Families First Coronavirus Response Act (FFCRA) Procedure

Background: The Families First Coronavirus Response Act created two paid leave provisions for employers with fewer than 500 employees and public employers with at least one employee. The Emergency Paid Sick Leave (EPSL) provides up to two weeks of paid leave for qualifying reasons. The Emergency Family and Medical Leave Expansion Act (EFMLEA) expands the protections of the Family and Medical Leave Act (FMLA) to provide paid benefits in certain situations.

Exemptions: Employers of health care providers or emergency responders may elect not to provide this leave to those specific employees. Businesses with fewer than 50 employees are exempt from FMLA private causes of action under the Emergency Family and Medical Leave Expansion Act (EFMLEA), but not Department of Labor enforcement. Additionally, small businesses with fewer than 25 employees may be exempt from providing Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave Expansion Act (EFMLEA) if the leave request is because of the child’s school or child care provider is closed due to COVID-19 related reasons and would cause an undue hardship on the organization. Also, small businesses with fewer than 25 employees may be exempt from reinstatement rights following an EFMLEA leave due to negative business or operational changes.

Statement of Procedure
This procedure is in place for Oklahoma Center for Nonprofits to comply with the requirements of the Federal Families First Coronavirus Response Act (FFCRA). The FFCRA provides employees with Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave Expansion Act (EFMLEA) for those affected by the COVID-19 pandemic, from April 1, 2020 through December 31, 2020.

Two Types of Leave Covered Under FFCRA

1) Emergency Paid Sick Leave (EPSL)
Emergency paid sick leave will be available for an employee who is unable to work or work remotely because:

1. The employee is subject to a governmental quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. The employee is caring for an individual (does not have to be a family member) subject to governmental quarantine/isolation order or health care provider recommendation;
5. The employee is caring for an eligible son or daughter under age 18 whose school or place of care is closed due to COVID-19 precautions or;
6. The employee is experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services.

Eligibility for EPSL
All employees, regardless of their tenure with the organization, with full-time or part-time status are eligible to receive this benefit.

Paid Benefits for EPSL
Eligible employees will receive up to two weeks of paid sick leave.

- Full-time employees (scheduled to work 40 or more hours per week): 80 hours at their regular rate of pay, subject to caps and reasons noted below.
- Part-time employees (scheduled to work less than 40 hours per week): the number of hours that the employee works, on average, over a two week period, subject to caps and reasons noted below.

Payments are capped at $511 a day ($5,110 in total) for dealing with an employee’s own illness or quarantine (reasons 1, 2 and 3 above). Employees who are caring for an individual affected by COVID-19 and those whose children’s schools or childcare providers have closed (reasons 4, 5 and 6 above) receive up to two-thirds of their pay, and that benefit is limited to $200 a day ($2,000 in total).
Return to Work Following EPSL
Employees are required to follow guidelines established by the Centers for Disease Control and Prevention as it relates to ceasing home isolation practices.

- **If you will not have a test** to determine if you are still contagious, you can leave home after these three things have happened:
  - You have had no fever for at least 72 hours (that is three full days of no fever without the use medicine that reduces fevers)
  - other symptoms have improved (for example, when your cough or shortness of breath have improved)
  - at least 7 days have passed since your symptoms first appeared

- **If you will be tested** to determine if you are still contagious, you can leave home after these three things have happened:
  - You no longer have a fever (without the use medicine that reduces fevers)
  - other symptoms have improved (for example, when your cough or shortness of breath have improved)
  - you received two negative tests in a row, 24 hours apart.

2) Emergency Family and Medical Leave Expansion Act (EFMLEA)
Employees will be entitled to take up to 12 weeks of leave if an employee is unable to work or work remotely due to caring for the employee’s minor child because the child’s school or child care provider has been closed because of COVID-19.

**Eligibility for EFMLEA**
Under EFMLEA, full-time and part-time employees who have been on Oklahoma Center for Nonprofits payroll for 30 calendar days, prior to taking the leave, are eligible for leave.

**Paid Benefits for EFMLEA**
The EFMLEA provides for a combination of unpaid and paid leave.

- The first 10 days of EFMLEA may be unpaid. An employee may choose to take an existing pay benefit (i.e. PTO, vacation, sick pay) during the 10-day unpaid period, or the 10 days may be paid under Emergency Paid Sick Leave (EPSL), if taken for a qualifying reason.
- After ten days of unpaid leave, employees are entitled to 10 weeks of leave at two-thirds their usual pay. Part-time employees are entitled to be paid two-thirds of their usual pay based on the average number of hours worked for the six months prior to taking the leave.
- The cap of the paid leave entitlement for employees is $200 per day ($10,000 in the aggregate).

**Notifying Company of the Need for FFCRA Leave**
Employees should request their need for emergency paid leave as soon as possible, by notifying their immediate supervisor and human resources of the specific qualifying reason and date of requested leave. If an employee is incapacitated, the employee's representative should give verbal notice as soon as possible. Calling in “sick” does not qualify as adequate notice. An employee must provide sufficient information regarding the reason for an absence for the company to know that protection and benefits may exist under FFCRA.

**Required Documentation**
IRS guidance outlines the information an eligible employer must receive from an employee and maintain to substantiate eligibility for sick leave or family leave credits.
The employee must provide:
- His or her name.
- The date or dates for which leave is requested.
- A statement of the COVID-19 reason the employee is requesting leave and written support for such reason.
- A statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine. If the person subject to quarantine is not the employee, that person's name and relation to the employee shall be provided.

If a school closes or child care provider is unavailable, the statement from the employee should include:
- The name and age of the child or children.
- The name of the school that has closed or place of care that is unavailable.
- A representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave.
- With the care of a child older than 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

Insurance Benefit Continuation During FFCRA Leave

Coverage under group health insurance will continue while on leave, but employees must continue to pay their portion of the premium. Other employment benefits will also be continued during the leave, as long as the employee continues to pay any required contribution. Payment arrangements will be discussed with individuals as needed.

Certification for FFCRA Leave

Generally, the company will require certification to verify the qualifying reason for the leave. Employees should be prepared to provide documentation such as a copy of the individual's quarantine or isolation order, or written note by a health care provider advising self-quarantine, or a notice of closure of school or childcare provider (i.e. email, notification on website, or news article).

We understand that requesting healthcare provider documentation may place additional burdens on our medical community during this pandemic, therefore if an employee is unable to obtain this documentation, at a minimum, the name, address, and phone number of your treating healthcare provider must be provided. Oklahoma Center for Nonprofits also reserves the right to request additional documentation completed by your healthcare provider or childcare provider (as applicable) in situations where there is reason to believe an employee has fraudulently obtained leave or paid benefits.

Interruption Leave

Interruption leave will be permitted if the employee is unable to work his or her normal schedule of hours. The employee and employer will come to an agreement on a schedule that provides for the least amount of disruption to an employee's job. For EFLMEA purposes, the total amount of leave taken should not exceed the 12 weeks defined earlier in this procedure.

Rights Upon Return from FFCRA Leave

An employee who takes leave under FFCRA may be reinstated to the same job or an equivalent position upon completion of the leave*. If an individual has exhausted all leave under this FFCRA and is still unable to return to work, the situation will be reviewed on a case-by-case basis to determine what rights and protections might exist.

The law provides that an employee has no greater rights upon a return from leave than the individual would have had if s/he had continued to work. Therefore, an employee may be affected by a layoff, reorganization, furlough,
change in job duties or other change in employment if the action would have occurred had the employee remained actively at work.

*Under the EFMLEA portion of FFCRA, employers with less than 25 employees may be excluded from restoring the employee to his or her previous position if all four of the following hardship conditions exist:

- The position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of the leave;
- The company made reasonable efforts to restore the employee to the same or an equivalent position;
- The company makes reasonable efforts to contact the employee if an equivalent position becomes available; and
- The company continues to make reasonable efforts to contact the employee for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after the leave began, whichever is earlier.