certification:** Employees shall complete an Amended FMLA Request form that will be used specifically for the purposes under the FAMILIES FIRST CORONAVIRUS RESPONSE ACT. Forms can be found and printed from the Richland County Information Page, or by asking your department. [<https://co.richland.wi.us/Employees/index.html>]. In compliance with the recommended social distancing, please do not physically go to the courthouse to submit the form to the Clerk's Office.

Understanding that Schools and Day Cares are closed, and health care providers are overwhelmed at this time, the required certification will be waived unless there is cause to believe the employee falsified the request.

- H. **Return to Work:** Employees shall return to work in accordance with the Richland County COVID-19 & Viral Contagion Plan.
- I. **Enforcement:** Nothing in this provision shall be construed to in any way to diminish the rights or benefits that an employee is entitled to under any law, collective bargaining agreement, or existing County policy. An employee is encouraged to consult with their Department Head regarding any questions or concern.

III. **Unemployment Compensation Rights**

The Families First Coronavirus Response Act also affords an opportunity to affected employees absent due to the Coronavirus to access Unemployment Compensation Benefits at an earlier point than exists under current law. The Act not only increases funding for Unemployment Compensation Benefits, it also removes the “job search requirement” and allows for benefit entitlement on the first day of the loss of employment, rather than a one week waiting period for benefits. The Wisconsin Legislature still must take action to eliminate the one-week benefit waiting period, which as of the writing of this Client Alert has not occurred.

IV. **Consideration for exempted employees:**

This policy does not impact regular full-time and regular part-time employees’ entitlement to protected leave under the FMLA to care for themselves or a family member.

Employees utilizing FMLA will be required to use their available leave balances for the duration of their illness or to provide care for a family member’s illness (including available compensatory, sick, vacation and floating holiday) in compliance with Federal and State FMLA. Employees exceeding all paid benefit time available will be allowed to enter a negative balance on their sick leave accrual bank until they can safely return to work. Once they have returned, all future paid time off (including compensatory, sick, vacation, and floating holiday) will be recouped at time earned to offset any remaining negative balance.

The county may consider a future process of evaluating and waiving incurred negative sick leave balances that exempt employees incur from COVID-19 related absenteeism.

Departments are encouraged to work with employees in allowing for flexibility of scheduling, utilization of benefit time off in care of dependents impacted by school closures, and allowing for negative balances, to the extent of being able to safely maintain essential services of the department.

V. **Payroll processing and guidance:**

- A. The county will make the 6.2% social security contribution as the county is not qualified for payroll tax credit at the time of this release.
- B. The PLSA / EFMLEA time sheets will be utilized to track compensations for employees utilizing these programs. Departments will include proper project codes for tracking purposes.
- C. Reasonable calculation of utilized benefit time employees may use to make themselves whole will be made through the County Clerk's Office.

VI. **Information resources and references:**

Department of Labor – FFCRA Poster

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Department of Labor – Question and Answer:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

CDC guidelines for returning to work:

<https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/hcp-return-work.html>

CDC guidance on critical infrastructure:

<https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>